

Ministry of Justice of the Kyrgyz Republic
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EVALUATION OF THE STATE
OF THE PENITENTIARY SYSTEM OF THE
KYRGYZ REPUBLIC

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TABLE OF CONTENTS

INTRODUCTION	5
1. MAJOR CHARACTERISTICS OF THE PENITENTIARY SYSTEM OF THE KYRGYZ REPUBLIC	11
2. PREVENTION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT. RIGHT TO FREEDOM AND PERSONAL SECURITY	19
3. COUNTERACTING CRIMINAL ACTIVITIES IN PENITENTIARY FACILITIES	21
4. THE CONDITIONS UNDER WHICH INMATES ARE HELD	27
4.1. CORRECTIONAL INSTITUTIONS	29
4.2. PRE-TRIAL DETENTION CENTRES	31
4.3. OPEN PRISONS	34
4.4. SPECIAL PREMISES	35
4.5. OTHER ASPECTS OF PROVIDING DETENTION CONDITIONS	36
5. REGIME	39
6. PRISONERS SENTENCED TO CAPITAL PUNISHMENT	43
7. MEANS OF CONTROL AND PROVISION OF SECURITY	47
8. MEDICAL SERVICES	51
8.1. MEDICAL EXAMINATION ON ENTRY	53
8.2. MEDICAL SERVICES	54
8.3. TUBERCULOSIS AND OTHER CONTAGIOUS DISEASES	55
9. PERSONNEL	59
10. MONITORING	65
11. CONCLUSIONS AND RECOMMENDATIONS	69
LIST OF ABBREVIATIONS	75
APPENDIX. EXTRACT FROM THE PUBLICATION “THE CPT STANDARDS”	77

INTRODUCTION

Introduction

This report was written in conformity with the Memorandum of June 8, 2006 on cooperation between the Ministry of Justice of the Kyrgyz Republic (KR MJ) and the Centre of the Organization for Security and Cooperation in Europe in Bishkek (hereinafter – the Bishkek OSCE Centre) on evaluating the state of the Kyrgyz Republic penitentiary system on the basis of the results of a corresponding assignment performed by a group of experts composed of:

Mr. Seidulla Gusseinov, independent consultant on issues of penitentiary system reform, OSCE Office for Democratic Institutions and Human Rights (hereinafter – OSCE ODIHR), former Head of the Board of Detention Facilities and Secure Escorting, Kazakh Ministry of Interior,

Mr. Erik Svanidze, expert, Penal Reform International (PRI), member of the European Committee for Prevention of Torture and Inhuman or Degrading Treatment or Punishment, former Deputy Minister of Justice, Georgia.

From 24 July to 1 August 2006 16 facilities were visited with the purpose of evaluating them:

- all 6 pre-trial detention centres (PTDC): Nos. 21, 23, 24, 25, 50¹ and PTDC at institution No. 14;
- 9 penal colonies: Nos. 1 and 16 - high security; Nos. 8, 10, 19 and 47 - medium security; correctional institution No. 2 - for female offenders; juvenile colony No. 14 - for juvenile male delinquents; medical treatment institution No. 27 - for convicts with tuberculosis;
- open prison No. 44.

The experts had the opportunity to visit premises at their discretion, talk with any inmates², familiarize themselves with registration and other types of documentation including personal records of inmates and meet with administration and personnel of the institutions to discuss various issues. The international experts were provided with current regulations and some regulations in the process of being drafted, requested by them in advance as well as statistics and other information. KR MJ provided the appropriate conditions for fulfilment of the obligations on the said Memorandum. In addition, experts had an opportunity to visit one more correctional institution over and above the scope of the agreed programme.³

In addition to visits to the said institutions the following meetings took place:

- in the Main Directorate of Penal Affairs (MDPA) of the KR MJ with Mr. K. Cholushev, the Head of MDPA;
- with Mr. T. Bakir-uulu, Ombudsman (Akyikatchi), the Kyrgyz Republic;
- with the administration of the public prosecutor's office for the supervision of enforcement of laws in the penitentiary system (with Mr. K. Mamakeyev, Acting Prosecutor).

¹ Further on in the text an accepted simplified numbering of the four main pre-trial detention centres is used instead of the formal one (without the first digit "2").

² Talks with inmates took place in the presence of or within view of the facility administration.

³ The experts decided to visit penal colony No. 1 in the course of their work.

- in representation offices of international organizations (with Dr. S. Machl, Deputy Head, OSCE Centre in Bishkek, Mr. J. Bouyjou, Head, OSCE Field Office in Osh and Mr. A. Kashkaryov, Coordinator, United Nations Development Programme);
- in the Mission Office of the Regional Delegation of International Committee of the Red Cross (ICRC) for Central Asia (with Mr. C. Gaillard, Head, ICRC Mission in Bishkek; Ms. V. Catliff, Protection Coordinator, ICRC Mission in Bishkek; and with Mr. M. Berdnikov, Officer, counter-TB programmes);
- in the representation offices of foreign NGOs (with Mr. D. Therond, Head, “Médécins sans frontières” Mission in Bishkek; with Mr. R. Khakimov, Coordinator, “Soros-Kyrgyzstan” law programmes) and representatives of the “International Crisis Group”;

In the course of the visit, meetings were held with representatives of NGOs and educational organizations:

“Spravedlivost” – in the city of Jalal-Abad; “Law initiative”, “Ray of Solomon” – in the city of Osh; “Young lawyers of Kyrgyzstan”; “Nurzholber” – in the city of Naryn; “Independent human rights protection group”, “The centre for legal support for prisoners”, “Citizens against corruption”, “Soyuz Yedineniya”, “Kyrgyzi-Russian Slavic University”, “Egalité”, “AIDS Foundation East-West”, “Civil defence” and “Egel” – in the city of Bishkek.

In the course of the visits the group was accompanied by Mr. M. Dzhamankulov, Head, Department for penitentiary system reform, KR MJ, whose help in organizing the work of international experts on evaluating the Kyrgyz Republic’s penitentiary system has been greatly appreciated by the experts.

Worthy of note is the valuable contribution by the OSCE Centre in Bishkek (in particular, Dr. O. Semenenko, Human Dimension Officer, and Ms. T. Zlobina, Senior Project Assistant) in preparing the project, assisting in the organization and conducting the work.

The final version of the Report was prepared by Mr. D. Nurumov, OSCE ODIHR Rule of Law Coordinator in Central Asia.

Whilst drawing up the report, which included the analysis of the existing legislation, by-laws, current practices and work on the corresponding recommendations the experts were guided by fundamental international agreements, namely, the International Covenant on Civil and Political Rights (1966), UN Convention against Torture and Other Cruel, Inhuman or Degrading Types of Treatment and Punishment (1984), standards and decisions of convention bodies (The UN Committee on Human Rights and the UN Committee against Torture), as well as by the Minimal Rules for the Treatment of Prisoners (1955), standards, principles and practices recognized and applied by OSCE member states as compliant with the ideals of democracy, rule of law and observation of human rights.

The decisions of the European Committee for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment (CPT) set out the corresponding international standards in more detail. Although CPT is a regional body it is the most authoritative

international organization constantly developing and clarifying penitentiary standards. The CPT documents are the source, upon which the majority of international and national bodies base their work. In connection with the above, the report is supplemented by excerpts from the publication “The CPT Standards”.⁴

The experts emphasize that the basic international law norm existing in the penitentiary system is a ban on torture as well as on cruel, inhuman or degrading treatment or punishment. This norm has acquired the status of an imperative norm of international law (*jus cogens*), which has force irrespective of the conclusion of new international law acts or accession to those already in existence.

The provision of and compliance with human rights applied to persons deprived of freedom has become one of the major focuses of the mission. It is the analysis of the compliance of the existing situation in the penitentiary system of the Kyrgyz Republic with the conventional standards in the area of human rights that formed the basis of this report.

