

## **Report**

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

**from 15 to 22 April 2015**

UNMIK has requested the publication of this report and of its response. The response of UNMIK is set out in document CPT/Inf (2016) 24.

Strasbourg, 8 September 2016

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

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## EXECUTIVE SUMMARY

During the 2015 visit, which was carried out on the basis of an agreement signed in 2004 between the Council of Europe and the United Nations Interim Administration Mission in Kosovo, the CPT's delegation reviewed the measures taken by the relevant authorities following the recommendations made by the Committee after its previous visits (in 2007 and 2010). In this connection, particular attention was paid to the treatment and conditions of detention of persons in police custody and the situation in penitentiary establishments as well as to the Forensic Psychiatric Institute at Pristina University Hospital.

Throughout the visit, the delegation received very good co-operation at all levels. It enjoyed rapid access to all the places visited (including those which had not been notified in advance), was provided with the information necessary for carrying out its task and was able to speak in private with persons deprived of their liberty.

### **Police establishments**

The delegation gained the impression that, as compared to 2010, the overall situation had somewhat improved in terms of both the number and severity of allegations of police ill-treatment. That said, the delegation received a significant number of allegations from detained persons of physical ill-treatment by police officers. Most of the allegations concerned slaps, punches and kicks, in the context of police questioning, with a view to extracting confessions, or at the time of apprehension after the person concerned had been brought under control. The Committee stresses the need for the relevant authorities to take additional vigorous action, including during in-service training, to combat the phenomenon of police ill-treatment and recommends that all police officers once again be reminded that all forms of ill-treatment of detained persons are unacceptable and will be the subject of severe sanctions.

As regards the implementation in practice of the fundamental safeguards against ill-treatment (the right to have the fact of one's detention notified to a relative or another third party and the rights of access to a lawyer and a doctor), the situation seems to have improved since the last visit. However, a number of detained persons claimed that they had been prevented from consulting a lawyer or that they met an *ex officio* lawyer for the first time only after having been questioned by a police officer.

In various police stations visited, the delegation observed further improvements regarding conditions of detention. In particular, at Gračanica/Gračanicë, Laposavić/Leposaviq, Mitrovicë/Mitrovica South and Obiliq/Obilić, police custody cells have been newly constructed or renovated, and most of the deficiencies observed during previous visits to other police stations have been remedied. That said, at Pejë/Peć Police Station, artificial lighting in the custody cells was very poor and, in several of the police stations visited, cells were not equipped with a call system.

### **Prison establishments**

As compared to the findings of the 2010 visit, the situation seemed to have improved significantly in most of the KCS establishments as regards the manner in which prisoners were treated by staff. In particular, at Dubrava Prison, the delegation received no allegations of recent physical ill-treatment or excessive use of force by members of the establishment's special intervention group or by custodial staff. Further, no allegations were heard at Lipjan/Lipljan Correctional Centre and the detention centres in Mitrovica/Mitrovicë, Pejë/Peć and Prishtinë/Priština. However, a number of allegations of physical ill-treatment as well as threats of being beaten by prison officers were received at Gjilan/Gnjilane Detention Centre and at the High Security Prison.

Compared to the situation found in 2010, inter-prisoner violence did not appear to be a major problem at Dubrava Prison, nor in any of the other KCS establishments visited.

That said, the CPT expresses its dismay about the apparent lack of progress in addressing the phenomena of corruption and favouritism at Dubrava Prison, despite the specific recommendations made by the Committee after its previous two visits. Indeed, the situation at this establishment, far from improving, seemed even to have deteriorated further, and the delegation received numerous allegations of corruption involving not only custodial, but also health-care staff. It would seem that, on payment of sufficient money, prisoners could obtain contraband (e.g. a mobile phone or drugs) or preferential treatment regarding work opportunities, family visits, temporary leave outside the establishment, medical treatment, security classification, etc. Further, some prisoners reportedly received preferential treatment because of their family or political connections. It is also a matter of concern that a number of complaints of corrupt practices were once again received at the detention centres in Pejë/Peć and Prishtinë/Priština.

Material conditions varied widely amongst the different KCS establishments. At Lipjan/Lipljan Correctional Centre, conditions for all inmates remained on the whole adequate, and improvements were observed at Dubrava Prison and Mitrovica/Mitrovicë Detention Centre. The CPT welcomes the existing plans to close down the detention centres in Gjilan/Gnjilane, Pejë/Peć and Prishtinë/Priština where material conditions are generally poor. Conditions at the High Security Prison were generally good, the establishment being virtually brand new. However, the prison suffered from a major structural flaw which severely affected the overall detention conditions. In fact, most of the exercise yards which were attached to the detention blocks were constructed of a white concrete terrain surrounded by a high wall of the same material. The delegation was inundated with complaints from prisoners that the blinding reflection of the sun off the concrete ground and walls in the summer months made outdoor exercise difficult – even with sunglasses – and that the hard surface made any physical activity besides walking hazardous.

As during the previous visits, the delegation gained a generally favourable impression of the regime offered to female and juvenile prisoners (both sentenced and on remand) at Lipjan/Lipljan Correctional Centre. At Dubrava Prison, sentenced prisoners could move around freely within their detention area during the day and were granted two to three hours of outdoor exercise. Around 350 sentenced prisoners were involved in work and other activities. In addition, there were now well-equipped workshops, which, however, were accessible only to a limited number of prisoners. As regards the detention centres visited, the CPT is pleased to note that, at Mitrovicë/Mitrovica, the number of sentenced prisoners involved in work had increased since the last visit and two new workshops have been established. The Committee also acknowledges the efforts of the management at Gjilan/Gnjilane and Pejë/Peć Detention Centres to provide some sports activities for sentenced prisoners, despite infrastructural and other constraints. As regards the High Security Prison, it is positive that most sentenced prisoners were able to spend six to nine hours per day outside their cell. However, it is a matter of serious concern that the overwhelming majority of prisoners were not being offered any purposeful activities (such as work, education, vocational training or sport).

Further, at Dubrava Prison and the High Security Prison, as well as in the other detention centres visited, the regime for remand prisoners remained generally poor. As in 2010, apart from outdoor exercise (for two to three hours per day), most remand prisoners still remained locked in their cells for most of the day, with very little to do besides watching TV, reading and playing board games.

The CPT notes that the responsibility for prison health care was transferred from the Ministry of Justice to the Ministry of Health in July 2013. Overall, the delegation observed a number of improvements regarding the health care provided to prisoners since the 2010 visit. Further, the budget for prison health care has been significantly increased in recent years.

Notwithstanding that, Dubrava Prison and Pejë/Peć Detention Centre were apparently frequently faced with disruptions to the supply of medication, including essential medicines like insulin, which the patients were sometimes obliged to purchase themselves. Further, the CPT expresses its serious concern about the inadequate psychiatric care provided to patients suffering from severe mental disorders in the hospital unit at Dubrava Prison. Whilst acknowledging that, in all the establishments visited, newly-arrived prisoners were usually seen by a doctor or nurse within 24 hours of admission, the CPT deplors the almost total lack of implementation of specific recommendations made after the previous two visits. In particular, with the exception of Dubrava Prison and the High Security Prison, there was still no systematic physical examination on admission in any of the establishments visited. In addition, medical examinations/consultations were still often carried out in the presence of prison officers.

Further, the CPT formulates a number of specific recommendations regarding various other prison-related issues, such as prisoners' contacts with the outside world, discipline and security.

### **Forensic Psychiatric Institute at Pristina University Hospital (“Forensic Institute”)**

The delegation received no allegations – and did not find any other indications – of ill-treatment of patients by staff. On the contrary, the general atmosphere appeared relaxed, and relations between staff and patients positive.

Material conditions in the Forensic Institute, which was opened in August 2014, were very good in all respects, and staffing levels were adequate.

The Forensic Institute provided both pharmacological and psychosocial treatment. As regards consent to treatment, the Committee emphasises that the admission of a person to a psychiatric establishment on an involuntary basis should not preclude seeking informed consent to treatment. Every patient should be informed about the intended treatment and should be given the opportunity to refuse or withdraw his/her consent to treatment or any other medical intervention. Any derogation from this fundamental principle should be based upon law and only relate to clearly and strictly defined exceptional circumstances.

Resort to means of restraint (seclusion and mechanical restraint) was very rare. That said, there were only very basic written guidelines on seclusion and no guidelines at all on the use of other means of restraint; in addition, there was no comprehensive restraint register. The CPT recommends that detailed guidelines be drawn up on the basis of detailed criteria set out in the report.

Further, the Committee expresses its misgivings about the fact that nursing staff on Ward B regularly performed security-related tasks such as body searches and cell searches and that private security staff (on Ward B) and KCS officers (on Ward C) were on occasion called upon by nursing staff to assist in dealing with patients although they had received no training for such activities.

### **Psychiatric Clinic at Pristina University Hospital (“Psychiatric Clinic”)**

The delegation carried out a brief visit to the Admission Ward of the Psychiatric Clinic in order to review the legal safeguards surrounding involuntary placement of a civil nature in a psychiatric establishment. In this regard, the CPT notes that the Law on Non-Contentious Procedures contains a number of important safeguards. However, the visit brought to light that the relevant legal provisions had never been implemented in practice in the Psychiatric Clinic. In particular, courts had never been informed of involuntary admissions. In other terms, since the first visit of the CPT in 2007, the applicable legislation remained a dead letter. The Committee calls upon the relevant authorities to put an immediate end to this unacceptable state of affairs.

## I. INTRODUCTION

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

1. In pursuance of Article 3 of the Agreement signed on 23 August 2004 between the United Nations Interim Administration Mission in Kosovo and the Council of Europe on technical arrangements related to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (“the Agreement”), a delegation of the CPT carried out a visit to Kosovo\* from 15 to 22 April 2015.

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

- Mykola GNATOVSKYY, President of the CPT (Head of Delegation)
- Haritini DIPLA
- Julia KOZMA
- Vytautas RAŠKAUSKAS
- Hans WOLFF.

They were supported by Michael NEURAUTER, Head of Division, and Janet FOYLE of the CPT's Secretariat, and assisted by an expert, Michael KELLETT, former Detective Chief Inspector in the Lancashire Constabulary (United Kingdom).

### B. Establishments visited

3. The delegation visited the following places:

#### *Police stations*

- Gračanica/Graçanicë Police Station
- Leposavić/Leposaviq Police Station
- Mitrovicë/Mitrovica South Police Station
- Obiliq/Obilić Police Station
- Pejë/Peć Police Station
- Prishtinë/Priština Police Station No. 1

#### *Penitentiary establishments*

- Dubrava Prison
- High Security Prison at Gërdoc-Podujeva/Grdovac-Podujevo
- Lipjan/Lipljan Correctional Centre for Women and Juveniles
- Gjilan/Gnjilane Detention Centre
- Mitrovica/Mitrovicë Detention Centre
- Pejë/Peć Detention Centre
- Prishtinë/Priština Detention Centre

*Psychiatric establishments*

- Forensic Psychiatric Institute at Pristina University Hospital

The delegation also paid a brief visit to the Admission Ward of the Psychiatric Clinic at Pristina University Hospital in order to examine the legal safeguards offered to civil patients who had been admitted to the hospital on an involuntary basis.

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

4. In the course of the visit, the CPT's delegation had consultations with Ambassador Farid ZARIF, Special Representative of the Secretary-General of the United Nations in Kosovo (SRSG), Ms Jennifer BRUSH, Deputy SRSG, Ambassador Jean-Claude SCHLUMBERGER, Head of the OSCE Mission, and Mr Gabriele MEUCCI, Head of the European Union Rule of Law Mission (EULEX), as well as with Mr Skënder HYSENI, Minister of Internal Affairs, Mr Lirak QELAJ, Deputy Minister of Justice, Ms Rita HAJZERAJ BEQAJ, Deputy Minister of Labour and Social Welfare, Mr Emrush THAÇI, General Director of the Kosovo Correctional Service (KCS), Mr Fitim SHISHANI, Head of the Kosovo Police Inspectorate (PIK), Mr Izet SADIKU, Chief Advisor to the Minister of Health, Mr Milazim GJOCAJ, Head of the Prison Health Department, and other senior officials of the relevant ministries.

Further, the delegation had meetings with Mr Samuel ŽBOGAR, European Union Special Representative, Brigadier General Anton WALDNER, Deputy Commander of KFOR, the members of the UNMIK Human Rights Advisory Panel and Mr Sami KURTESHI, Ombudsperson *ad interim*. In addition, the delegation met representatives of the following non-governmental organisations: Civil Rights Defenders, Council for the Defence of Human Rights and Freedoms, Kosovo Rehabilitation Centre for Torture Victims and the Kosovo Youth Initiative for Human Rights.

5. Throughout the visit, the delegation received very good co-operation at all levels. It enjoyed rapid access to all the places visited (including those which had not been notified in advance), was provided with the information necessary for carrying out its task and was able to speak in private with persons deprived of their liberty.