⁴ The CPT Standards [CPT/Inf/E (2002) 1 - Rev. 2006] <http://www.cpt.coe.int/en/documents/eng-standards-scr.pdf>

**MAJOR CHARACTERISTICS
OF THE PENITENTIARY SYSTEM
OF THE KYRGYZ REPUBLIC**

1. Major characteristics of the penitentiary system of the Kyrgyz Republic

Since 2002 the penitentiary system of the Kyrgyz Republic has been within the competence of the Kyrgyz Ministry of Justice. Its withdrawal from the subordination and structure of the Ministry of Interior conforms to common practice and is conducive to the decrease of abuse stemming from carrying out both criminal procedure activities and criminal detection work.

The change of the subordination structure was carried out within the framework of events implementing the Decree of the KR President “On measures aimed at further improving the penitentiary system of the Kyrgyz Republic” of 24 October 2001, Resolutions of the KR Government “On procedure and conditions for providing security for correctional institutions and escorting convicts and persons in custody” of 17 May 2002 and “On transferring the penitentiary system of the Ministry of Interior of the Kyrgyz Republic to the competence of the Ministry of Justice of the Kyrgyz Republic” of 20 June 2002.⁵

The KR law “On introducing changes and amendments in some legal acts of the Kyrgyz Republic” of 20 March 2002 transformed the legal basis of the penitentiary system including the KR Penal Code (KR PC). On 12 August 2003 the Law of the KR “On the bodies and facilities of the penitentiary system” was adopted. The conceptual framework of the further development of the KR Main Directorate of Penal Affairs (MDPA) formed part of the “Umut” National Programme for Restructuring the Kyrgyz Republic Penitentiary System until 2010, adopted by the KR Government on 10 March 2006.⁶

The change in administrative and functional subordination of the penitentiary system has been, although a significant, but, unfortunately, the only step aimed at its restructuring undertaken by the time evaluation was conducted. On the whole, the system, in fact, represents a model inherited from the Soviet era, the remnants of which were subjected to a number of negative factors of a socio-economic, political and criminogenic character.

At the time of the mission the penitentiary system was represented by the institutions forming the structure of MDPA and military divisions of the Department of the KR MJ for the security for correctional facilities and escorting convicts and persons in custody.

MDPA supervises 35 independent facilities (listed below):

1). 11 correctional institutions in which convicts are held according to a closed camp principle, in barrack type accommodation.

In conformity with the formal classification of correctional institutions they are represented by:

⁵ The said regulations later were subject to partial change.

⁶ See the analysis of this programme in the publication: *Comments on the “Umut” National Programme for Restructuring the Kyrgyz Republic Penitentiary System until 2010*, prepared by OSCE ODIHR and Penal Reform International (PRI), 30 March 2006. Almaty, 2006.

- three colonies of maximum security, specified by the legislation for repeat male offenders, who were previously imprisoned or are dangerous habitual offenders;
- four colonies of medium security – for male offenders serving their first custodial sentence for committing serious or especially serious crimes⁷;
- one juvenile correctional institution for juvenile male offenders⁸;
- one female correctional colony⁹;
- two medical correctional institutions for persons with tuberculosis.

Certain types of institutions, such as minimal security and special security correctional colonies for males provided for by the legislation (Articles 46 and other norms of KR Penal Code, KR PC) are not available in the system. The system also lacks the whole spectrum of female and juvenile subdivisions of correctional institutions. This results in a custodial sentence regime not matching the existing norms and standards. For example, a prison regime is used in pre-trial detention centres. In some cases punishment turns out to be more severe than is envisaged by the law. The norms for different prison regimes for various categories of convicts held together in one facility are also not observed.

2). 19 open prisons are penal facilities of open type where prisoners live, as a rule, under supervision in specially designated dwelling facilities. Their population consists of prisoners sentenced to a term of not more than five years for crimes committed out of negligence, and convicts who were transferred from penal colonies after they had served part of their sentence.

3). 5 PTDCs, designated for holding in cells, as a measure of restraint, persons subject to pre-trial detention; that is, persons who are on remand and in the supervision of courts until their sentences come into force (including stages of appeal).¹⁰ PTDCs are also used to hold convicts sentenced to prison regime and to death under the conditions of the moratorium for its execution, despite the fact that, according to the law, PTDCs are places of custody whose purpose is to facilitate measures of criminal procedure enforcement¹¹. In particular, due to the moratorium on the death penalty introduced in the Kyrgyz Republic, PTDC No. 1 (Bishkek) and PTDC No. 5 (Osh), at the time of the visit, held persons sentenced to capital punishment (CP), as well as persons for whom the prison regime was prescribed by the court (PTDC No. 1). At the time of the visit there were 1697 detainees in PTDC No. 1; 136 of them had been sentenced to CP, 49 – to prison regime; PTDC No. 5 held 460 detainees with 28 sentenced to CP.

⁷ The regime category of correctional colony No. 19 is even less defined because it is used for former law enforcement officers and other categories of convicts (those sentenced to a term of up to five years; those for so called “economic” crimes; those above 50 years of age).

⁸ Legislation also provides for juvenile colonies of minimal and medium security.

⁹ Legislation provides for female correctional colonies of minimal and maximum security, as well as a juvenile colony of minimal security.

¹⁰ A pre-trial detention centre at the correctional colony No. 14 is formally a subdivision and not an independent facility. This causes variant readings with counting the number of facilities visited by experts (*see*: Introduction).

¹¹ Article 7 of the KR Law “On procedure and conditions of custody for detainees suspected and accused of committing crimes” of 31 October 2002.

As of 1 July 2006 the total population of MDPA facilities stood at 15249; 8402 of this number or 55% were held in correctional institutions and 4194 persons or 27,5% in open prisons. Recent years have witnessed a definite fall in the total number of people held in the penitentiary system. For example, as of 1 July 2005 this number peaked at 16364. The prison population index for Kyrgyzstan is 300-350 people per 100,000 population, which, although an average, is still quite a high indicator, even for the Central Asian region.¹²

It has to be recognized that the positive trend in the reduction of the prison population is a result of numerous acts of clemency, leading to the effect of “inflation of justice”, and not a result of a system of measures aimed at humanizing criminal legislation and law enforcement practice. This is confirmed by a steady and even slightly higher number of detainees, compared with 2005, held in pre-trial detention centres (an increase from 2613 to 2653). Since Zhogorku Kenesh (Parliament) of the Kyrgyz Republic rejected the criminal legislation humanization package submitted for Government’s consideration in 2006, another 1932 inmates arrived in the correctional institutions over 6 months in 2006, which exceeded the number of those who left the system (1574) by 22%.

The holding capacity of the penitentiary facilities is limited to 20263 inmates, which is more than the number of persons actually held there. Legislation provides guidelines for prison places, according to which (Article 71 of the KR PC) a convict in a correctional colony cannot have less than two square metres; in a prison, less than two and a half square metres; in a female colony, less than three square metres; in a juvenile colony, less than three and a half square metres; in medical centres within the penitentiary system, less than five square metres; in dedicated medical treatment correction institutions, less than three square metres. In reality, the limits of holding capacity are calculated on the basis of the actual number of beds and artificially deduced restrictions for certain types of penal facilities.¹³ However, even these artificially established limits are significantly exceeded in pre-trial detention centres. On the date of the visit, that is 1 July 2006, the number of those held in PTDCs exceeded by 539 the maximum number of 2114 specified according to the guidelines, with the level of overcrowding being 25.5%.¹⁴ Compare, for example, the accepted standards of CPT, according to which the minimal appropriate prison space per person equals 4 square metres¹⁵.

In recent years insufficient funding for the penitentiary system has become a constant negative factor. The national budget for 2006 provides for only 230 millions Kyrgyz Soms (national currency of Kyrgyzstan) for the system with the lowest demand and request standing at 600 millions Soms. Moreover, in reality,

¹² The same indicator, according to the International Centre for Prison Studies, in 2006 was 164 in Tajikistan; 184 in Uzbekistan; 292 in Latvia; 333 in Estonia; 364 in Kazakhstan and Ukraine; 603 in Russia, although in the majority of Western European countries it is significantly lower – 100. <http://www.prisonstudies.org/>.

¹³ See: “The Rules of internal routine in correctional institutions”; The Order of the Ministry of Justice of 22.12.2003. The draft of the newly prepared “Rules of internal routine of PTDCs” (Article 2), in fact, also neglects the criterion of establishing capacity limits for this type of institution.

¹⁴ See: Section 4. *below* “The conditions under which inmates are held” about the actual facility conditions.

¹⁵ See, for example: CPT report on a visit to Armenia on 6-17 October 2002 (in English). Para. 65, CPT/Inf (2204) 25. www.cpt.coe.int.

even this amount is not allocated in full – only about 36% of it. According to MDPA, by August 2006 the credit indebtedness of the institutions amounted to 63.9 millions Soms¹⁶.

Huge amounts of misappropriation and numerous breaches of financial discipline present a serious problem, which exacerbates the situation. At the time of the mission public prosecution bodies were investigating criminal cases with regard to former MDPA management concerning abuse and misappropriation to a total of 29 million Soms. One case was misappropriation of 2 million Soms in purchasing barbed wire.¹⁷ Such a massive scale of financial abuse and corruption against a background of a lack of funds for normal functioning of the institutions is one of the most important factors, which has to be taken into account when working on the priorities of restructuring the system.

¹⁶ At the time of the mission, on 31 July 2006, the issue of insufficient funding became a subject of consideration for public prosecution bodies. The decision was taken to defend an issue of immediate funding before the Government and President of the Kyrgyz Republic. The request of the MDPA management to the Prime-Minister of the country to allocate an additional 11 million Soms for renovation and 5 million for catering was left unanswered.

¹⁷ For other facts, including the construction of PTDC No. 50, see *below*: Para 4.2. *Pre-trial detention centre* in Section 4. “The conditions under which inmates are held”.

**PREVENTION OF TORTURE
AND OTHER CRUEL,
INHUMAN OR DEGRADING
TREATMENT OR PUNISHMENT.
RIGHT TO FREEDOM
AND PERSONAL SECURITY**

2. Prevention of torture and other cruel, inhuman or degrading treatment or punishment.

Right to freedom and personal security

In the course of expert evaluation no significant occurrences of torture or deliberate inhuman treatment of inmates by the penitentiary system personnel were documented. Many interviewed confirmed that the situation had changed for the better in this regard after penitentiary system bodies had been transferred under the jurisdiction of KR MJ, which has nothing to do with the functions of criminal procedure and criminal investigation response to crimes committed. However, there were reports of beatings and disproportionate application of force – for example, in the course of measures taken after October 2005.¹⁸

Serious concern was raised because of numerous complaints by those inmates interviewed, including juveniles and women, about cruel beatings on a regular basis, involving truncheon blows to the heels and head; asphyxiating by putting a gas mask on, etc. According to the respondents, these measures of coercion were applied to them by police officers when they were held at police stations and temporary detention facilities (TDF). Such treatment can be equated to torture, taking into account the extreme degree of cruelty and reasons for that: to make a detainee confess, to own up to other crimes (up to 8-10 crimes) or to retaliate to earlier violence against a police officer (in one case). Such treatment is often accompanied by excessively long terms of keeping a detainee in TDF (from a few weeks to eight or more months).¹⁹ Intentional bad treatment and the risk of being subjected to torture make the TDF conditions for detainees even worse than in the penitentiary system institutions. This was confirmed during the meetings conducted by the experts and talks with PTDC staff.

Therefore, the experts looked at what was done by the penitentiary system to prevent such treatment at the initial stages of custodial restraint. One of the functions of pre-trial detention centres is to reveal cases of torture or cruel treatment towards detainees by the police and other law-enforcement bodies. The main means to this end is medical examination and a clearly delineated procedure that new detainees undergo at entry. The existing procedure does not fully meet the respective requirements. In particular, according to the staff of PTDC No. 3 and 50, they refuse to accept the transferred inmates when the latter exhibit physical injury; the staff of PTDC No. 5 confirmed that written recording of such injuries is only made if the transferred inmates wish to pursue a complaint; in PTDC No. 1 medical examination is conducted in the presence of officers, which, in addition to direct violation of medical confidentiality, limits the opportunity for open communication between the persons examined and medical personnel. The new draft Rules of PTDC's internal routine, namely, paragraph 3, describes the due procedure for reception but it

¹⁸ See detailed report on the events of October 2005. – Prison nightmare of Kyrgyzstan. The report by the Crisis group No. 118 Asia (16 August 2006). http://www.crisisgroup.org/library/documents/asia/central_asia/russian_translations/118_kyrgyzstans_prison_system_nightmare_rus.pdf.

¹⁹ In a number of cases such allegations were re-checked and corroborated by studying personal files of particular detainees.

requires some additional work to be done to exclude the said drawbacks for the future.

One of the factors to minimize the risk of torture or cruel treatment of inmates by the police is to strictly observe the legally prescribed terms for detention. For this purpose it is important to establish a clear-cut and efficient system of detainees' transfer to PTDCs and to expand the geography of their network. Three oblasts, namely – Batkenskaya, Zhalabatskaya and Talasskaya do not have pre-trial detention centres. To satisfy the needs of the latter, a PTDC on the territory of Kazakhstan is used. This is not supported by any interstate agreements and, correspondingly, offers no proper guarantees for observing legitimacy and rights of inmates.

In conformity with international law standards, cases of transfer (extradition, deportation, informal surrender) of persons to the authorities of those states where there is a real risk that they would be subjected to torture, cruel, inhuman or degrading treatment or punishment, are considered to be cases of cruel treatment. In the course of their mission the experts discovered that PTDC No. 5 was holding citizens of Uzbekistan who had been sought by the authorities of their home country on charges of being implicated in political and religion-inspired crimes. The said persons were kept in custody without definite status and clear-cut legal grounds; no decisions were taken to extend the terms of their custody. Irrespective of the fact that they have not been given refugee status (this question was under consideration by the Supreme Court of the Kyrgyz Republic), the competent bodies, in order to avoid violating the respective international law norms, must not ignore the risk of torture of these persons in case of their extradition to the Uzbek authorities.

Keeping these persons in custody for a long time without legally extended terms or other grounds for further keeping them in custody, supported by proper documentation, is categorized as a violation of their right to freedom. Another example of such “exceptions from the rules” is treatment of some persons who were placed in a combined unit for convicts transferred to a cell regime (the so called “Combined Premises of Cell-Type or Combined PCT”, organized within PTDC No. 3). The experts discovered that, in addition to convicts held in this regime beyond the established term (due to the problem of transporting convicts), there were convicts there with no formal decisions supporting their placement in PCT.

It should be noted that the existing legal framework and practices of the penitentiary system on the whole prohibit illegal placement of persons in penitentiary institutions, that is without documentation supporting the decisions of competent bodies on their incarceration.