That said, at Gjilan/Gnjilane Detention Centre, a prisoner who had been interviewed subsequently informed the delegation that he had been asked by a prison officer to reveal the subject matter of his interview. If true, such action on the part of prison staff is not acceptable, as it runs counter to the principle of co-operation and is likely to compromise the confidential nature of the CPT's work.

The CPT trusts that the authorities will take appropriate measures to prevent a recurrence of such practices in the future.



**D. Monitoring of places of deprivation of liberty**

6. After the CPT's visit, a new Law on the Ombudsperson was adopted, which entered into force in July 2015.<sup>1</sup> According to the law, the Ombudsperson is designated as "National Preventive Mechanism" (NPM) against torture and other cruel, inhuman or degrading treatment or punishment, and a specialised branch of the Ombudsperson Institution is to be set up for this purpose with a multidisciplinary staff (including lawyers, medical doctors, psychologists and social workers). The mandate of the NPM covers all places where persons are deprived of their liberty, and the NPM is specifically required to make regular and unannounced visits to such places. Further, the Ombudsperson and his/her staff are entitled to interview detained persons in private.

The CPT welcomes this development; **it would like to receive updated information on the establishment of the above-mentioned specialised branch within the Ombudsperson Institution and its activities as NPM.**

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<sup>1</sup> Law No. 05/L-019.

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

### A. Police establishments

#### 1. Preliminary remarks

7. One of the main objectives of the visit was to examine the treatment and conditions of detention of persons deprived of their liberty by the Kosovo Police (KP). For this purpose, the delegation visited several police stations and interviewed a number of persons who were or had recently been held in police custody.

8. Since the 2010 visit, the legal framework governing the deprivation of liberty of persons by the police has undergone major changes, in particular, with the adoption in 2012 of the Code of Criminal Procedure<sup>2</sup> (CPC) and a new Law on the Police.<sup>3</sup>

Persons who are suspected of having committed a criminal offence may be detained by the police for up to 48 hours before being brought before a judge.<sup>4</sup> Further, the police may detain and gather information from persons found at the scene of a criminal offence who may provide relevant information (maximum period: six hours).

Under the Law on the Police, persons may be held in temporary police custody when it is necessary to protect them from posing a risk for themselves or others (for an initial period of up to six hours which may be extended to a maximum of twelve hours) or for identification purposes (for an initial period of up to six hours which may be extended to a maximum of 24 hours).<sup>5</sup>

#### 2. Ill-treatment

9. In the course of the visit, the delegation received a significant number of allegations of physical ill-treatment by KP officers from detained persons (including juveniles). Most of the allegations concerned slaps, punches and kicks, in the context of police questioning, with a view to extracting confessions or obtaining other relevant information. In one case, the ill-treatment was allegedly inflicted in the presence of a prosecutor, which, if true, would give rise to particular concern. Further, a number of allegations referred to punches and kicks at the time of apprehension after the person concerned had been brought under control.

Notwithstanding the above, the delegation gained the impression that, as compared to 2010, the overall situation had somewhat improved in terms of both the number and severity<sup>6</sup> of allegations of police ill-treatment.

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<sup>2</sup> Code No. 04/L-123.

<sup>3</sup> Law No. 04/L-076.

<sup>4</sup> On the basis of Section 162 (provisional arrest of a person who is caught in the act of committing a criminal offence), Section 163 (provisional arrest of a person, following an arrest warrant issued by a court) or Section 164 of the CPC (arrest during an investigative stage, at the request of a public prosecutor). According to Section 13, paragraph 2, of the CPC, a person deprived of his/her liberty on suspicion of having committed a criminal offence shall be brought before a judge promptly and at the latest within 48 hours of the arrest.

<sup>5</sup> Section 20. Moreover, under Section 16 persons may be detained for identification purposes for up to six hours.

<sup>6</sup> In 2010, some of the allegations of ill-treatment received could easily be considered as amounting to torture.

However, it is clear from the information gathered during the visit that there are no grounds for complacency. Additional vigorous action is still required to combat the phenomenon of ill-treatment by the Kosovo Police, which often appears to be related to an overemphasis on confessions during criminal investigations. In this connection, greater emphasis should be given, including during in-service training, to modern, scientific methods of criminal investigation, through appropriate investment in equipment and skilled human resources, so as to reduce the reliance on confessions to secure convictions.

**The CPT reiterates its recommendation that the relevant authorities pursue vigorously their efforts to combat ill-treatment by the Kosovo Police, in the light of the above remarks. All KP officers (including officers of the criminal police) should be reminded once again that all forms of ill-treatment of detained persons are unacceptable and will be the subject of severe sanctions. They should also be reminded that no more force than is strictly necessary should be used when effecting an apprehension and that, once apprehended persons have been brought under control, there can be no justification for striking them.**

10. As stressed in previous visit reports, one of the most effective means of preventing ill-treatment by police officers lies in the diligent examination by the competent authorities of complaints or other information indicative of ill-treatment.

In this regard, the CPT notes that a new Law on the Police Inspectorate of Kosovo (PIK)<sup>7</sup> was adopted in October 2010. According to this law,<sup>8</sup> the independence of the PIK has been reinforced and its competences extended in the context of criminal investigations against KP officers. The PIK is an executive institution under the Ministry of the Interior, whose task is to carry out criminal and high-profile<sup>9</sup> disciplinary investigations into potential cases of misconduct (including torture and ill-treatment) by KP officers, as well as to conduct inspections of KP establishments and services. Criminal investigations are carried out under the auspices of the competent public prosecutor. The PIK is independent of the Kosovo Police and operates under the direct supervision of the Minister of the Interior whose authority does not include the operational management of the PIK. It is also noteworthy that the PIK may not disclose to the Minister or any other authority or person any information related to its investigations. The PIK is headed by a Chief Executive and comprises a total of 48 investigators and 13 inspectors.

11. In order to obtain a more comprehensive and an up-to-date picture of the treatment of persons detained by the Kosovo Police, **the CPT would like to receive the following information, in respect of the period from 1 January 2014 to the present time:**

- **the number of complaints of ill-treatment made against KP officers and the number of criminal/disciplinary proceedings which have been instituted as a result;**
- **information on the outcome of the above-mentioned proceedings, including an account of the criminal/disciplinary sanctions imposed on the KP officers concerned.**

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<sup>7</sup> Law No. 03/L-231.

<sup>8</sup> Sections, 2, 6 and 10.

<sup>9</sup> "High-profile" is defined as those cases which attract public attention and those which involve middle- or high-ranking officers. All other disciplinary investigations are carried out by the KP Professional Standards Department.

### 3. Safeguards against ill-treatment

12. The CPT recalls that three fundamental rights (the right to have the fact of one's detention notified to a relative or another third party and the rights of access to a lawyer and a doctor) should apply from the very outset of a person's deprivation of liberty. These safeguards should apply not only to persons detained by the police in connection with a criminal or administrative offence, but also to those who are obliged to remain with the police for other reasons (e.g. for identification purposes).

13. In a criminal law context, Section 13 of the CPC stipulates that any person deprived of his/her liberty shall be informed promptly, in a language which he or she understands, of the right to legal assistance of his or her own choice and the right to notify or to have notified a family member or another appropriate person of his or her choice about the arrest, and that the aforementioned rights apply "throughout the time of deprivation of liberty".<sup>10</sup>

14. As regards the right of notification of custody, Section 168 of the CPC further stipulates that an arrested person has the right to notify or have notified a family member or another appropriate person of his or her choice about the arrest and the place of detention, immediately after the arrest; notification of a family member or another person may be delayed for up to 24 hours where a public prosecutor determines that the delay is required by the exceptional needs of the investigation of the case.

Further, according to the Law on the Police,<sup>11</sup> the right of notification of custody also applies to persons who are held in "temporary police custody" for identification purposes or for their own protection or the protection of others.

15. Overall, the delegation gained the impression that the situation had significantly improved since the last visit with regard to the implementation in practice of the right of notification of custody. Hardly any allegations were received from detained persons that they had not been allowed to contact a family member or another trusted person upon apprehension.

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<sup>10</sup> See also Articles 29 and 30 of the Constitution.

<sup>11</sup> Section 20.

16. As regards the right of access to a lawyer, the CPC contains a number of specific provisions which specify that persons who are suspected of having committed a criminal offence have the right of access to a lawyer (including the right to consult a lawyer in private<sup>12</sup> and to have a lawyer present during police questioning<sup>13</sup>).<sup>14</sup> Further, persons who are not able to pay for a lawyer are entitled to free legal aid from a lawyer appointed by the Bar Association.<sup>15</sup>

That said, from the consultation of relevant documentation and interviews with KP officers in several of the police establishments visited, it transpired that the existing legal provisions were being interpreted in such a way that the right of access to a lawyer usually only applied as from the moment a criminal investigation had been formally opened against an apprehended person. Moreover, the view was expressed that the right of access to a lawyer did not apply to persons who were deprived of their liberty (for up to six hours) as a witness.<sup>16</sup> Further, the CPT notes that the Law on the Police<sup>17</sup> does not provide for a right of access to a lawyer for persons who are held in “temporary police custody” for identification purposes or for their own protection or the protection of others (for a maximum of up to twelve and 24 hours, respectively).

**The CPT recommends that steps be taken by the relevant authorities to ensure that all persons who are deprived of their liberty by the police – for whatever reason – are granted the right of access to a lawyer from the very outset of their deprivation of liberty (i.e. from the moment when the persons concerned are obliged to remain with the police). If necessary, the relevant legal provisions should be amended accordingly.**

17. Most persons interviewed by the delegation indicated that they were offered the possibility to consult a lawyer (including an *ex officio* lawyer if the person concerned was indigent).

That said, several detained persons met by the delegation claimed that they had been prevented from consulting a lawyer as KP officers had told them that they could not have, or did not need, a lawyer.

Further, a number of complaints were received that detained persons who had requested an *ex officio* lawyer met the lawyer for the first time after having been questioned by a KP officer. In this regard, the CPT recalls that, according to Section 171 of the CPC, the police are under a legal obligation to arrange for the presence of an alternative lawyer if a lawyer does not appear within one hour, and that the person concerned may only be questioned without the presence of a lawyer if the alternative lawyer does not appear within one hour (provided that it is determined by the competent public prosecutor or the police that any further delay would seriously jeopardise an ongoing investigation).

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<sup>12</sup> Sections 61 and 166.

<sup>13</sup> Sections 53, 152 and 171.

<sup>14</sup> See also Section 11 of the CPC. According to Section 166, paragraph 5, of the CPC, it is also noteworthy that in the event that a arrested person is suspected of terrorism or organised crime and that there are grounds to believe that the defence counsel chosen by the person concerned is involved in the commission of the criminal offence or will obstruct the conduct of the investigation, the pre-trial judge may, upon the application of the public prosecutor, order that an alternative defence counsel be appointed to represent the arrested person for a maximum period of 72 hours from the time of arrest.

<sup>15</sup> See Section 167 of the CPC and Sections 1 and 10 of the Law on Free Legal Aid.

<sup>16</sup> See Section 72 of the CPC.

<sup>17</sup> Section 20.

One juvenile met by the delegation who was suspected of a serious crime claimed that the *ex officio* lawyer had remained at the police station for less than half an hour and that during the questioning the lawyer was joking with the KP police investigator.

Moreover, one person met by the delegation claimed that the *ex officio* lawyer assigned to him was the son of the prosecutor who was present during the interrogation. If true, such a practice is unacceptable.

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

18. Pursuant to Section 169, paragraph 1, of the CPC, an arrested person has the right, upon request, to be examined by a doctor of his or her own choice as promptly as possible after his/her arrest and at any time during detention.<sup>18</sup>

As regards persons held in temporary police custody, the Law on the Police does not contain a formal right of access to a doctor. **The CPT trusts that the relevant authorities will take steps to ensure that persons who are deprived of their liberty by the police in a non-criminal context are effectively granted the right of access to a doctor (including to one of their own choice) as from the very outset of deprivation of liberty.**

19. As was the case during the previous visit, the delegation received no complaints from detained persons regarding access to a doctor during police custody. At the request of the person concerned or at the initiative of KP officers, emergency doctors were called or the person was transferred to a general hospital.

However, despite the specific recommendation made by the Committee after the previous visits, KP officers were still usually present during medical examinations in most of the police establishments visited. Such a state of affairs is not acceptable.

**The CPT calls upon the relevant authorities to take immediate steps to ensure that, in all police establishments, all medical examinations of detained persons are conducted out of the hearing and – unless the doctor concerned requests otherwise in a particular case – out of the sight of KP officers.**

20. As regards the provision of information on rights, detained persons were usually informed of their rights verbally without undue delay when they arrived at a police station.

That said, detained persons were not systematically provided with an information sheet which sets out the rights of detained persons. As in 2010, the delegation saw in most of the police stations visited notices on the walls in several languages setting out the rights of detained persons.