**COUNTERACTING CRIMINAL ACTIVITIES
IN PENITENTIARY FACILITIES**

3. Counteracting criminal activities in penitentiary facilities

The whole set of negative factors brought the penitentiary system to the verge of collapse. These include: continued recessional socio-economic situation in the country and recent political processes; society's underestimating the significance of efficient functioning of the penitentiary system for its own stability and normal development; neglect of demoralising tendencies inside the penitentiary system; lack of proper funding; and failure respond effectively in order to secure realistic and consistent system reform. Paralysis of the penitentiary mechanism and completely worn out infrastructure promoted the development and overwhelming spread of the criminal subculture. This negative phenomenon represents a highly hierarchical informal community based on permanent threat and physical violence, killings²⁰, sexual assaults²¹, and diverse psychological factors of a criminal nature, including extortion. Although it was inherited from the Soviet past together with the system, it has virtually started spiralling out of control.²²

The system's management and the administration of the penal institutions lost the ability to control the situation in the majority of these institutions, especially in correctional colonies. Local areas inside colonies stipulated by regime requirements and designated for distribution of and – to some extent – control over convicts, stopped functioning. Fences and other similar fixtures were dismantled. Convicts on the whole received the opportunity to move freely and interact within the perimeter. Such elementary regime requirements as assembly and roll calls are no longer observed. As bad as it is, all that is happening in the absence of a possibility to distribute convicts by institutions of relevant categories, which exacerbates the impact made by the criminal community. Some pre-trial detention facilities (for example, No. 3), where inmates could freely move inside the buildings and even along the perimeter, were not an exception. In addition, the staff and administration were often subjected to physical abuse. Virtually unmanageable and uncontrollable by the penitentiary mechanism the body of convicts was often kept within the facility perimeters solely by the threat of using firearms. Such a situation culminated in the notorious events of October 2005, escalating across the whole system and presenting a real threat to the vitality of the state mechanism. The danger was averted by repressive military-type measures.

Regime measures undertaken later, included house-to-house searches, conducted, according to the personnel of penal facilities, for the first time in the past 15 years, counter-criminal and disciplinary measures (transfer, isolation and so on), criminal prosecution as well as organizational and staff changes in the management of MDPA and a number of other facilities, helped to stabilise the situation and to a certain extent restore control over the facilities.

²⁰ Killings to do with intra-criminal subculture relationships also took place recently, for example in correctional colony No. 16.

²¹ The September events of 2005 in correctional colony No. 3 are one such example.

²² This subculture spread beyond the penitentiary system affecting both economic and political spheres of society, which was directly or indirectly confirmed by the events of October 2005-May 2006.

At the same time the observed stabilization was achieved, among other things, due to the interaction with criminal hierarchy, which was confirmed by the heads of the majority of institutions visited by the evaluating group. Criminal subculture, having stopped its active aggression aimed at the state constituent of the system, is still prevalent among the penitentiary institution population.

It should be emphasized that in addition to prohibiting torture and cruel treatment towards inmates directly on the part of personnel, prohibition of inhuman or degrading treatment or punishment implies the responsibility of the state to provide safety and physical and psychological security of persons in custody. Thus, the state has a positive obligation to protect inmates from the offences of other persons in custody. When convicts' safety is jeopardised by their inmates, the level of efficiency of such widely used means of protection as transfer and holding convicts in disciplinary isolation units (punitive isolation cells or PICs and PCTs) is not as high as it seems. This measure, although used at the request of the latter (according to Article 12 of the KR PC) results in lengthy (often until the money extorted by criminal structures is paid out) periods of being held in totally unfit premises and under the strict regime conditions. For example, in correctional colony No. 47, 12 such convicts were held in five PCT cells located in the basement, with no daylight and insufficient lamplight, no ventilation and in unsanitary conditions; in correctional colony No. 1, seven people were held under similar conditions.

However, merely existing in such conditions for the absolute majority of people held in the penitentiary system – and not only for the category of “the downtrodden”²³ – with that level of development of criminal subculture, which prevails in the system, can be equated to the violation of the above mentioned right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment.

The situation which has developed and jeopardises not only the observance of human rights in a penitentiary system but primarily the security and efficiency of penitentiary activities of the state, requires a set of measures including the transition from the camp system to a cell-based system of housing convicts as a strategic goal.²⁴ In the short term it is important to consistently apply regime measures including the mandatory observation of internal routine, restoration of local areas and other measures aimed at improving the maintenance of control.

²³ “The downtrodden” (*“opoushchennye”* - Russian criminal slang) – these are individuals with regard to whom acts of pederasty are usually forcefully performed as well as voluntary homosexuals. Notably, an active form of homosexuality is not considered a disgrace, while a passive partner is always at the very foot of a hierarchical ladder with all subsequent restrictions, harassment, victimization, physical and psychological isolation of these persons (for example, tables, dishware and so on that are especially marked “for the downtrodden”). In addition to humiliating treatment, segregation, systematic sexual assaults and violence, this category of inmates has to fulfil the dirtiest jobs of cleaning the premises, toilets, sewage, etc. It should be noted that even the juvenile colony has this category of inmate.

²⁴ What is meant here is a contemporary concept of “placement” implying a flexible system of regimes and not a strict isolation similar to prison confinement.

Another efficient means is a proper response to the information revealing that violence or other methods of influence were used with regard to persons in custody. Proper response implies efficient investigation, namely a comprehensive, exhaustive and timely inquiry and where necessary, pre-trial investigation and a trial. At present these activities have been reduced to zero by the administration due both to the conciliatory attitude and the tactics of co-existence with criminal subculture, and to the fact that the main criterion of evaluating the work of institutions is the number of registered crimes, and not the efficiency of responding to them. As a result, when on 1 June 2006 the convict A. M. was delivered to the medical unit of the correctional colony No. 8 with a swollen face and legs, black and blue on the small of the back and a bulging belly, despite the obvious signs of intentional physical violence (beatings), a version of his falling from a great height was accepted without reservation. Such facts are kept quiet and ignored. Typically, when talking to the experts, the management of the colony denied criminal incidents amongst inmates.

Therefore, it is important to provide for further consistent and rigorous restoration of a normal working routine in the facilities as a priority. Minimization of the impact of criminal subculture must become one of the goals of system reform in the long-term, to be achieved via the application of a set of comprehensive measures including a relevant strategy to develop a penitentiary infrastructure.

**THE CONDITIONS UNDER
WHICH INMATES ARE HELD**

4. The conditions under which inmates are held

The absolute majority of buildings, dwellings and premises used for living, placement and satisfaction of daily needs of persons in custody are worn out and run down to the extreme. The reason for that is not only their old age (some premises of PTDC No. 5 were built in the 1880s, the hospital building in correctional colony No. 47 - in 1916, premises of correctional colony No. 1 - in 1929, premises of PTDC No. 1 - in 1943 and so on) but also the fact that for the past 15 years neither ordinary maintenance, nor major overhaul has taken place, which in its turn is due to the lack of finance. Some institutions (for example, medical correctional institution No. 27 whose buildings have been used since 1978) did not have any major overhaul in the Soviet era either.

4.1. Correctional institutions

Generally, accommodation in correctional institutions is of brick/stone, one or two storey (sometimes more) hostel-type dwelling facilities designed for joint cohabitation of convicts in large rooms of up to 100 and more square metres (correctional colony No. 19 and others). Today many buildings have only walls and cement floors/interstorey structures. Not all dwellings are rain or snow proof due to faulty roofs or even partial absence of the roof (building three, hospital complex, colony No. 27 and others) which makes this fact a priority concern not only in order to protect those convicts who live there from atmospheric phenomena but for elementary preservation of the buildings' frameworks. Over the past years only a few institutions have partially renewed roofs out of their budgets (correctional colonies Nos. 8 and 10). A large number of window apertures do not have window frames and an even greater number of windows do not have glass. According to the personnel and convicts, by the cold season, window glazing is usually financed from a variety of sources or the apertures are closed utilizing materials at hand. Available window frames – dilapidated, warped – leave gaps between them and the walls (juvenile colony No. 14, correctional colony No. 19 and others).

The practice of independent non-sanctioned construction and refurbishment of premises by convicts themselves has become widely spread. In some big dwelling houses (in colonies Nos. 8 and 10 and others) bedrooms are partly separated by fabric curtains and other materials at hand. In correctional colonies Nos. 1, 8, 10 and others, unauthorized permanent wall partitions have been built in most dwelling houses, not complying with any norms (construction, sanitary, fire-prevention) which has resulted in fragmentation of bedrooms into box rooms or rooms with connecting passages and corridors. This too worsened ventilation and lighting in the premises. Moreover, substantial number of convicts had been housed in the ruins of industrial estate dwellings refurbished in the same way. In colony No. 1 such a “squatter settlement” developed on a large scale because, in addition to the situation described above, this has given rise to a huge block of mutually connected one-storey (of human height) shacks built from materials at hand. Each shack is about four square metres adobe-type space (called “*bendeshki*” in local jargon) covered by rusty and leaking sheet metal. Daylight and fresh air have difficulty in penetrating into these

dwellings through low apertures. In order to enter them a person of average height has to bend down or to duck his head. Some premises have glass blocks installed in their walls or have little apertures for windows. According to the head of the colony up to 500 people or one third of its contingent live in premises of this type.

Although convicts spend most of their time outside the buildings, the level of overcrowding is an essential factor detrimental to their living conditions. Despite the fact that established limits were not exceeded in any visited colonies²⁵, convicts live in a packed manner both in big bedrooms (for example, 47 people in a room of about 100 square metres – in colony No. 19) and in the refurbished premises (for example three people in a box room with a space of 7 square metres – in a correctional colony No. 10).

The problem of heating of premises is a serious one. According to convicts and personnel of the institutions, the main means of heating are various types of self-made and factory-made electric appliances with exposed bars, which is inefficient (the state pays for it), a fire hazard and bad for health due to high levels of humidity caused by vapours and moisture condensation (in order to maintain the temperature convicts completely stop the access of air from the outside). The state of wiring subjects convicts to the immediate danger of electrocution (stripped wiring and so on). In some institutions they also use self-made furnaces (for example, in juvenile colony No. 14, correctional colony No. 16 and others). The majority of buildings are hard to heat sufficiently due to their miserable condition described above. In all colonies there are complaints about cold in winter time, including medical correctional institution No. 27, correctional colony for women and others.

Good conditions in some rooms and even buildings occupied by the leaders of the criminal subculture stand out glaringly against this background (correctional colonies Nos. 8 and 10 and other male institutions).

The situation in institutions for juvenile offenders (No. 14) and women (No. 2) is marginally better compared with general living conditions in other correctional institutions. Despite the presence of certain serious drawbacks, bedrooms in a juvenile colony are sufficiently light and spacious, they are decorated with a few rugs and other objects, some have televisions and videos. One of the experts, who had visited correctional colony No. 2²⁶ earlier, noted positive changes in the equipment of shower-rooms, laundry room and a temporary toilet. These categories of convicts are fully provided with beds and bedding.

These positive tendencies are due to the high-profile attention of international and local donors to the said categories of convicts. It is these institutions that are major beneficiaries of donor aid, which, at the same time, has a one-off and episodic character. One example of an overall solution to one of the problems is funding the renovation and purchasing the equipment, as well as furnishing the children's unit of female colony No. 2.

²⁵ See *above* about officially limited capacity p. 8, Section 1. Major characteristics of the penitentiary system of the Kyrgyz Republic. Typically, under the said conditions the capacity limit for correctional colony No. 1 stands at 1900 people (obviously, including so called “uncontrolled settlement”).

²⁶ Institution was visited by Mr. S. Gusseinov.

One of the acute problems of all correctional colonies is the lack of or extremely poor condition of sanitary facilities and unsatisfactory provision of water. The overwhelming majority of convicts have no choice but have to use dirty toilets spreading a nasty smell, which do not meet basic sanitary requirements and are in fact primitive dwellings installed over cesspits. Even these toilets are often not fit for the purpose. For example, in correctional colony No. 2 the main toilet is not used because of the rotten floor, in correctional colony No. 19 sewage disposal is not carried out²⁷. In the latter, as well as in the juvenile colony No. 14 there are no shower-rooms, and those which are available in other colonies are clearly insufficient for normal washing, taking into account the number of convicts, the state of the equipment and the volume of water requiring heating.²⁸ In general, these are self-made electric heaters, rusty pipes and 3-5 functioning “outlets” in the shape of openings. However, colonies (Nos. 8, 10 and others) have one steam bathhouse each. Laundry equipment is either fully absent (for example, in colony No. 10 two bath tubs are used for laundry), or it is insufficient, worn out and outdated (in colony No. 16 there is only one old washing machine and an old centrifugal spin dryer). There are no autoclaves.

Colonies No. 2 (female) and No. 19 are not supplied with drinking water of proper quality. In the former it is due to the worn out pipes and the fact that they run next to sewage pipes of the same quality (water quality is satisfactory in the water tower), in the latter it is related to insufficient depth of the well from which water is pumped. In colony No. 19, despite the measures taken, including preventive treatment (rice and blackthorn broths, etc.) this leads to on-going intestinal infections²⁹. In the past years there were outbreaks of dysentery. However, that happened in other colonies as well (for example, in colony No. 8), which is related to insanitary conditions, brought about by the accumulation of the above-mentioned factors.

Here unsystematic collection of rubbish has to be mentioned, which, as a rule, is collected from the institutions’ premises. In some of the colonies (Nos. 8, 19 and others) bins are not used and rubbish is just dumped in piles. In colony No. 8 it is done on the outskirts of the perimeter and its grounds are cleaned; in colony No. 19 rubbish is dumped right between the dwelling houses. The situation in correctional institution No. 8 is a direct result of the absence of elementary organization and discipline as well as a failure to take measures, which, incidentally, do not require finance.

4.2. Pre-trial detention centres

Like dwelling houses in the colonies, an overall majority of the regime buildings of pre-trial detention centres is completely worn out. However, due to the

²⁷ “The downtrodden” dump the remains of faeces in the pits on the colony’s premises.

²⁸ In female colony (No. 2) and medical correctional colony (No. 27) bath premises were refurbished at the expense of external financial aid (ICRC and certain NGOs). In colony No. 2 a laundry room was also renovated.

²⁹ At the moment of the visit convicts with intestinal disorder were placed in the medical unit of the institution. On one day only, 24 July 2006, seven such patients were placed into the medical unit of correctional colony No. 19.

peculiarities of this regime, the functional state of buildings was preserved and their unauthorized refurbishment was not allowed. However, they badly need funds to be renovated. Some of PTDC buildings are virtually unfit for the purpose. For example, a one-storey regime building of PTDC No. 4 (city of Naryn) is extremely run down. Because of the high altitude there is no water in winter. Due to frequent power cuts the problem of heating is acute; when snow melts the roof leaks, etc. The building used at present as PTDC No. 50 is the only one whose construction began from the moment the Kyrgyz Republic became independent (construction has been on-going from 1996).

Pre-trial detention centres are institutions of prison type designated for carrying out a measure of restraint in the form of pre-trial detention (until the judgement comes into force), where detainees are locked up in cells (mainly high occupancy; there are cases when inmates are held one to a cell – in PTDC No. 5³⁰). As mentioned already, in the Kyrgyz Republic PTDCs are also used as prisons for those serving particular sentences (prison regime and capital punishment, CP). The experts came across no cases of cell sharing between convicts and remand prisoners.

One of the most serious factors negatively affecting the conditions under which remand prisoners are held is PTDC overcrowding compared with officially established capacity limits. At the time of the visit the number of people held in PTDCs exceeded these norms: the actual number of people held in PTDC No. 1 was 1697, with the capacity limit being 1329; in PTDC No. 3, 151 people, with a capacity limit of 135; in PTDC No. 5, 460 people, with a capacity limit of 390; in PTDC, institution No. 14, a female unit, 91 people, with a capacity limit of 76 persons, and in a juvenile unit, 60 people, with a limit of 77. The level of overcrowding and occupancy in certain cells is extremely high: three people (sentenced to CP) were held in an underground cell of 7.5 square metres (PTDC No. 1); in a cell of about 3x5 metres 10 people were held (PTDC No. 5); a cell of less than 6 square metres was occupied by three people (PTDC No. 4). Not all remand prisoners had beds.