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<sup>18</sup> According to paragraph 3 of the same provision, the police may also appoint a doctor to conduct a medical examination or to provide medical treatment at any time in the case of physical injury or other apparent medical necessity.

This is a welcome practice but should not be regarded as a substitute for the provision of an information sheet to every detained person.

Further, it is a matter of concern that, in some cases, apprehended persons were apparently taken to a police station only after they had spent some time at another location with investigators and after they had been questioned. Thus, whether or not a suspect was told of his/her rights and allowed to exercise them from the outset of deprivation of liberty depended on the investigator involved in the case and often appeared to be linked to whether or not a confession was needed. The delegation once again found indications that some investigators did not comply with the requirement to inform detained persons of their rights.

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

21. The delegation noted that failure to implement in practice the fundamental safeguards against ill-treatment was less common at police stations where a custody officer was on duty on a full-time basis (e.g., at Mitrovicë/Mitrovica South Police Station or Prishtinë/Priština Police Station No. 1). The CPT acknowledges that it may not be feasible to permanently appoint such an officer at smaller police stations, nor would it even be necessary at those police stations which do not have their own detention facilities. However, a requirement for every apprehended person to be seen and processed by a designated KP officer before any steps are taken to interview him/her would help to resolve a number of the shortcomings outlined above. **The Committee encourages the relevant authorities to revise the current regulations and practices accordingly.**

22. As regards minors who are deprived of their liberty by the police, the relevant legislation contains a number of important safeguards. In particular, minors may not be held in police custody for more than 24 hours.<sup>19</sup> Further, the police are under a legal obligation to immediately notify a family member or, if the latter is not contactable, the Centre for Social Work; under no circumstances may notification be delayed for the purpose of an ongoing investigation.<sup>20</sup> In addition, Section 43 of the Juvenile Justice Code (JCC) stipulates that a minor shall be provided with the possibility to have a defence counsel (private or appointed *ex officio*) “from the beginning until the end of the procedure”.

23. The information gathered during the visits suggests that a family member or the Centre for Social Work was always informed promptly following the apprehension of a juvenile. Further, most of the juveniles interviewed by the delegation indicated that they were questioned by the police in the presence of a lawyer or another trusted adult person (parent or representative of the Centre for Social Work).

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<sup>19</sup> Section 65, paragraph 2, of the JCC.

<sup>20</sup> Section 168, paragraphs 2 and 4, of the CPC.

That said, it is a matter of serious concern that, according to Section 43, paragraph 4, of the JJC, a juvenile may refuse the appointment of an *ex officio* lawyer. Further, pursuant to Section 53, paragraph 5, of the CPC, juveniles may waive the right of access to a lawyer with the consent of a parent or a representative of the Centre for Social Work. Moreover, current legislation does not contain any specific provision which would prevent juveniles from being questioned by the police and signing incriminating statements without the benefit of the presence of either a defence lawyer or a trusted person.

Given their particular vulnerability, the Committee considers that the appointment of a defence lawyer should be mandatory for juveniles held in police custody. Further, the purpose of special provisions for juveniles is to protect this age group and to provide them with adult support so that they do not have to make decisions with important legal implications on their own.

**The CPT recommends that the relevant authorities take steps to ensure that juveniles are never subjected to police questioning or requested to make any statement or to sign any document concerning the offence(s) they are suspected of having committed without the presence of a lawyer and, in principle, a trusted adult person. The relevant legal provisions should be amended accordingly.**

24. The standard of completion of custody registers and records appears to have improved since the 2010 visit. There was greater uniformity in the type of record used and there appeared to be fewer omissions and inconsistencies.

The CPT wishes to recall the importance of a contemporaneous recording of events in connection with persons held in police custody; such a practice may also protect KP officers against false allegations. In this regard, the delegation gained a particularly positive impression of Mitrovicë/Mitrovica South Police Station, where KP officers had recorded every instance when a detained person had been visited in his cell, provided with food, taken out for questioning, etc. on a form designed for the purpose which was attached to the individual custody record of the person concerned. In contrast, in some other police stations visited, no such data were recorded by KP officers at all.

**The CPT recommends that the relevant authorities take steps to ensure that the practice of an individualised contemporaneous recording of events in police custody observed at Mitrovicë/Mitrovica South Police Station is followed in all other police stations.**

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

25. The delegation observed further improvements regarding material conditions in various police stations. In particular, at Gračanica/Gračanice, Leposavić/Leposaviq, Mitrovicë/Mitrovica South and Obiliq/Obilić, police custody cells have been newly constructed or renovated, and most of the deficiencies observed during previous visits to other police stations have been remedied.

That said, at Pejë/Peć Police Station, artificial lighting in the custody cells was very poor and, in several of the police stations visited, cells were not equipped with a call system. **Steps should be taken to remedy these deficiencies.**



## **B. Prison establishments**

### **1. Preliminary remarks**

26. The CPT's delegation carried out follow-up visits to the following establishments under the authority of the Kosovo Correctional Service (KCS): Dubrava Prison, Lipjan/Lipljan Correctional Centre for Women and Juveniles, and the detention centres in Gjilan/Gnjilane, Mitrovica/Mitrovicë, Pejë/Peć and Prishtinë/Priština. The main purpose of these visits was to review the measures taken by the relevant authorities to implement the recommendations made by the Committee after previous visits.<sup>21</sup> In addition, the delegation paid a brief visit to the new High Security Prison at Gërdoc-Podujeva/Grdovac-Podujevo, which opened in May 2014, in order to examine the general conditions of detention and certain issues related to the provision of health care, discipline and security.

27. Since the last visit, a comprehensive legal framework relating to the penitentiary system has been adopted, in particular the 2012 Criminal Code,<sup>22</sup> the 2012 Criminal Procedure Code (CPC),<sup>23</sup> the 2013 Law on the Execution of Penal Sanctions (LEPS)<sup>24</sup> and the 2010 Juvenile Justice Code (JJC).<sup>25</sup> That said, the main legal provisions relevant to the work of the CPT remained largely unchanged as compared to the provisions which were applicable at the time of the 2010 visit.<sup>26</sup>

In addition, shortly after the 2015 visit, new uniform house rules in correctional institutions ("House Rules") were introduced by means of an Administrative Instruction<sup>27</sup> issued by the Minister of Justice; the latter rules entirely replaced the previous rules which differed from one establishment to another.

28. *Dubrava Prison* remains the largest KCS establishment with an official capacity of 1,159 places, divided into eight residential units, a prison hospital unit and one semi-open unit. At the time of the visit, the capacity had been reduced to 887 places (due to the ongoing renovation of Blocks 1 and 5), and the establishment was accommodating a total of 857 male prisoners (717 sentenced, including 15 classified as "high risk" prisoners, and 140 on remand), of whom 33 were being held in the prison hospital unit and 20 in the special care unit (for inmates with special medical needs).

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<sup>21</sup> The visits to Lipjan/Lipljan Correctional Centre and the different detention centres were focused mainly on interviews with newly-arrived remand prisoners, general conditions of detention and health-care related issues.

<sup>22</sup> Code No. 04/L-082.

<sup>23</sup> Code No. 04/L-123.

<sup>24</sup> Law No. 04/L-149 (which replaced the previous LEPS No. 03/L-191).

<sup>25</sup> Code No. 03/L-193.

<sup>26</sup> In particular, UNMIK Regulations on the Provisional Criminal Code, the Provisional Criminal Procedure Code, the LEPS and the JJC.

<sup>27</sup> Administrative Instruction MoJ-NO.07/2015 dated 14 July 2015.

The new *High Security Prison*, which opened in May 2014, had a capacity of 390 places. Prisoners were accommodated in three separate blocks (divided into three wings on three floors each): Block 1 for the majority of sentenced prisoners, Block 2 for prisoners classified as medium-risk who were employed as house workers, and Block 3 for remand prisoners. The delegation was somewhat disconcerted to note that an aerial view of the structures (available over the internet) revealed that Blocks 1 and 2 had been constructed unmistakably in the form of pistols. At the time of the visit, the prison was accommodating 111 prisoners: 101 sentenced to terms of between 15 and 40 years (79 “high-risk” or “very high-risk” and 22 “medium-risk”) and ten remand prisoners (all of whom were classified as “high risk”).

*Lipjan/Lipljan Correctional Centre*, with a total capacity of 155 places, continued to serve as the sole KCS establishment for female and juvenile prisoners (both sentenced and on remand). At the time of the visit, the correctional centre was accommodating 101 inmates: 42 female prisoners (34 sentenced and seven on remand, including one female juvenile, and one juvenile placed as an educational measure) and 50 male juveniles (eleven sentenced, twelve on remand and 27 placed as an educational measure<sup>28</sup>). In addition, the correctional centre was accommodating nine adult male prisoners serving short sentences.<sup>29</sup> The delegation was informed that a new structure for male juveniles subject to an educational measure was under construction and was expected to be completed by the end of 2015. **The CPT would like to receive updated information on this point.**

As was the case during the previous visits, most of the *detention centres visited*, although intended for remand prisoners, were also accommodating sentenced prisoners (usually on short sentences). At the time of the visit, Gjilan/Gnjilane Detention Centre (capacity: 94 places) was holding 84 inmates (including 22 sentenced), Pejë/Peć Detention Centre (capacity: 80 places) 76 inmates (including 13 sentenced) and Prishtinë/Priština Detention Centre (capacity: 38 places) 39 inmates (all on remand).

Mitrovica/Mitrovicë Detention Centre, which remained the only KCS establishment in the north, continued to accommodate both remand and sentenced prisoners, with a capacity of 79 places and a population of 44 inmates (including 25 sentenced) at the time of the visit. The management of the detention centre expressed concerns that the establishment had neither the infrastructure nor the staff resources to deal with the expected influx of remand and sentenced prisoners once the courts in the north began functioning again. **The CPT encourages the authorities to develop solutions to this problem and would like to be kept informed of any developments in this regard.**

29. The CPT welcomes the fact that two new detention centres are being constructed in Prishtinë/Priština (with a capacity of some 350 places) and Gjilan/Gnjilane, respectively, in order to replace the old facilities where material conditions were found to be poor (see also paragraph 40). The delegation was informed that, with the opening of the new detention centres (planned by the end of 2015), the long-standing problem of holding remand and sentenced prisoners together in the different detention centres should be resolved.

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<sup>28</sup> Due to the absence of any specialised institution in Kosovo, juveniles subject to a measure under Section 22 (placement in a disciplinary centre), Section 27 (placement in an educational institution) or Section 28 (placement in an educational-correctional institution) of the JJC continued to be held at Lipjan/Lipljan Correctional Centre.

<sup>29</sup> Due to a lack of space in other KCS establishments, the correctional centre also regularly accommodated a number of male adult prisoners who were either serving short sentences or who had been sentenced for minor offences and were at the end of their sentence.

30. On the other hand, the CPT must express its dismay about the apparent lack of progress in addressing the phenomena of corruption and favouritism at Dubrava Prison, despite the specific recommendations made by the Committee after its previous two visits. Indeed, the situation at this establishment, far from improving, seemed even to have deteriorated further, and the delegation received numerous allegations of corruption involving not only custodial, but also health-care staff. It would seem that, on payment of sufficient money, prisoners could obtain contraband (e.g. a mobile phone or drugs) or preferential treatment regarding work opportunities, family visits, temporary leave outside the establishment, medical treatment, security classification, etc. Further, some prisoners reportedly received preferential treatment because of their family or political connections.

It is also a matter of concern that a number of complaints of corrupt practices were once again received at Prishtinë/Priština Detention Centre and, for the first time, at Pejë/Peć Detention Centre.

**The CPT once again calls upon the relevant authorities to take decisive action to combat the phenomena of corruption and favouritism at Dubrava Prison, as well as in other KCS establishments. In particular, the Committee reiterates its recommendation that the authorities strengthen their efforts in this regard through preventive measures, education and the application of appropriate sanctions. In this context, KCS staff and officials working within the penitentiary system should receive the clear message that obtaining or demanding money or other advantages from prisoners is not acceptable and will be punished accordingly; this message should be reiterated in an appropriate form, at suitable intervals.**

31. Section 5, paragraph 3, of the LEPS stipulates that secondary legislation shall be issued with the aim of eliminating corruption, *inter alia* in the KCS and in KCS institutions, through “the promotion and existence of a clear system of rewards and sanctions as part of the implementation of the action programme, development of ethical standards, etc., as a mechanism to fight corruption”. To the knowledge of the CPT, such secondary legislation has not yet been issued. **The CPT would like to receive updated information in this regard.**

## **2. Ill-treatment**

32. As compared to the findings of the 2010 visit, the situation seemed to have improved significantly in most of the KCS establishments as regards the manner in which prisoners were treated by staff. In particular, at Dubrava Prison, the delegation received no allegations of recent physical ill-treatment or excessive use of force by members of the establishment’s special intervention group or by custodial staff. Further, no allegations of ill-treatment were heard at Lipjan/Lipljan Correctional Centre and the detention centres in Mitrovica/Mitrovicë, Pejë/Peć and Prishtinë/Priština.