In addition to double functional usage of PTDC (for its direct purpose and for holding convicts sentenced to prison regime and CP) and the lack of efficient concept of alternative measures, another serious negative factor is low efficiency of the judicial system and a harsh approach towards using imprisonment as both a measure of restraint and punishment. It should be noted that not only a substantial number of prisoners questioned in the course of the visit but also some of the personnel of the penitentiary system and representatives of NGOs said that the use of measures alternative to custody and imprisonment was possible only by resorting to corruption. According to respondents, elements of corruption show up even in the course of such formal activities as timely forwarding judgement copies to PTDC³¹ (in some courts this is done for a special payment – about 300 Soms).

In the course of visiting much was said by respondents about the long periods of nonfeasance on the part of investigative bodies. Prisoners wait for a long time to be

³⁰ Long-term solitary confinement under the conditions of restricted ties with the outer world and regular contacts with other prisoners is a violation of internationally accepted standards and considered as inhuman treatment. In PTDC No. 5 one person sentenced to CP was held in solitary confinement.

³¹ Mandatory for transfer to correctional institutions of persons who have been convicted.

called by investigators and interrogating officers to interrogations and other investigative activities³².

The existing practice of returning criminal cases by courts to the prosecution bodies “to provide for the appearance of witnesses and/or defendants” testifies to the inefficiency of administering justice, heel-dragging with hearing criminal cases and the attitude of the judiciary towards this problem.³³

The delays in delivering new convicts from PTDCs to correctional institutions can also be due to the problems of the penitentiary system itself. For example, PTDC No. 4 (city of Naryn) has only one special-purpose vehicle (1988 model), which is defective, to escort convicts to PTDC No. 1 (Bishkek). The situation in PTDC No. 5 (Osh) is no better, it has only one special-purpose vehicle made in 1970. For this reason in PTDC No. 1 convicts were waiting for their escorting to correctional institutions for ten and more days (some of them spent more than two months there).

The duration of holding prisoners in PTDC significantly aggravates the negative impact of overcrowding and other factors stemming from the unsatisfactory state of the PTDC infrastructure.

The interior of the majority of cells is evaluated as extremely unsatisfactory (with the exception of PTDC No. 50, some cells in PTDCs No. 1³⁴, No. 5³⁵ and some other premises partly renovated at the expense of various donors). Many cells have cement floors (PTDC No. 3 and others). Toilets in cells were generally separated by a curtain, in some of them washbasins with cold water were installed directly above the toilet. Bathroom fitments in most cases were in extremely poor condition, they were dirty and had a bad odour. Electric wires in many places were exposed which per se is life-threatening. Access of fresh air and natural light in many cells was substantially restricted by blinds, thick bars and other similar fixtures; some cells were located in basement and semi-basement spaces (in PTDC No. 1 and 5 they are occupied by persons sentenced to CP).

The conditions in PTDC No. 50 are the most acceptable (except for the occupancy rates and washbasins installed above the toilets). The state of cells and furniture (new beds) is satisfactory, windows are big and allow good access of light and fresh air. However this facility, consisting of a one-storey regime building

³² For example, female remand prisoner K. said that she had been held in PTDC at correctional institution No. 14 for six months and no investigation activities had been conducted with her over that time.

³³ For example, the case with the court since 31.10.2005 on part 2 of Article 350, Article 28, part 1 of Article 346 of the KR Criminal Code (maximum punishment – up to three years of imprisonment) related to female remand prisoner H. (in custody since 17.08.2005), held in PTDC at correctional institution No. 14, was returned by the court to the prosecutor twice (physically forwarded) on the said grounds and at the moment of the experts’ visit had not yet been considered. See Article 265 of KR Criminal Procedure Code.

³⁴ 10 cells for holding tuberculosis patients were renovated due to the financial support of the international non-governmental organization “Médécins sans frontières”.

³⁵ At the expense of Osh city administration 12 cells of the regime building No. 2 were renovated which included substantial widening of windows, providing better access of light and fresh air; toilets were separated properly.

(which was initially designed for disciplinary premises), a two-storey administrative building and a non-reinforced brick wall along the perimeter of the grounds (main buildings and other infrastructure failed to be constructed) represents an example of irrational waste of a substantial amount of allocated funds. Furthermore, its construction was fraught with corrupt abuses, misappropriation and embezzlement of 4 million Soms; criminal proceedings were instituted as a result.

PTDCs situated within city boundaries have centralized (city) water supplies. However, it still does not fully solve the water quality problem. In PTDC No. 1 an old water pipe runs next to sewage and leaks.

A number of PTDCs use city central heating (PTDC Nos. 1 and 5), others have their own boiler rooms (PTDC No. 3). However, due to insufficient heat and wear and tear of the equipment electric heaters are frequently used to maintain the required temperature, which is fraught with serious negative consequences – excessive humidity and so on. This is the sole source of heating (although not stable) for PTDC No. 4 and PTDC No. 50; the latter, in addition, stockpiles firewood in case of power cuts.

All pre-trial detention centres have shower rooms (in PTDC No. 4 a shower room has been restored due to a grant received from a local NGO but is still in a deplorable condition; in PTDC No. 5 the shower room was made out of cells; in order to have a wash remand prisoners have to carry water themselves). Laundry is done in a primitive way – by hand.

Proper modernization and construction of regime buildings is not being carried out; funds for these purposes are not allocated. Small budget allotments are barely enough for cosmetic repairs (PTDC No. 1 in 2006 had partial plastering and whitewashing of up to 70% of cells done; PTDC No. 4 renovated one of the cells and equipped the exercise yard; PTDC at correctional institution No. 14 and the institution itself were allocated renovation funds in 2006; PTDC No. 5, in addition to the help of local administration received 56 thousand Soms). As already mentioned, renovation work, mainly, is carried out thanks to external financial sources. At the time of the visit PTDC No. 5, with the financial help of the OSCE Field Office in Osh, was in the process of setting up a summer kitchen, additional bathhouse and renovating the library.

4.3. Open prisons

Visiting one colony of this type will not provide the full picture of the state of these institutions. However, since convicts serve their sentences in an open regime (assuming their involvement in work outside the institution), the mission did not require their detailed study.

Additionally, in the course of the visit it became clear that the main problems of institutions of this type are lack of employment opportunities for the majority of convicts and poor living conditions, which lead to situations when many convicts escape. Talking to persons who were placed in PTDCs for absconding from open

prisons the experts found that it was those circumstances that had pushed them to do that. Due to the great number of convicts who left open prisons and were on the run, the number of convicts documented does not match the real number. For example, in open prison No. 44, 91 out of 345 convicts have absconded. Many convicts working on long-term agreements in fact do not live there either.

Open prison No. 44 occupies the building of the former hall of residence of one of its works. It was introduced as one of the best institutions of this type although its residential accommodation was in the process of renovation (third and fourth floors³⁶). In the area adjacent to the building bath-and-laundry premises were in the process of being constructed.

Due to the fact that the open prison is located in a resort area, according to the administration, in the summer time it was possible to provide jobs for nearly 70% of convicts living there.

4.4. Special premises

All above-listed examples of poor material conditions under which convicts are held, even on a greater scale, refer to special premises where individuals deprived of freedom are held for different reasons for relatively short periods of time.

One such type of premises are quarantine premises for those newly arrived at correctional institutions. In addition to an extremely poor state of the premises themselves, there was no bedding at all. Instead there were only old, dilapidated and dirty mattresses. The same applied to the quarantine premises of the transit/collection unit of PTDCs with the exception of PTDC No. 50.

Premises designated for disciplinary isolation of inmates – PTDC isolation cells, punitive isolation cells (PICs) and premises of cell-type for convicts (PCTs) are in an even more deplorable state. All cells in such premises are dark (if there are windows they are firmly shut using iron plates, blinds, etc.), badly ventilated; do not have sufficient artificial lighting. The interior, places for sleeping (bunks, folding berths and so on) and bedding are extremely worn out. As a rule, cells have concrete floors and often are muddy and damp. This applies to similar units of nearly all institutions. Many persons subjected to disciplinary isolation said they had not been taken for a walk.