33. However, a number of allegations of physical ill-treatment (such as punches and/or kicks) as well as threats of being beaten by prison officers were received (for the first time) at Gjilan/Gnjilane Detention Centre and at the High Security Prison. In some cases, the allegations made were supported by medical evidence. In this regard, particular mention should be made of the two following cases.

- (a) At Gjilan/Gnjilane Detention Centre, a prisoner (D. P.) claimed to have been severely beaten and also kicked in the face by prison officers on the night of 8-9 March 2015 after having been dragged out of his cell into the corridor. Prior to this, the prisoner had allegedly requested repeatedly to see a doctor, the prison officers refusing, however, on the basis that he was only pretending to be ill. The delegation found an entry in the establishment's incident register which contained information (including on a body chart) that the "person claims that he was beaten by guards" and that "there are injuries on left eye, eyebrow, maxillary part of face". On 9 March, the prisoner was examined by a doctor and subsequently taken to a hospital for an X-ray. In the medical file, it is recorded that the prisoner had a temperature of 39.6 C, but no information is included regarding possible injuries. In contrast, on referral to the hospital, there was the diagnosis: "state after contusion of left eye, state after contusion of right part of the chest". On 19 March, the prisoner underwent another examination at the hospital (diagnosis: "contusion of chest").

The prisoner said that he had complained verbally to the Director about the beating, which was subsequently confirmed by the Director to the delegation. He had also contacted the Ombudsperson. Notwithstanding that, the incident report which had been sent by the Director to the KCS Inspectorate made no mention of any allegation of ill-treatment by the prisoner. Further, there was no record in writing of the interview between the prisoner and the management, and the delegation was told by the Director that he had decided not to keep the recordings of the CCTV camera in the corridor where the prisoner's cell and duty office were located, as the recordings displayed "no information of interest". It remained unclear whether any administrative/criminal investigation had been initiated in this case.

- (b) At the High Security Prison, one prisoner (A.A.) alleged that, following a visit received by a relative on 2 April 2015, he was taken by three prison officers to a room set aside for searches near the visiting area and then kicked and punched for several minutes. On the arrival of a senior prison officer the beating allegedly stopped. Subsequently, the prisoner was allegedly placed in a punishment cell and subjected to further beatings. On the same day, the prisoner was examined by a doctor who documented in the medical file (including on a body chart) the following injuries: "minor redness superficially in the face, forehead, head, hand joints (wrists). An irregular shaped redness on the right leg, minor redness ... on the left side of the chest". The delegation was informed that this case was being investigated by the KCS Inspectorate. It remained unclear whether this case had been brought to the attention of the competent prosecutor and a criminal investigation initiated.

**The CPT recommends that the management of Gjilan/Gnjilane Detention Centre and the High Security Prison deliver a clear message to all staff that all forms of ill-treatment of prisoners are not acceptable and will be punished accordingly.**

**Further, the Committee would like to be informed of the results of any investigations carried out in respect of the two above-mentioned cases, and of any action taken as a consequence.**

34. Compared to the situation found in 2010, inter-prisoner violence did not appear to be a major problem at Dubrava Prison, nor in any of the other KCS establishments visited.

That said, the CPT would like to highlight one case brought to the attention of the delegation<sup>30</sup> which involved the alleged rape of a prisoner by his cell-mates at Dubrava Prison in September 2014. The delegation was informed that a criminal investigation had been initiated. **The Committee would like to be informed of the outcome of the aforementioned investigation and of any action taken as a consequence.**

### 3. Conditions of detention

#### a. material conditions

35. Material conditions varied widely amongst the different KCS establishments. As was the case at the time of the 2010 visit, overcrowding was generally not a problem, although instances of overcrowding were observed in certain blocks at Dubrava Prison (due to ongoing renovation work in other blocks) as well as in some cells in the detention centres in Pejë/Peć and Prishtinë/Priština (see paragraphs 38, 40 and 41).

36. Conditions at the High Security Prison were generally good, if somewhat oppressive, the establishment being virtually brand new. Accommodation was identical for all prisoners and consisted of a single cell measuring some 10m<sup>2</sup> (including a semi-partitioned sanitary annexe) equipped with a bed, shelf, table and bench, television set and a call system. Access to natural light and artificial lighting was also good.

However, there was inadequate storage space for personal belongings in the cells so that inmates had to purchase additional furniture or keep their possessions in cardboard boxes or plastic bags under their beds. **Steps should be taken to remedy this shortcoming.**

In addition, the prison suffered from a major structural flaw which severely affected the overall detention conditions. In fact, most of the exercise yards which were attached to the detention blocks were constructed of a white concrete terrain surrounded by a high wall of the same material. The delegation was inundated with complaints from prisoners that the blinding reflection of the sun off the concrete ground and walls in the summer months made outdoor exercise difficult – even with sunglasses – and that the hard ground made any physical activity besides walking hazardous. The management affirmed to the delegation that they were aware of the problem and were trying to devise a solution (including by repainting the white surfaces in different colours). Further, it is regrettable that none of the exercise yards was equipped with adequate shelter against inclement weather.

**The CPT recommends that the relevant authorities take steps as a matter of priority to ensure that the design and layout of the outdoor exercise yards at the High Security Prison are altered, in the light of the above remarks.**

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<sup>30</sup> The person concerned was no longer in prison at the time of the visit.

37. At Lipjan/Lipljan Correctional Centre, conditions for all inmates remained generally adequate, and an ongoing refurbishment process in the section for female prisoners was in its final stage. It is also noteworthy that problems observed during the previous visit concerning the supply of sanitary towels appeared to have been resolved.

38. At Dubrava Prison, refurbishment works were ongoing, and the delegation observed a number of improvements, particularly in Block 3 and the hospital unit, both of which had been refurbished since the last visit.

However, a number of shortcomings were identified in other blocks. Sanitary facilities in some multi-occupancy cells were not fully partitioned, and many cells contained no call system. Inadequate storage space resulted in inmates keeping their possessions in cardboard boxes or plastic bags under the beds, and inmates reported that they did not receive any bed linen but had to obtain such items from their families. Overcrowding was also an issue in some cells in Blocks 2 and 4, mainly as a result of the temporary closure of Blocks 1 and 5 for refurbishment.<sup>31</sup> Further, dangerous improvised wiring was observed in a number of cells and common spaces, particularly in Block 8, including in one room also used for showering (resulting in a real risk of electrocution for both prisoners and staff). In addition, in the kitchens used for the preparation of food for inmates, much of the essential equipment, such as ovens, burners, and cold storage rooms, was either very dilapidated or not functioning at all.

**The CPT recommends that the above-mentioned shortcomings be remedied at Dubrava Prison. Further, the Committee trusts that once refurbishment is completed, all multi-occupancy cells in the establishment will provide at least 4m<sup>2</sup> of living space per prisoner (without counting the space taken by the sanitary facilities).**

39. At Mitrovica/Mitrovicë Detention Centre, renovation works had been carried out at the establishment since the last visit and material conditions were generally acceptable.

40. In contrast, conditions were not satisfactory in parts of Prishtinë/Priština Detention Centre. The building was generally old and dilapidated, and the ground floor of the facility was not being used as a result. The delegation observed overcrowding in some cells, including one four-person cell where a fifth inmate had been sleeping on a mattress on the floor for 20 days. Likewise, at Gjilan/Gnjilane Detention Centre, material conditions were generally sub-standard. The CPT welcomes the fact that these two detention centres are expected to be closed by the end of 2015 and the inmates transferred to the new establishments. **The Committee would like to receive updated information on this point.**

41. At Pejë/Peć Detention Centre, material conditions were also generally poor in terms of the state of repair (including the sanitary facilities) and ventilation. In addition, cells were not equipped with furniture to store personal belongings, nor were they fitted with a call system. Further, the delegation observed that a number of cells were overcrowded. For instance, several cells measuring some 13m<sup>2</sup> (including a fully-partitioned sanitary annexe of 2m<sup>2</sup>) were accommodating four prisoners.<sup>32</sup> The delegation was informed by the authorities that it was planned to close this detention centre and transfer the inmates to other establishments in the coming years.

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<sup>31</sup> By way of example, some cells measuring less than 20m<sup>2</sup> (including the sanitary facilities), were accommodating up to six prisoners.

<sup>32</sup> The delegation was told that, on occasion, a fifth inmate had to sleep on a mattress on the floor.

**The CPT encourages the relevant authorities to pursue their plan to close down Pejë/Peć Detention Centre as soon as possible. For as long as the existing premises remain in use, efforts should be made to ensure that sanitary facilities are kept in an acceptable state of repair and that prisoners are offered at least 4 m<sup>2</sup> of living space per person in all multi-occupancy cells.**

b. regime

42. As during the previous visits, the delegation gained a generally favourable impression of the regime offered to female and juvenile sentenced prisoners at Lipjan/Lipljan Correctional Centre. Secondary education courses were provided, and vocational training was also available: computing, plumbing, electrical installation, and construction courses for male juveniles as well as computing, tailoring, hairdressing and food preparation for women.<sup>33</sup>

That said, from interviews with sentenced male juveniles it appeared that they were usually offered only some two hours of outdoor exercise per day, rather than the three hours to which they were entitled by law.<sup>34</sup> **The CPT would like to receive the authorities' comments on this point.**

43. At Dubrava Prison, sentenced prisoners could move around freely within their detention area during the day and were granted three hours of outdoor exercise in the summer and two hours during the rest of the year.<sup>35</sup> The delegation was told that around 350 sentenced prisoners were involved in work and other activities, and since the last visit a farm had been established on the prison grounds.<sup>36</sup> In addition, there were also now well-equipped workshops (welding, carpentry, plumbing and electrical installation), which provided training courses of several months' duration three times a year. However, these workshops were only available to a limited number of prisoners. **The CPT encourages the relevant authorities to make the existing workshops accessible to more prisoners.**

44. As regards the detention centres visited, the CPT is pleased to note that, at Mitrovicë/Mitrovica, the number of sentenced prisoners involved in work (such as cleaning, maintenance and kitchen duties) had increased since the last visit. Further, two new workshops had been established, for carpentry and tailoring, respectively, and the fitness and computer rooms referred to in the last report had been equipped and were now in use.

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<sup>33</sup> As in the other establishments visited, certificates delivered to inmates in respect of educational or vocational courses did not indicate that the course was completed while the person was in a correctional facility (in accordance with Section 86 of the LEPS).

<sup>34</sup> Section 139 of the JJC.

<sup>35</sup> According to Section 37 of the LEPS, sentenced prisoners are entitled to at least two hours of daily outdoor exercise.

<sup>36</sup> Prisoners under the semi-open regime formed the main workforce on the prison farm, which raised beef cattle and also had its own bakery. All products were used for consumption within the prison.

The CPT also acknowledges the efforts of the management at the detention centres in Gjilan/Gnjilane and Pejë/Peć to provide some sports activities for sentenced prisoners, despite infrastructural and other constraints. More particularly, at Gjilan/Gnjilane some fitness equipment was now available in the indoor sports room.<sup>37</sup> At Pejë/Peć Detention Centre, table tennis equipment had been installed in the exercise yard.

45. As regards the High Security Prison, it is positive that most sentenced prisoners were able to spend six to nine hours per day outside their cell.<sup>38</sup> However, it is a matter of serious concern that the overwhelming majority of prisoners were not being offered a regime worthy of the name. The only activity available during out-of-cell periods consisted of associating with other inmates in the corridors or gathering in a small recreation room to play board games, table tennis or table football. Apart from a group of 22 prisoners who were occupied in work in the kitchen and laundry, the other inmates had virtually no access to purposeful activities such as work, education, vocational training or sport.<sup>39</sup> The two structures designed to be used as workshops were not equipped for providing vocational training, and no educational or vocational courses were available to prisoners at the time of the visit. Further, although one of the workshops was being used as a fitness room, the delegation was told that only a limited number of prisoners were allowed to use it. Similarly, almost a year after the prison had opened, the library had received almost no books, and prisoners were obliged to have reading material brought to them by their families.<sup>40</sup> Finally, as has already been mentioned at paragraph 36, the design of the outdoor yards - although adequate in size - precluded most sports activities.

Many inmates expressed to the delegation feelings of intense frustration that their conditions of detention had become, as they perceived it, more punitive. This was especially the case for inmates who had enjoyed purposeful activities in other KCS facilities before their transfer to the High Security Prison. In this connection, the CPT wishes to stress that purposeful activities are of crucial importance for the well-being and resocialisation of any prisoner. As regards sentenced prisoners in particular, such activities are essential to render meaningful a term of imprisonment.