Obviously, holding convicts in such premises presents an additional element of punishment, which is unlawful.

The said premises were renovated in female correctional colony No. 2; premises in PTDC No. 50 and PTDC at institution No. 14 are in a better state than generally in the system. A combined PCT of PTDC No. 3 may serve as an example of satisfactory conditions: convicts are provided with food and bedding, cells are spacious enough and not overcrowded, cell windows provide for normal access of natural light. There are separated tiled bathrooms in cells and exercise yards.

³⁶ The second floor of the building is allotted to the personnel of the penitentiary system who come and use the accommodation for recreational purposes. The open prison is located in a resort area near lake Issyk-Kul. Each room is assigned to a correctional institution, responsible for its renovation.

4.5. Other aspects of providing detention conditions

The equipment of joint cells and dwelling houses consists, as a rule, of old multi-tiered bunks or iron beds. As for bedding, individuals deprived of freedom (including juveniles held on pre-trial detention in PTDC No. 5), are provided only with shabby mattresses and pillows, and sometimes not even that.

Provision of toiletries (soap, tooth-paste, etc.) is also unsatisfactory. Convicts are only provided with household soap, and even this is not supplied on a regular basis³⁷. Thus, in colony No. 19 convicts complained that they had not received soap since February 2006.

Generally, convicts have to buy both toiletries and other items of everyday use (including clothes and footwear). Although at the time of the visit inmates from the juvenile colony were all provided with a black uniform, it did not promote a favourable psychological climate.³⁸

Despite the fact that prisoners noticed some improvement in catering against previous years, the quality of meals provided, their nutrition and variety of the menu do not meet even the national standards, approved by the resolution of the Government of the Kyrgyz Republic No. 323 of 7 June 2000 (with further amendments). Primarily, it is due to the lack of finance allocated for the corresponding budget items; this being the case, estimated figures are knowingly understated. In reality, various institutions receive 20-30% of the stipulated funds only. Average daily expenses for food differ from institution to institution (28 Soms in PTDC No. 5; 25 Soms in PTDC No. 3; 28 Soms in colonies Nos. 1 and 2; 18 Soms in colony No. 8; 25 Soms in colony No. 14; 23 Soms in colony No. 27) and by categories of prisoners (from 14 Soms, to those sentenced to CP; 22 Soms, to remand prisoners in PTDC No. 1). Governors of correctional colonies Nos. 10, 16 and 19 had difficulty in stating the amount of average daily expenses for food. In addition, many prisoners mentioned facts of abuse on the part of the administration (corrupted relations with suppliers and stealing among personnel). The only product served in the amount close to the norm (but not of the appropriate quality and variety) is bread. Most institutions have their own bakeries. Meat and fish are actually replaced by concentrated products. There is no adequate provision of potatoes and other vegetables. For example in PTDC No. 5 in a week's menu there was no meat at all. In correctional institution No. 19 lunch menu consisted of: 1) vermicelli soup with soy meat, 2) barley porridge, 3) tea; in institution No. 27: 1) soup from concentrates, 2) millet porridge.

MDPA procures food products for all system institutions except PTDCs Nos. 3 and 5 and correctional institution No. 10 because of their remote location. Nearly all governors of penitentiary institutions spoke in favour of local food procurement because MDPA does not know individual demands and the real situation in each institution to take them into consideration. At the same time some governors mentioned serious problems related to food procurement due to corruption in the system (tender commissions, controlling bodies, etc.).

³⁷ Women's sanitary items were provided in female colony No. 2.

³⁸ Administration, recognizing this circumstance, approached the OSCE Centre in Bishkek with the request to help purchase civilian clothes.

The majority of correctional institutions visited, even the juvenile colony, which receives more diverse products, do not have refrigerators.

The majority of visited correctional institutions and PTDCs have functioning electric/steam boilers for cooking. At the time of the visit boilers in PTDC No. 50 had not been yet working and food was being prepared on hotplates. In some institutions boilers have recently been partially replaced out of the state budget. However many of them are due to be fully replaced (in PTDC No. 5, in colonies Nos. 1, 2, 8, 10 and 16). A so called “summer kitchen” was equipped in PTDC No. 5 at the expense of a grant provided by the OSCE Field Office in Osh for them to prepare food using firewood during power cuts.

It stands out that none of the correctional institutions, including the one for juveniles, has functioning dining rooms; furniture either does not exist or there are some shabby remnants of it and there is no necessary dishware and tableware. In correctional institutions prisoners do not have special rooms in which to eat. Foodstuffs acquired individually are not stored properly (especially in PTDCs).

The majority of people held in penitentiary institutions have no choice but to buy food or rely on parcels. Therefore, the right to receive parcels in any quantity is not restricted in any institutions for any category of prisoners with the exception of those sentenced to CP, although such practices contradict the existing regulations and are categorized as transgression. The impossibility of imposing any restrictions in this case and the reality of the situation make it necessary to introduce amendments in the legal framework. The recommendation is to abolish practices of total restriction/limitation in favour of exceptions on an individual basis (restrictions for parcels) regulating the quantity and types of foodstuffs and objects sent.

In order to obtain additional funds to provide for their main functional purpose some institutions make attempts to supplement it with business functions. Thus, juvenile colony No. 14 has a separate self-financing organization (SFO No. 2), which, together with baking bread produces pasta and leases out three hectares of farmland. The subsidiary farm has 10 cattle and 65 pigs.

The most significant international project has been the allocation of 350 000 Euros by the German Government for the development of agricultural farming in colony No. 26 in order to improve nutrition for convicts with tuberculosis.

Proposed tax benefits, subsidizing and other measures of state support for the penitentiary system merit consideration. At the same time, in order to achieve better results they should be supported by effective counter-corruption measures.

REGIME

5. Regime

The regime of deprivation of freedom, as mentioned already, in correctional institutions, has been virtually reduced (despite official division into maximum and reinforced security) to holding prisoners inside the institution perimeter and in PTDC cells (with the exception of convicts engaged in domestic activities).³⁹

In addition, in some PTDCs prisoners do not always have an opportunity to perform daily one-hour walks, which is a violation of a minimal internationally recognized standard. Many prisoners of the largest PTDCs – Nos. 1 and 5 – are not taken for a walk every day and if are, for less than one hour. Moreover, even when walks occur, the small space of exercise yards, absence of partial shelters protecting them from rain or the sun in some PTDCs, do not allow prisoners to benefit from these walks properly. As already mentioned, people placed in PICs/PCTs and punishment cells are often denied walks.

The overwhelming majority of convicts (except prisoners of female correctional institution No. 2) and all remand prisoners were not provided with work. Economic recession in the Kyrgyz Republic as well as failure to compete and the loss of previous economic ties made all industrial enterprises operating in correctional institutions in the Soviet times fully defunct; they ceased to exist, with frameworks and ruins being left from their buildings.

However, certain positive trends in this direction were observed or foreseen in a number of institutions. In correctional institution No. 10 some convicts were engaged in a small clothes workshop and car servicing. According to the head of correctional colony No. 16, the decision was taken to build workshop to produce bricks; juvenile colony No. 14 had plans to restore a sawmill.

In correctional colony No. 2 more than 100 convicts are employed in the colony's own clothes factory and as workers at the homestead plot. The colony owns a small farm (4 cows) thanks to which the colony's children's unit is provided with milk. Some of the convicts are employed in gardening within the colony and grow vegetables (in 2006 they planted about 40 thousand tomato plants).

Due to summer vacations the experts did not manage to assess the delivery of education in juvenile colony No. 14. However, according to the colony's administration and convicts, juvenile offenders studied according to the secondary school curriculum. Starting from September 2006 it was planned to resume vocational training.

Correctional institution No. 10 initiated the programme to partially revive the vocational school system, which used to exist before. With financial support from the OSCE Centre in Bishkek the colony was planning to purchase gas-welding equipment to train juvenile convicts in this profession.