**The Committee recommends that steps be taken as a matter of priority to devise and implement a comprehensive regime of out-of-cell activities for all sentenced prisoners at the High Security Prison. The aim should be to ensure that all prisoners are able to spend a reasonable part of the day outside their cells engaged in purposeful activities of a varied nature (work, preferably with a vocational value; education; sport; recreation/association). Particular attention should be paid in this context to the situation of long-term prisoners.**

46. Concerning the regime offered to remand prisoners, the situation remained generally satisfactory at *Lipjan/Lipljan Correctional Centre* for juveniles in terms of education and recreational activities. Further, all female remand prisoners had access to sports facilities twice a week for one hour (in addition to outdoor exercise). It is also noteworthy that at *Pejë/Peć Detention Centre* remand prisoners now had the opportunity to engage in sport (table tennis) in the exercise yard.

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<sup>37</sup> See CPT/Inf (2009) 3, paragraph 58.

<sup>38</sup> This included two hours of outdoor exercise.

<sup>39</sup> Some of the prisoners were allowed to do cleaning work within their blocks, for which they received some remuneration.

<sup>40</sup> According to Section 80 of the House Rules, all KCS establishments should have a library.



However, at Dubrava Prison and the High Security Prison, as well as in the other detention centres visited, the regime for remand prisoners remained generally poor, although the management of the different establishments appeared to be making efforts to relax the regime as much as possible, for instance by allowing remand prisoners to watch television for prolonged periods, and also by allowing some remand prisoners to do cleaning work within their block. As during the previous visits, apart from outdoor exercise (for two to three hours per day<sup>41</sup>), most remand prisoners still remained locked in their cells for a large part of the day, with very little to do besides watching television, reading and playing board games.

**The CPT reiterates its recommendation that the authorities strive to enhance the out-of-cell activities available to remand prisoners in all the establishments visited and, where appropriate, in other KCS establishments; the longer the period for which remand prisoners are detained, the more developed should be the regime offered to them. To this end, steps should also be taken to ensure that staffing levels are, where required, increased accordingly.**

#### 4. Health care

##### a. introduction

47. The CPT notes that the responsibility for medical services in KCS establishments was transferred from the Ministry of Justice to the Ministry of Health in July 2013. Overall, the delegation observed a number of improvements regarding the health care provided to prisoners since the 2010 visit. Further, the budget for prison health care has been significantly increased in recent years.

##### b. staff, treatment and facilities

48. As regards health-care staff, the number of general practitioners<sup>42</sup> was adequate in all the establishments visited.

49. Further, the situation remained generally satisfactory with regard to nursing staffing levels.<sup>43</sup> At Dubrava Prison, the High Security Prison and Lipjan/Lipljane Correctional Centre, as well as at Prishtinë/Priština and Pejë/Peć Detention Centres, there was 24-hour nursing cover, seven days a week. At Gjilan/Gnjilane Detention Centre, a nurse was present during the day seven days a week, while at night one of the nurses was present or remained on call.

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<sup>41</sup> According to Section 199 of the CPC, remand prisoners are entitled to at least two hours of outdoor exercise per day.

<sup>42</sup> At the High Security Prison, two full-time doctors were present eight hours a day on weekdays, and otherwise on call. At Dubrava Prison, there were six full-time doctors ensuring a 24-hour presence. Lipjan/Lipljane Correctional Centre had three full-time doctors working eight hours a day on weekdays, and one part-time doctor who visited once a week. As for the detention centres, at Mitrovica/Mitrovicë, the doctor visited three times per week; at Prishtinë/Priština, a full-time doctor worked eight hours a day on weekdays, as well as a part-time doctor who visited once a week; Pejë/Peć Detention Centre had two part-time doctors who visited twice a week for two hours; Gjilan/Gnjilane had one part-time doctor working for 20 hours per week from Monday to Friday. At the correctional centre and in all the detention centres visited, doctors were on call outside working hours.

<sup>43</sup> There were 25 nurses (with at least six being present every day) at Dubrava Prison, six at the High Security Prison, Lipjan/Lipljane Correctional Centre and the detention centres in Pejë/Peć and Prishtinë/Priština, and four at Mitrovica/ Mitrovicë Detention Centre.

At Mitrovica/Mitrovicë Detention Centre,<sup>44</sup> the delegation was informed that a recruitment process for two additional nurses was underway which would eventually allow the reintroduction of nursing cover around the clock.<sup>45</sup> **The CPT would like to receive updated information on this point.**

50. In terms of specialist staff, the CPT welcomes the recruitment of a full-time psychiatrist at Dubrava Prison, in accordance with a specific recommendation made by the Committee after the 2010 visit. In the other establishments visited, a psychiatrist was present on a part-time basis,<sup>46</sup> except in Mitrovica/Mitrovicë Detention Centre, where the recruitment of a psychiatrist was in process and was expected to be completed in the coming months; in the meantime, prisoners with mental health problems were treated by the general practitioner in co-ordination with a psychiatrist from the general hospital. **The CPT would like to receive updated information on this matter.**

51. The health-care teams included a full-time psychologist in all the establishments visited, with the exception of the detention centres in Mitrovica/Mitrovicë and Prishtinë/Priština, where a psychologist was called in when needed.

That said, bearing in mind that Dubrava Prison usually accommodates a number of psychiatric patients (nine at the time of the visit) in the prison hospital unit, it is matter of concern that the post of psychologist had been vacant in the establishment since January 2015. **The CPT recommends that the relevant authorities take immediate steps to ensure that this post is filled.**

52. It is praiseworthy that, at Dubrava Prison, a full-time dentist has been recruited, as recommended by the Committee after the previous visit. There was likewise a full-time dentist at the High Security Prison, while, at Lipjan/Lipljan Correctional Centre and Mitrovica/Mitrovicë Detention Centre, a dentist held consultations at the establishment three times per week.<sup>47</sup> At the other detention centres visited, inmates in need of dental care were referred to outside clinics.<sup>48</sup>

53. In particular at the High Security Prison, several members of the health-care staff expressed the desire to receive enhanced in-service training to increase their effectiveness in dealing with health issues specific to a prison environment. **The CPT encourages the relevant authorities to arrange in-service training on relevant issues related to prison health care (including psychiatric care) for health-care staff in all KCS establishments.**

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<sup>44</sup> At Mitrovica/Mitrovicë Detention Centre, nurses worked from 7 a.m. to 7 p.m. (including weekends).

<sup>45</sup> In 2010, nursing staff were present around the clock in the establishment.

<sup>46</sup> At the High Security Prison, the psychiatrist worked part-time (50%); at Lipjan/Lipljan Correctional Centre and the detention centres in Pejë/Peć, Prishtinë/Priština and Gjilan/Gnjilane a psychiatrist visited at least once a week.

<sup>47</sup> At the time of the visit, the dentist for Lipjan/Lipljan Correctional Centre was on maternity leave.

<sup>48</sup> Inmates from Prishtinë/Priština Detention Centre were also sometimes sent to Lipjan/Lipljan Correctional Centre to receive dental treatment.

54. The provision of general health care appeared to be on the whole adequate in most of the establishments visited.

That said, it is a matter of serious concern that Dubrava Prison and Pejë/Peć Detention Centre were apparently frequently faced with disruptions to the supply of medication, including essential medicines like insulin, which the patients were sometimes obliged to purchase themselves.<sup>49</sup> Medical staff at Dubrava Prison confirmed that, with the exception of treatment for tuberculosis, all other treatment was regularly interrupted because of shortages in the supply of medicines. The CPT wishes to stress that the duty of care of the KCS towards prisoners includes the obligation to provide them with adequate medical care, including necessary medication.

**The Committee recommends that the relevant authorities take immediate steps to ensure the uninterrupted supply of all essential medicines to KCS establishments, including by authorising the procurement of medication, if necessary, from local sources.**

55. There had been two suicides at Dubrava Prison during the course of 2014 and one at the High Security Prison in February 2015. In addition, there had been several cases of attempted suicide during the same period at Lipjan/Lipljane Correctional Centre and the detention centres in Gjilan/Gnjilane and Pejë/Peć.

**The Committee would like to receive detailed information on the measures taken by the relevant authorities to prevent suicides in KCS establishments.**

56. The CPT is concerned about the manner in which two cases of attempted suicide (by hanging) were managed in early 2015 at Pejë/Peć Detention Centre. According to the medical files, neither of the two prisoners was immediately examined by a general practitioner, nor were they transferred to hospital for further tests to detect a possible trauma of the larynx or cervical bones or other injuries.

**The CPT recommends that steps be taken at Pejë/Peć Detention Centre, as well as in all other KCS establishments, to ensure that prisoners who have attempted to commit suicide are promptly examined by a general practitioner and subjected, if necessary, to essential diagnostic procedures.**

57. As regards psychiatric care, the psychiatric ward of the hospital unit at Dubrava Prison was accommodating nine patients, six of whom suffered from severe mental disorders (such as psychosis). The care provided to the latter patients appeared to be highly inadequate, there being no meaningful occupational or therapeutic activities, apart from pharmacotherapy and regular consultations with a psychiatrist. The CPT considers that prisoners with severe mental disorders should be cared for in a therapeutic environment and receive the same level of psychiatric care, including psychosocial treatment and occupational therapy, as those outside the prison system. Even if the vacant post of psychologist at Dubrava Prison was filled (see paragraph 51), the new Forensic Psychiatric Institute in Prishtinë/Priština would offer far more suitable conditions to treat severely mentally-ill prisoners and was also operating far below its official capacity (at the time of the visit, there were only twelve forensic patients in the ward for psychiatric treatment with 24 beds).

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<sup>49</sup> Medications appearing on a list established by the Ministry of Health are sent to the different KCS establishments at regular intervals during the year and provided to prisoners free of charge. Medicines not on this list have to be purchased by the patients themselves.

**The Committee recommends that the relevant authorities take immediate steps to review the situation of severely mentally-ill prisoners at Dubrava Prison, in the light of the above remarks.**

58. For cases of drug addiction, there was a fledgling programme in place. At Dubrava Prison, three prisoners were receiving opiate substitution treatment with methadone, and, at the level of the Ministry of Health, there were plans to extend this programme to several other KCS establishments. However, none of the establishments visited had put in place any harm-reduction measures (such as the provision of bleach and information on how to sterilise needles or needle-exchange programmes), although the delegation was told that such programmes were available to the general public.

In the CPT's view, the management of drug-addicted prisoners must be varied – combining detoxification, psychological support, socio-educational programmes, rehabilitation and substitution programmes – and linked to public health prevention policy. It goes without saying that health-care staff must play a key role in drawing up, implementing and monitoring the programmes concerned and co-operate closely with the other (psycho-socio-educational) staff involved.

**The Committee encourages the relevant authorities to take into account the above-mentioned remarks in developing their programme for the management of drug-addicted prisoners, and would like to be informed of any developments in this regard.**

59. Health-care facilities were once again generally found to be satisfactory in all the KCS establishments visited. In particular at the High Security Prison, the facilities were of a very good standard and well-equipped.

That said, it is regrettable that medical examinations were routinely carried out by doctors in the prisoners' cells rather than in the health-care unit. **The CPT recommends that this practice be discontinued at the High Security Prison.**

60. At Dubrava Prison, the premises of the hospital unit, though newly renovated, were not adapted to the needs of physically disabled inmates; for example, a raised threshold at the entrance to the common sanitary facilities prevented access by wheelchair. **The CPT recommends that steps be taken at Dubrava Prison to remedy this deficiency.**

61. Moreover, at both Dubrava Prison and Pejë/Peć Detention Centre, the delegation was surprised to note that the common toilets and showers in the medical unit/infirmary had to be cleaned by the patients themselves. Such work is highly inappropriate for inmates who are ill. **Steps should be taken to put an end to such practices.**

c. medical screening

62. As during the last visit in 2010, the delegation paid particular attention to the medical screening of newly-arrived prisoners. The CPT recalls that such screening is essential, not only for detecting (transmissible) diseases and preventing suicides, but also for contributing to the prevention of ill-treatment through the proper recording of injuries.

Whilst acknowledging that, in all the establishments visited, newly-arrived prisoners were usually seen by a doctor (or a nurse reporting to a doctor) within 24 hours of admission, the CPT must express its concern about the almost total lack of implementation of specific recommendations made by the Committee after the previous two visits.

In particular, with the exception of Dubrava Prison and the High Security Prison, there was still no systematic physical examination on admission in any of the establishments visited (the examination often being limited to questions about the state of health of the prisoner concerned and the existence of any injuries). In addition, in all the establishments visited, it remained the case that newly-arrived prisoners were not systematically screened for tuberculosis, nor was screening for hepatitis and HIV offered to inmates. Relevant tests were only carried out if there was a concrete suspicion. **The CPT reiterates its recommendation that steps be taken in all KCS establishments to ensure that all newly-arrived prisoners benefit from a comprehensive medical examination (including screening for transmissible diseases).**

63. Further, as regards the recording of injuries, the situation left much to be desired in virtually all the establishments visited. Injuries were not always recorded (see also the case referred to in paragraph 33(a)), whether on admission or during imprisonment. Indications on body charts were often not accompanied by an adequate description of the injuries and an indication of allegations made by the prisoner. Finally, even where allegations were recorded, there was a notable lack of any observations by the doctor concerning the consistency between the allegations and the doctor's findings.

**The CPT recommends once again that steps be taken in all KCS establishments to ensure that the file drawn up after the examination of a prisoner – on admission or during imprisonment – contains:**

- i) a full account of objective medical findings based on a thorough examination (supported by a “body chart” for marking traumatic injuries). It would be desirable for photographs also to be taken of the injuries;**
- ii) a full account of statements made by the person concerned which are relevant to the medical examination (including the description of his/her state of health and any allegations of ill-treatment);**
- iii) the doctor's observations in the light of i) and ii) above, indicating the consistency between any allegations made and the objective medical findings.**

**Further, the results of every examination, including the above-mentioned statements and the doctor's observations, should be made available to the prisoner and his/her lawyer. In addition, a special trauma register should be kept in every KCS establishment in which all types of injury observed should be recorded.**

64. From consultations with health-care staff, there appeared to be no clear procedures in place in any of the establishments visited in respect of the reporting of detected injuries. In particular, the information gathered during the visit suggests that injuries were not systematically brought to the attention of the management, let alone reported to the competent prosecutor.

**The CPT reiterates its recommendation that the Ministries of Health and Justice take the necessary steps to ensure that, whenever injuries are recorded in any KCS establishment which are consistent with allegations of ill-treatment made by the prisoner concerned (or which, even in the absence of an allegation, are clearly indicative of ill-treatment), the record is systematically brought to the attention of the competent prosecutor. In this connection, the Committee would like to emphasise that, in accordance with its current standards, the aforementioned procedure should be followed regardless of the wishes of the person concerned.**

d. medical confidentiality

65. The CPT notes with concern that, despite its specific recommendations made after the two previous visits, it remained the case that, in the KCS establishments visited, medical examinations/consultations were often carried out in the presence of prison officers, or with a prison officer waiting outside an open door within hearing distance. The Committee notes that such practices are also at variance with the new House Rules.<sup>50</sup>

The CPT wishes to stress once again that the presence of custodial staff during medical examinations/consultations is detrimental to the establishment of a proper doctor/patient relationship and in the vast majority of cases unnecessary from a security point of view. Alternative solutions can and should be found to reconcile legitimate security requirements with the principle of medical confidentiality. One possibility might be the installation of a call system, whereby a doctor would be in a position to rapidly alert prison officers in those exceptional cases when a prisoner becomes agitated or threatening during a medical examination.

**The CPT reiterates its recommendation that steps be taken in all KCS establishments to ensure that medical examinations of prisoners, whether on arrival or at a later stage, are conducted out of the hearing and – unless the doctor concerned requests otherwise in a particular case – out of the sight of prison officers.**

66. In most of the KCS establishments visited, prisoners were often required to make requests to see a doctor via the custodial staff (though without specifying the underlying reason). In order to enhance the confidentiality of such requests, and to reduce the risk, as well as potential suspicions, of corrupt practices in this regard, **it would, in the CPT's view, be desirable to introduce more appropriate procedures in all KCS establishments, for instance by arranging daily rounds of nursing staff in the detention areas to collect requests for medical consultations (as was observed at Lipjan/Lipljane Correctional Centre), or by introducing dedicated locked letterboxes for requests for medical consultations to which only members of the health-care team have access.**

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<sup>50</sup> Section 25.

67. Finally, at Mitrovica/Mitrovicë Detention Centre, the delegation found a notice posted in the corridor of the detention area concerning the psychotropic medicine prescribed for a named prisoner. The CPT would like to stress that such information is protected by medical confidentiality and should under no circumstances be displayed in a public place. **Steps should be taken to put an end to such practices.**

## 5. Other issues

### a. prison staff

68. Staffing levels appeared to be generally adequate in most of the establishments visited. That said, at the detention centres in Gjilan/Gnjilane and Mitrovica/Mitrovicë,<sup>51</sup> the delegation was told by the management that night shifts were understaffed by around 50%, with only five or six officers on duty. Further, at Mitrovica/Mitrovicë, the management indicated that it was expecting current staffing problems to be exacerbated once the courts in the north began functioning again and the detention centre received an increased number of remand and sentenced prisoners as a result (see also paragraph 28).

**The CPT recommends that the authorities review the staffing situation at Gjilan/Gnjilane and Mitrovica/Mitrovicë Detention Centres, in the light of the above remarks.**

### b. discipline

69. According to the relevant legislation,<sup>52</sup> sentenced prisoners may be subjected to the following disciplinary sanctions: reprimand, deprivation of an assigned privilege, an order to make restitution, and solitary confinement for up to 15 days (sequential periods of solitary confinement may be imposed for a total period not exceeding 30 days, and the total period of solitary confinement of a convicted person may not exceed two months during a single calendar year). Remand prisoners may be subjected to the sanction of prohibition or restriction on visits and correspondence (except contacts with defence counsel, the Ombudsperson, diplomatic missions, etc.), if they have committed particular disciplinary offences enumerated in the law (none of which is linked to the exercise of prisoners' rights to have contact with the outside world).<sup>53</sup>

The above-mentioned provisions also apply in principle to juvenile prisoners; however, the imposition of solitary confinement is explicitly prohibited.

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<sup>51</sup> At Mitrovica/Mitrovicë Detention Centre there were 64 staff in total, of whom 31 were custodial officers, for a total capacity of 79 places; at Gjilan/Gnjilane there were 88 staff in total, of whom 59 were custodial officers, for a total capacity of 94 places.

<sup>52</sup> Sections 101 to 113 of the LEPS.

<sup>53</sup> Section 201 of the CPC.

70. Bearing in mind the potentially extremely damaging effect of solitary confinement on the mental, somatic and social health of inmates, there should be a prohibition on sequential disciplinary sentences resulting in an uninterrupted period of solitary confinement in excess of the maximum period for a single punishment (*i.e.* 15 days). Any offences committed by a prisoner which might call for more severe sanctions should be dealt with through the criminal justice system. If, on the other hand, a prisoner has been sanctioned to disciplinary confinement for a total of more than 15 days in relation to two or more offences, there should be an interruption of several days in the disciplinary confinement.<sup>54</sup>

**The CPT recommends that the relevant authorities take steps to ensure that the above-mentioned precept is effectively implemented in all KCS establishments.**

71. At Lipjan/Lipljan Correctional Centre, the delegation was surprised to find out that, on several occasions, the sanction of solitary confinement (of up to 15 days) had been imposed on juveniles, despite the fact that such measures are explicitly prohibited under the JJC. **The CPT recommends that the management of Lipjan/Lipljan Correctional Centre put an immediate end to the practice of imposing solitary confinement on juveniles as a disciplinary measure.**

72. Further, the CPT has misgivings about the fact that restrictions or a prohibition of contacts with the outside world may still be imposed (by a judge) on remand prisoners, even when there is no link between the offence and such contacts. In this regard, **the Committee recommends that the relevant legal provisions be revised so as to ensure that disciplinary punishment of remand prisoners does not include a total prohibition of family contacts and that any restrictions on family contacts as a form of punishment are applied only when the offence relates to such contacts. Further, in respect of juvenile prisoners, there should be no total prohibition of any given form of contact with the outside world (correspondence, visits, telephone) as a disciplinary measure; nor should any form of contact be limited unless the disciplinary offence relates to such contact.**

73. In practice, there did not appear to be excessive resort to disciplinary sanctions in any of the establishments visited. However, it is a matter of concern that, at Lipjan/Lipljan Correctional Centre and Mitrovica/Mitrovicë Detention Centre, self-harm was considered a disciplinary offence. At Lipjan/Lipljan Correctional Centre, it was punished in some cases by solitary confinement (including for juveniles). In this connection, the CPT would like to emphasise that acts of self-harm frequently reflect problems and conditions of a psychological or psychiatric nature, and should be approached from a therapeutic rather than a punitive standpoint. Further, placing such prisoners in solitary confinement is likely to exacerbate their psychological or psychiatric problems. In this connection, it should also be added that all cases of self-harm ought to be assessed medically immediately after the incident to evaluate the extent of the lesions and to assess the psychological state of the prisoner. Moreover, the CPT notes that instances of self-harm are not included in the list of disciplinary offences in Section 101 of the LEPS and that Section 47, paragraph 4, of the LEPS provides that “a professional multidisciplinary team shall initiate the action necessary to assist [the inmate concerned] to address whatever is causing him or her to be inclined to attempt such action”.

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<sup>54</sup> See also the CPT’s 21<sup>st</sup> General Report (CPT/Inf (2011) 28, paragraph 56), in which the Committee expressed the view that the maximum period of solitary confinement as a punishment should be no higher than 14 days for a given offence, and preferably lower.



**The CPT recommends that steps be taken at Lipjan/Lipljan Correctional Centre and Mitrovica/Mitrovicë Detention Centre and, where appropriate, in other KCS establishments to ensure that the above-mentioned precept is effectively implemented in practice.**

74. The CPT is pleased to note that, contrary to the situation found in 2010, prisoners subjected to solitary confinement were no longer deprived of contact with the outside world and were provided with reading material. Further, the prisoners concerned continued to be offered at least one hour of outdoor exercise per day.

75. From the consultation of disciplinary registers and files, as well as interviews with prisoners and staff, it transpired that disciplinary procedures continued to be carried out in a satisfactory manner in all the establishments visited. In accordance with the relevant rules,<sup>55</sup> prisoners were usually heard in person by the decision-making authority (i.e. the Director in the case of serious offences and a senior officer in the case of minor offences), were allowed to call witnesses on their own behalf and to cross-examine evidence given against them and received a copy of the reasoned decision.

Further, relevant information on the modalities and deadlines for lodging an appeal was often contained in the written disciplinary decision. However, this was apparently not a systematic practice in all the establishments visited. **The CPT recommends that steps be taken in all KCS establishments to ensure that disciplinary decisions always include the avenues for lodging an appeal; the prisoners concerned should also confirm in writing that they have received a copy of the decision.**

76. Before a prisoner is placed in a disciplinary cell, a prison doctor is still required, in accordance with the relevant legal provisions,<sup>56</sup> to certify that the prisoner concerned is able to sustain the measure. Whilst acknowledging that in most of the establishments visited such certificates were no longer requested from doctors in practice, the CPT wishes to stress once again that medical practitioners in prisons act as the personal doctors of prisoners, and ensuring that there is a positive doctor-patient relationship between them is a major factor in safeguarding the health and well-being of prisoners. The practice of prison doctors certifying that a prisoner is fit to undergo punishment is scarcely likely to promote that relationship. Medical personnel should never participate in any part of the decision-making process resulting in any type of solitary confinement, except where the measure is applied for medical reasons.<sup>57</sup>

On the other hand, health-care staff should be very attentive to the situation of prisoners placed in disciplinary cells. They should report to the prison director whenever a prisoner's health is being put seriously at risk by being held in disciplinary confinement. In this regard, the CPT is pleased to note that, in accordance with the existing rules, the persons concerned were usually seen by a member of the health-care staff on a daily basis.

**The CPT recommends that the relevant authorities take steps to ensure that an end is put to the practice of requiring doctors to certify that inmates are fit to undergo solitary confinement. To this end, the relevant legislation and rules should be amended accordingly.**

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<sup>55</sup> Section 107 to 110 of the LEPS.

<sup>56</sup> Section 107 of the LEPS and Section 76 of the House Rules.

<sup>57</sup> See also the European Prison Rules (in particular, Rule 43.2) and the CPT's 21<sup>st</sup> General Report (CPT/Inf (2011) 28, paragraphs 62 and 63).

77. Material conditions in disciplinary cells were generally satisfactory in all the establishments visited. That said, at Dubrava Prison and Lipjan/Lipljan Correctional Centre, the cells used for solitary confinement, while otherwise adequate in terms of size and conditions, were not equipped with a call system. The delegation was told that inmates had to bang on the door or yell loudly to attract the attention of staff. Further, at the High Security Prison, the exercise yards used for prisoners subject to solitary confinement had no means of rest or shelter.

**The CPT recommends that the above-mentioned shortcomings be remedied.**

c. contact with the outside world

78. As regards remand prisoners, the relevant legislation does not contain a minimum visit entitlement. Section 200 of the CPC stipulates that remand prisoners may receive visits “within the limits of the rules of the detention facility” with the permission of the (pre-trial) judge and under his or her supervision. Further, it is stated in the same section that correspondence and other contacts are also subject to a decision by the (pre-trial) judge.<sup>58</sup>

In practice, contacts with the outside world varied considerably amongst different remand prisoners in the establishments visited, some having up to two 30-minute visits a week while others were not entitled to any visits but could have access to the telephone once or twice per week. The situation was generally more favourable regarding juvenile remand prisoners who were usually granted at least one one-hour visit per week and could make at least three phone calls per week.

The CPT considers that remand prisoners should be entitled to send/receive letters, to receive visits and make telephone calls as a matter of principle, rather than subject to authorisation by a prosecutor or judge. Furthermore, they should be allowed to receive visits and communicate with family in the same way as sentenced prisoners. This precept is also set out in Rule 99 of the European Prison Rules. Any refusal in a given case to permit such contacts should be specifically substantiated by the needs of the investigation and be applied for a specified period of time. If it is considered that there is an ongoing risk of collusion, particular visits or phone calls can always be supervised/monitored. **The Committee recommends that the rules governing remand prisoners’ access to the outside world be revised, in the light of these remarks.**

79. The legal framework applicable to sentenced prisoners regarding contact with the outside world remained essentially unchanged following the adoption of the new LEPS. Adult prisoners have an “unrestricted right to correspondence” (subject to certain exceptions),<sup>59</sup> are entitled to a visit at least once each month for a minimum of one hour as well as to a visit by their spouse and children at least once every three months for a minimum of three hours.<sup>60</sup> In addition, they have “the right to place telephone calls” (without any further specification).<sup>61</sup> According to the JJC,<sup>62</sup> juvenile sentenced prisoners are entitled to receive one one-hour family visit per week as well as one visit at least once per month by “other persons who will not have a negative influence”.

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<sup>58</sup> According to Section 68 of the JJC, the general rules concerning remand prisoners’ contact with the outside also apply to juvenile prisoners.

<sup>59</sup> Section 58 of the LEPS.

<sup>60</sup> Sections 62 and 65 of the LEPS.

<sup>61</sup> Section 60 of the LEPS.

<sup>62</sup> Sections 120 and 134 of the JJC.

In practice, at Lipjan/Lipljan Correctional Centre, all juvenile sentenced prisoners were allowed to receive visits in accordance with the above-mentioned rules and to make at least three telephone calls per week. Further, in all the establishments visited, adult sentenced prisoners could normally make telephone calls for ten to 15 minutes between one and three times per week, depending on their regime level.<sup>63</sup> Whilst acknowledging that the actual practice in terms of visits remained more favourable than the terms provided for by legislation, it is regrettable that visit entitlements for the majority of adult sentenced prisoners in most of the establishments visited had been reduced since the last visit from a one-hour visit per week to a one-hour visit every two weeks.

In this regard, the CPT wishes to emphasise that contacts with the outside world, in particular visits from families and other relatives, are of crucial importance in the context of the social rehabilitation of prisoners. The Committee is therefore of the view that all prisoners should be entitled to a visit of at least one hour every week. **The CPT recommends that the relevant authorities take the necessary steps to ensure that this precept is effectively implemented in all KCS establishments.**

80. Facilities used for visits were generally satisfactory in all the establishments visited.

However, it is a matter of concern that Dubrava Prison and even more so the High Security Prison are both in remote locations difficult to reach for families. The situation was particularly problematic with regard to the High Security Prison, which was virtually impossible to reach by public transport and where even staff were apparently faced with constant problems arranging their transport to work. In terms of family visits, only those with private cars or sufficient means to afford taxis could make the journey there on a regular basis. In the light of the importance of maintaining family contacts, particularly for prisoners with long sentences, **the CPT would like to receive the authorities' comments on possibilities for remedying, or at least improving, the situation at both Dubrava Prison and the High Security Prison in this regard, for instance, by providing transport for families to these establishments on a regular basis, or by allowing prisoners to accumulate visit entitlements.**

d. admission procedures

81. In most of the establishments visited, newly-arrived prisoners were required to undergo an admission procedure lasting between seven and 28 days during which they were assessed and categorised in a segregation cell/unit before being allocated to an ordinary cell.

The regime applied to the prisoners concerned was usually very restrictive and could even amount to solitary confinement when only a single prisoner was undergoing an admission procedure. In this regard, it is a matter of particular concern that one juvenile met by the delegation at Lipjan/Lipljan Correctional Centre had spent five days alone in a cell during the induction phase; the prisoner indicated that he had felt considerable distress under such conditions. Further, at Lipjan/Lipljan, both adult and juvenile inmates were only offered some 30 minutes of outdoor exercise per day during the induction period, whereas by law adult inmates are entitled to at least two hours of outdoor exercise per day,<sup>64</sup> while juveniles are entitled to at least three hours.<sup>65</sup>

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<sup>63</sup> The delegation was told that, in practice, prisoners on the basic regime may make one call per week, those on the standard regime two calls per week, and those on the advanced regime three calls per week.

<sup>64</sup> Section 37 of the LEPS and Section 199 of the CPC.

<sup>65</sup> Section 139 of the JJC.

**The CPT recommends that steps be taken at Lipjan/Lipljan Correctional Centre and, where appropriate, in other KCS establishments to ensure that:**

- **conditions for newly-arrived prisoners do not amount to a solitary confinement-type regime for prolonged periods. Under no circumstances should newly-arrived juvenile prisoners be subjected to such a regime;**
- **outdoor exercise is provided at all times, including during the induction period, to all inmates in accordance with the relevant legislation.**

**Further, the Committee invites the relevant authorities to consider shorting the maximum period of the admission procedure.**

e. security-related issues

82. The CPT regrets that its recommendation concerning the use of pepper spray in KCS establishments has not been followed.<sup>66</sup> In virtually all the establishments visited, custodial officers continued to openly carry pepper spray within the detention areas. Given the potentially harmful effects of this substance, **the Committee recommends once again that steps be taken in all KCS establishments to ensure that pepper spray does not form part of the standard equipment of custodial staff and that it is never used in confined spaces.**

83. The system of security classification of inmates remained somewhat unclear, the information provided to the delegation in this regard differing from one establishment to another. **The CPT would like to receive detailed information as to the decision-making body or bodies involved in security classification of both remand and sentenced prisoners, the period within which the decision must be reviewed, and the possibilities for appealing the decision.**

f. complaints and inspection procedures

84. Effective complaints and inspection procedures are basic safeguards against ill-treatment in prisons. Prisoners should have avenues of complaint open to them, both within and outside the prison system, and be entitled to confidential access to an appropriate authority. In addition to addressing the individual case involved, the CPT considers that a careful analysis of complaints can be a useful tool in identifying issues to be addressed at a general level.

85. Section 91 of the LEPS provides for a detailed procedure by which prisoners may address complaints confidentially to the Director of a KCS establishment. The procedure includes deadlines for responses by the Director, and the possibility to refer a complaint under certain circumstances to a higher authority, in particular the General Director of the KCS and the Minister of Justice. As regards remand prisoners, Sections 192 and 203 of the CPC also provide for court oversight of conditions of detention, including with regard to petitions by inmates.

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<sup>66</sup> CPT/Inf (2011) 26, paragraph 71.

Regrettably, none of the establishments visited had any dedicated register for internal complaints, although Section 91 of the LEPS provides specifically that such complaints, and all measures taken to address them, are to be recorded.

**The CPT recommends that steps be taken by the relevant authorities to ensure that the procedures stipulated by the relevant legal provisions relating to complaints by prisoners – including the maintaining of a dedicated register – are fully implemented in practice in all KCS establishments.**

86. In terms of inspection procedures, at the time of the visit, regular monitoring of KCS establishments was being carried out by the Ombudsperson as well as by civil society organisations.<sup>67</sup> (see also paragraph 6 regarding the designation of the Ombudsperson as NPM).

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<sup>67</sup> On the basis of a co-operation agreement of 10 May 2011, a Monitoring Task Force composed of the Ombudsperson Institution and two non-governmental organisations carried out joint monitoring of KCS establishments (and other places of deprivation of liberty). In addition, these same organisations individually continued to carry out monitoring activities.

## C. Forensic Psychiatric Institute at Pristina University Hospital

### 1. Preliminary remarks

87. The Forensic Psychiatric Institute (“Forensic Institute”) opened on 8 August 2014 as a result of the co-ordinated efforts of the Ministries of Health and Justice, within the framework of the national mental health strategy for 2008-2013. The new Forensic Institute is situated within the compound of the University Clinical Centre (UCC) of Prishtinë/Priština University, and its operational budget is included as part of the overall budget of the UCC. The Ministry of Health is responsible for the management and internal security of Ward A (admissions/outpatient services) and Ward B (mandatory psychiatric treatment), while the Kosovo Correctional Service (KCS) is responsible for the management and security of Ward C (psychiatric assessment) (see also paragraphs 106 to 109).

88. The relevant legal framework is contained in the Criminal Code (Sections 18 and 87 to 90), the Criminal Procedure Code (CPC) (Sections 506 to 518), and the Law on the Execution of Penal Sanctions (LEPS) (Sections 174 to 180). In addition, a new draft Mental Health Law approved by the Government on 24 March 2015 was awaiting adoption by the Kosovo Assembly. The delegation was also informed that standard operating procedures (SOP) for the Forensic Institute were in the process of finalisation. **The CPT would like to receive updated information on these issues.**

89. The Forensic Institute accommodates criminally irresponsible offenders who are subjected to a court-ordered measure of mandatory psychiatric treatment in custody,<sup>68</sup> as well as persons who are subjected to a court order for psychiatric evaluation in custody.<sup>69</sup> In addition, prisoners who have developed a mental disorder during imprisonment may be placed in the Forensic Institute. Alternatively, such patients may also be treated within the psychiatric ward of the hospital unit at Dubrava Prison. **In this regard, reference is made to the recommendation in paragraph 57.**

90. The Forensic Institute is located within the UCC compound and comprises three wards, with a total capacity of 36 beds: Ward A for admissions/outpatient services (without beds), Ward B for mandatory psychiatric treatment (24 beds) and Ward C for psychiatric assessment (twelve beds). At the time of the visit, Ward B was accommodating twelve patients and Ward C four patients (three under assessment and one remand prisoner undergoing treatment). All patients were male adults.

No separate ward for female patients had been provided for at the planning stage, and as a temporary measure two rooms had been set aside for receiving female forensic patients in both Wards B and C. The delegation was informed by the management that there were plans to construct an extra floor on top of Ward C to accommodate female and juvenile forensic patients. **The CPT would like to receive updated information on this point.**

91. From the outset, the CPT would like to stress that its delegation received no allegations – and did not find any other indications – of ill-treatment of patients by staff. On the contrary, the general atmosphere appeared relaxed, and relations between staff and patients positive.

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<sup>68</sup> Section 89 of the Criminal Code.

<sup>69</sup> Section 508, paragraph 4, of the CPC.

## 2. Patients' living conditions

92. The material conditions of the new Forensic Institute were very good. All the patients' rooms were double-rooms of the same design<sup>70</sup> and were optimal in terms of living space, access to natural light, ventilation and equipment. Further, both Wards B and C had a communal area with chairs, armchairs, a television set and board games, as well as a well-equipped kitchen and dining area.

In both wards, patients had access to the exercise yards attached to their ward for most of the day. The yards were spacious and partly laid out to lawn, and were equipped with benches and shelter against inclement weather.

## 3. Staff and treatment

93. Staffing levels of the Forensic Institute appeared to be adequate. There were 43 staff members in total, including five full-time psychiatrists trained in forensic psychiatry and two residents in psychiatry, 22 nurses, two psychologists and two social workers. The psychiatrists worked from Monday to Friday, and the resident psychiatrists were present during weekends; one psychiatrist always remained on call outside working hours. At least four nurses were present around the clock.

94. The Forensic Institute provided both pharmacological and psychosocial treatment. Psychotherapy was provided either on an individual basis or as group therapy. It is particularly noteworthy that several patients in Ward B were regularly granted temporary leave in the form of so-called "therapeutic weekends".

That said, a consultation of a number of medical files revealed that individual treatment plans only contained information concerning pharmacological treatment. Further, despite the fact that psychiatric treatment was in principle organised with a view to a multidisciplinary approach, the delegation observed that there was little co-ordination on individual case management between the psychiatrists and nurses on the one hand, and the psychologists and social workers on the other. Moreover, many patients interviewed by the delegation stated that they were not aware of any treatment plan.

The CPT wishes to highlight that psychiatric treatment should be based on an individualised approach which includes a wide range of therapeutic, rehabilitative and recreational activities, as well as access to appropriate medication and medical care. A treatment plan should be drawn up for each patient (taking into account the special needs of acute, long-term and forensic patients including, with respect to the forensic patients, the need to reduce any risk they may pose), indicating the goals of treatment, the therapeutic means used and the staff member responsible. The treatment plan should also contain the outcome of a regular review of the patient's mental health condition and a review of the patient's medication. Patients should be involved in the drafting of their individual treatment plans and be informed of their progress.

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<sup>70</sup> The rooms were L-shaped, approximately 7m long, and 4m wide at the widest and 3.30m wide at the narrowest part (near the door), and besides beds, table and chair, the rooms had a partitioned sanitary facility (stainless steel toilet, washbasin and shower), an open cupboard and a locker which could be locked.

**The CPT recommends that steps be taken at the Forensic Institute and, where appropriate, in other psychiatric establishments to ensure that individualised treatment plans are drawn up for psychiatric patients in the light of the above remarks. Further, steps should be taken to ensure appropriate coordination between all members of staff involved in the provision of psychiatric care.**

95. The delegation was informed that the Forensic Institute occasionally encountered problems in the supply of certain essential psychotropic medicines. **The CPT recommends that appropriate steps be taken to remedy this shortcoming.**

#### **4. Means of restraint**

96. The delegation was informed that, since the opening of the Forensic Institute, there had only been one instance of placement of an agitated patient in a seclusion room. As regards mechanical restraint, the only equipment available was a straitjacket, which had never been used. It remained somewhat unclear as to what extent recourse was had to the forcible administration of sedative medication (chemical restraint).

Members of the health-care staff affirmed to the delegation that patients would only be placed in seclusion or subjected to means of restraint upon the decision of the treating doctor or the doctor on duty (except in an emergency situation when a decision might be taken by the nurse on duty, who would have to obtain the approval by a doctor as soon as possible). Whenever patients were placed in a seclusion room, they would be constantly monitored by CCTV and checked by nursing staff every 15 minutes.

97. Regrettably, there were only very basic written guidelines on seclusion and no guidelines at all on the use of other means of restraint; in addition, there was no comprehensive restraint register (a record was only kept for the use of seclusion rooms).

In this regard, the CPT wishes to stress that the use of means of restraint should be the subject of a comprehensive, carefully developed policy. The involvement and support of both staff and management in elaborating the policy is essential. Such a policy should make clear which means of restraint may be used, under what circumstances these may be applied, the practical means of their application, the supervision required and the action to be taken once the measure is terminated. Further, if resort is had to sedative chemical restraint, it should be subjected to the same safeguards as mechanical restraint. It should be understood that such guidelines are not only a major support for staff, but are also helpful in ensuring that patients understand the rationale behind a measure of restraint that may be imposed.

In this context, guidelines on the use of restraint (seclusion, physical, mechanical, and chemical restraint) should include the following points:

- regarding their appropriate use, means of restraint should only be used as a last resort to prevent the risk of harm to the individual or others and only when all other reasonable options would fail to satisfactorily contain that risk; they should never be used as a punishment or to compensate for shortages of trained staff;



- any resort to means of restraint should always be either expressly ordered by a doctor or immediately brought to the attention of a doctor;
- staff must be trained in de-escalating techniques and in the use of restraint. Such training should not only focus on instructing staff as to how to apply means of restraint but, equally importantly, should ensure that they understand the impact the use of restraint may have on a patient and that they know how to care for a restrained patient;
- appropriate devices, such as purpose-made straps, should be used for the mechanical restraint of patients;
- the duration of the application of means of restraint should be for the shortest possible time. The prolongation of mechanical restraint should be exceptional and warrant a further review by a doctor;
- a patient subject to mechanical restraint should not be exposed to other patients unless the patient explicitly expresses the wish to remain in the company of a particular fellow patient;
- as regards supervision, whenever a patient is subjected to means of mechanical restraint, a trained member of staff should be continuously present in order to maintain the therapeutic alliance and to provide assistance. Such assistance may include escorting the patient to a toilet facility or helping him/her to drink/consume food;
- every instance of the use of seclusion or other means of restraint of a patient must be recorded in a specific register established for that purpose, in addition to the individual's file. The entry should include the times at which the measure began and ended, the circumstances of the case, the reasons for resorting to the measure, the name of the doctor who ordered or approved it, and an account of any injuries sustained by the person or staff. This will greatly facilitate both the management of such incidents and oversight into the extent of their occurrence;
- once means of restraint have been removed, a debriefing of the patient should take place. This will provide an opportunity to explain the rationale behind the measure, thus reducing the psychological trauma of the experience as well as restoring the clinician-patient relationship. It also gives the patient an occasion to explain his/her emotions prior to the restraint, which may improve both the patient's own and the staff's understanding of his/her behaviour.

**The CPT recommends that the relevant authorities take steps to ensure that the above-mentioned precepts regarding the use of means of restraint are included in the standard operating procedures for the Forensic Institute as well as for other psychiatric establishments and that they are effectively implemented in practice. The adoption of the guidelines described above should be accompanied by practical training on approved control and restraint techniques, which must involve all staff concerned (doctors, nurses, orderlies, etc.) and be regularly updated.**

98. The Forensic Institute had two seclusion rooms in Wards B and C which were well-lit and ventilated and were equipped with a thick rubber mattress, a floor-level toilet, a call system and video-surveillance (CCTV).

That said, it is matter of concern that the toilet area was in direct view of the CCTV camera. **The CPT recommends that appropriate steps be taken at the Forensic Institute to guarantee patients' intimacy when using the toilet in a seclusion room (e.g., by adjusting the CCTV camera in such a way that it does not cover the toilet area or that the toilet area is at least blurred out).**

## 5. Safeguards

99. Involuntary placement in a psychiatric establishment should cease as soon as it is no longer required by the patient's mental state. Consequently, there should be a systematic review at regular intervals of the need to continue the imposition of court-ordered measures of mandatory psychiatric treatment in custody which are usually of an indefinite duration.

In this regard, the relevant legislation contains a number of important safeguards. Section 176 of the LEPS stipulates that at least once every six months every placement must be reviewed by the court on the basis of a report drawn up by the management of the health-care institution and the opinion of an independent expert who is not employed at the health-care institution. In considering whether to discontinue the measure, the court must hear the public prosecutor, the defence lawyer and the patient, if his/her condition permits. Further, according to Section 517 of the CPC, patients must have a lawyer (private or appointed *ex officio*).

100. From the consultation of relevant documentation and interviews with patients and staff, it transpired that review procedures were generally carried out in accordance with the above-mentioned legal requirements. In practice, the Forensic Institute usually submitted evaluation reports to the court on a two-monthly basis.

That said, it is a matter of concern that, under the current law, court hearings are only required in the event that the court is considering a termination of the measure (i.e. for discharge or transformation of the measure into mandatory outpatient psychiatric treatment). In the CPT's view, every mandatory review of the measure (i.e. at least every six months) should involve not only a written report by the health-care institution and the opinion of an independent expert, but also a court hearing where the defence lawyer and the patient are heard. **The Committee recommends that the relevant legal provisions and practice be modified in the light of the above remarks.**

101. As regards consent to treatment, the information gathered suggests that patients were usually informed about the pharmacological therapy being provided to them, including possible side effects. However, in a number of cases, patients were apparently not given the possibility by health-care staff to refuse the proposed treatment. In addition, medical staff affirmed to the delegation that in the case of refusal of treatment by patients who were subject to a court-imposed treatment measure, recourse might be had to a forcible administration of the prescribed medication.

The CPT wishes to stress that the admission of a person to a psychiatric establishment on an involuntary basis, including under a court-ordered “measure of mandatory psychiatric treatment in custody”, should not preclude seeking informed consent to treatment. Every patient should be informed about the intended treatment and should be given the opportunity to refuse or withdraw his/her consent to treatment or any other medical intervention. Any derogation from this fundamental principle should be based upon law and only relate to clearly and strictly defined exceptional circumstances.

**The CPT recommends that steps be taken at the Forensic Institute and, where appropriate, in other psychiatric establishments to ensure that the above-mentioned precepts are effectively implemented in practice. If necessary, the relevant legal provisions should be amended accordingly.**

102. Information concerning patients’ rights was contained in leaflets provided to patients and on posters which were visible on the walls of the patients’ rooms and in the common areas of the Forensic Institute.

103. An effective complaints procedure is a basic safeguard against ill-treatment in psychiatric establishments. Specific arrangements should exist to enable patients to lodge formal complaints with a clearly designated body, and to communicate on a confidential basis with an appropriate authority outside the establishment.

In this regard, the delegation observed that there was no complaints box for internal complaints or other system for lodging complaints with the management, and the delegation was told that, so far, no complaints from patients had been registered. **The CPT recommends that a system for allowing patients to address complaints confidentially to the management of the Forensic Institute be put in place, for instance by installing locked letterboxes for this purpose on each of the three wards and ensuring that only designated personnel have access to them. Information on the system should also be included in the above-mentioned leaflets concerning patients’ rights.**

104. On a positive note, the Committee welcomes the fact that, shortly before the visit, a locked letterbox for communications with the Ombudsperson had been installed on the wards of the Forensic Institute, which was opened on a regular basis by staff of the Ombudsperson Institution.

## 6. Other issues

105. The arrangements for allowing patients at the Forensic Institute to maintain contact with the outside world were generally satisfactory. Patients could make telephone calls by using a payphone every day. In Ward B, patients could receive visits on every work day for half an hour and, in Ward C, patients could in principle receive two 30-minute visits or one one-hour visit per week.

That said, patients in Ward C were only allowed to receive visits or make telephone calls with the authorisation of the competent (pre-trial) judge. In this regard, **the remarks and recommendation made in paragraph 78 equally apply to the Forensic Institute.**

106. As indicated in paragraph 87, the Ministries of Health and Justice have a shared responsibility for ensuring external and internal security at the Forensic Institute. The delegation was informed that a memorandum of understanding between the Forensic Institute and the KCS was in the process of being drafted in this regard. **The CPT would like to receive updated information on this matter.**

107. The CPT has misgivings about the fact that, in the absence of auxiliary/security staff, nursing staff on Ward B regularly performed security-related tasks such as body searches and cell searches, for which they had received no specific training.

With a view to safeguarding the development and maintaining of a therapeutic relationship between health-care staff and patients, **the CPT recommends that the necessary steps be taken by the relevant authorities to put an end to the aforementioned practices.**

108. Further, the delegation was told that private security staff (on Ward B) and KCS officers (on Ward C) were on occasion called upon by nursing staff to assist in dealing with patients, including when patients became violent. From discussions with both health-care staff and KCS officers, it transpired that neither KCS officers nor the private security staff had received any training in dealing with patients suffering from mental disorders.

**The CPT considers it to be of crucial importance that staff assigned to security-related tasks in a psychiatric establishment be carefully selected and that they receive appropriate training before taking up their duties, as well as in-service courses. Further, during the performance of their tasks, they should be closely supervised by – and subject to the authority of – qualified health-care staff. In addition, the Committee has misgivings concerning the involvement of security staff in health-care related tasks. If such involvement is necessary as a measure of last resort, it should be carefully supervised by a qualified member of the health-care staff.**

109. Finally, KCS staff present on Ward C wore uniforms and openly carried pepper spray canisters. In this regard, **the remarks and recommendation made in paragraph 82 apply equally to the Forensic Institute.**

**D. Psychiatric Clinic at Pristina University Hospital**

110. The delegation carried out a brief visit to the Admission Ward of the Psychiatric Clinic at Pristina University Hospital (“Psychiatric Clinic”) in order to review the legal safeguards surrounding involuntary placement of a civil nature in a psychiatric establishment.

On the day of the visit, the Psychiatric Clinic was accommodating three patients (two male and one female) on an involuntary basis, all of them having been taken to the hospital by the police or family members.

111. The relevant legal framework set out in Sections 75 to 96 of the Law on Non-Contentious Procedures contains a number of important safeguards (in particular, obligation of the hospital to notify an involuntary admission within 24 hours to the competent court,<sup>71</sup> mandatory appointment of a lawyer; hearing of the patient before the court, involvement of an expert who is independent of the hospital, legal remedy against court decision, maximum time limit of one year,<sup>72</sup> possibility for patient to request judicial review of placement at any time, etc.).<sup>73</sup>

However, from the delegation’s consultations with medical staff at the Psychiatric Clinic, it became apparent that the above-mentioned legal provisions regarding involuntary placement of a civil nature had never been implemented in practice. In particular, courts had never been informed of involuntary admissions. In other terms, since the first visit of the CPT in 2007, the applicable legislation remained a dead letter. Such a state of affairs is not acceptable.

**The CPT therefore calls upon the relevant authorities to take immediate measures to ensure that the relevant legal provisions which govern involuntary placement of a civil nature are effectively implemented in practice at the Psychiatric Clinic and, where appropriate, in other psychiatric establishments. To this end, the competent courts should henceforth be informed, within the prescribed deadline, of all involuntary admissions.**

**In addition, the legal status of all patients at the Psychiatric Clinic should be reviewed, and all patients who are currently held there on an involuntary basis should be immediately notified to the competent court.**

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<sup>71</sup> The same legal obligation applies in the event that a voluntary patient withdraws his/her consent to placement.

<sup>72</sup> Upon expiry of the time limit, the patient must be discharged or a new involuntary placement procedure must be initiated.

<sup>73</sup> Law No. 03/L-007 adopted on 20 November 2008.

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

112. The various recommendations, comments and requests for information made by the CPT are set out in bold type in the present report. The CPT requests the relevant authorities to provide **within six months** a response containing an account of action taken by them to implement the Committee's recommendations and setting out their reactions and replies to its comments and requests for information.