³⁹ For the actual routine of open prisons see *above*, Paragraph 4.3. *Open prisons*; Section 4. "The conditions under which inmates are held".

In correctional institutions those who wish can play sports on their grounds. There are football and volleyball pitches. In some institutions donors helped to equip sport rooms with training and table tennis facilities (colonies Nos. 47 and 19, out of ICRC grant funds).

All institutions have opportunities for practising the Muslim religion; mosques are either built within the grounds or some premises are adapted for this purpose. In many institutions corresponding opportunities have been offered to Christians (according to the information obtained, chaplains and foreign missionaries are active in the penitentiary system).

Many institutions including PTDCs allow the use of individuals' televisions and radios which to a certain degree helps to organize the convicts' free time and is a means of receiving information.

The remaining library resources have not been updated at the expense of the budget for a long time. In odd cases external funds were used for this purpose. Due to the lack of funds periodicals and newspapers are not bought or subscribed to.

However, it should be noted that prisoners, as a rule, most of their time are volitionally inactive, not engaged in any productive activities, which extremely negatively affects their moral-and-psychological state, as well as the general psychological climate of the institutions. Correctional institutions do not carry out any focused work with convicts; a full-scale system to prepare them for discharge is non-existent.

An important aspect of the security regime for prisoners is their relationship with the outer world, including that with their families and friends. With regard to remand prisoners, the permission for them to have visits is given by investigators, prosecutors and supervising judges. This category of prisoner is eligible for short visits. It is expedient to replace this system of permission by one of a procedure, which only regulates the frequency of visits by relatives, with justified individual prohibitions in the interests of justice or in connection with abuse. The same procedure should apply to contacts via coin-operated phones.

Convicts held in correctional institutions did not raise the issue regarding the access to telephones and post because they had unauthorized usage of cell-phones.

Legislation establishes norms (frequency) for long-term and short-term visits convicts are entitled to, which corresponds to international practices. All institutions have appropriate premises. What disturbs the experts is that people have to pay for such meetings (49 Soms for 24 hours and 18 Soms for a short visit); despite the small amount charged, such payments may become an obstacle for some people from indigent circles in maintaining family relationships.

Together with the said faults the sphere of relations with the outer world including its illegal features (alcohol, drugs, cell phones, smuggling in persons including women for sexual intercourse, etc.) is characterized by a high degree of corruption.

**PRISONERS SENTENCED
TO CAPITAL PUNISHMENT**

6. Prisoners sentenced to capital punishment

Since 1998 the Kyrgyz Republic has had an active moratorium for the execution of sentences of capital punishment (CP) – the death penalty. This is one of the most important positive changes but it has not been supported by the appropriate legal and organizational measures.

Persons sentenced to CP are virtually equated to those sentenced to life imprisonment and are held under prison regime. At the time of the mission they were held in PTDC No. 1 and in PTDC No. 5 (136 and 28⁴⁰ correspondingly). In PTDC No. 4 (Naryn) one of the cells was renovated and reinforced (doors and window apertures were replaced and a small yard was fenced off for walking those sentenced to CP): supposedly, to hold two or three individuals sentenced to CP. Apart from the limited infrastructure for holding individuals sentenced to long prison terms, the perimeter of this PTDC, regime building and cells were, in fact, not technically reinforced as appropriate. During the 2004 riot in this PTDC 63 inmates easily smashed the wooden cell doors and penetrated into the area.

It was noted that the system developed a practice of additional discrimination of those sentenced to CP. They receive the smallest food ration with relaxed rules of receiving parcels not applying to them. Those sentenced to CP are the category that is allowed to receive parcels once a month. Like convicts sentenced to imprisonment they are housed in underground cells. The highest level of overcrowding and inappropriate conditions are in the underground cells of PTDC No. 1, where convicts are held in narrow, dark cells without access to fresh air, and with toilets which are not separated. The average space per convict in them amounts to 2.5 square metres; this is in addition to long terms of imprisonment and under the circumstances when this category of convicts virtually does not leave its cells (according to those sentenced to CP they can only rely on 40⁴¹ minute walks (not every day) and a wash once a week). Despite some allowances (they are allowed televisions, fans, to borrow books from the library) the conditions under which this category of convicts is held are extremely dissatisfactory.

Furthermore, those sentenced to CP must wear handcuffs when taken out of the cell, as a mandatory security measure. Here it is important to introduce the practice of individual risk assessment. The administration of PTDC No. 3 set a positive example, when, having studied the behaviour of inmates, refrained from using handcuffs when taking out two of them sentenced to CP by the court of the first instance.

In total all above-mentioned factors are manifestations of inhuman treatment/punishment.

⁴⁰ Two convicts sentenced to CP by the court of the first instance were held in a separate cell of the Combined PCT in PTDC No. 3.

⁴¹ The administration of PTDC No. 5 mentioned the problem of absence of an exercise yard, which restricted the opportunity of walks for those sentenced to CP.

The penitentiary system management considered the option of constructing or refurbishment of a special area within one of the institutions. (for example, in the place of the former industrial estate of correctional colony No. 19). However, when making a final decision it is important to determine the legal status of persons sentenced to CP, to take into account the best international practices including those which rule out unconditional life imprisonment and allowing their integration with convicts of other categories based on an individual approach. The time has come to abolish the death penalty on the level of legislation and to develop an alternative strategy of punishment in the form of long terms of imprisonment.

**MEANS OF CONTROL
AND PROVISION OF SECURITY**

7. Means of control and provision of security

For penitentiary institutions to function normally and properly fulfil their function as places of imprisonment and in order to create normal working conditions for their personnel it is important to provide security and due control.

Primarily, attention should be paid to the technical and physical wear-and-tear of mechanical locks on PTDC cell doors. In PTDC No. 4, in addition to that, the internal cell bars are not secured along the entire perimeter of window apertures; counter-escape grid fencing of walls and an exercise yard are made of used materials, installed carelessly and unsafely. PTDC No. 50, being not fully operational yet, does not meet the specified requirements: the walls of the regime building are made of ordinary bricks, the width of the walls is “half-a-brick”. Technical reinforcement of the main fence of regime zones and household yards of institutions is unsatisfactory too.

The state of engineering and technical means of security, a responsibility of the Department of Security of the KR MJ, is extremely deplorable. The barbed wire on the perimeter main fence is either not secured properly or is absent altogether. In those places where it is present, on the main or auxiliary fencing of institutions' perimeters the barbed wire is affected by corrosion, has lost its physical properties (became brittle) as a result of long-term atmospheric influence and requires replacement. Practically in all institutions wooden elements of main and camouflaged fencing of security objects have been subject to decay and also need to be replaced (foundations and so on).

The overwhelming majority of the technical means in use have reached the end of their service-life and should have long been written off. This especially concerns PTDC No. 4, juvenile colony No. 1 and correctional institutions Nos. 2, 10 and 19. The exclusion zone along all perimeters is practically non-existent. It has not been treated and became overgrown with grass in PTDCs Nos. 1, 4, 5 and 50, in juvenile colony No. 14 and in female correctional institution No. 2. Industrial CCTV “PTU-73” installed in some PTDCs in the late 1970s have also reached the end of their service life. Penitentiary institutions do not have modern equipment, control and security systems – beams and other advanced technical means.

Security alarm systems in the institutions have not been functioning for a long time and are not in working order. The operational technical engineering security means “Night –12”, “Pion”, “Mimoza-4” and others are physically and technically out-dated as a result of long-term operation. Alkaline batteries used for the emergency powering of electronic locking system “Night-12” and for stand-by lighting at 36 V have been run for more than 12 years, beyond their standard term of 6 years. When power is cut off their charge allows only 30 minutes of uninterrupted work.

Practically in all institutions convicts/detainees have illegal access to cell phones. There are no proper radio frequency generators to jam such communication.

MEDICAL SERVICES

8. Medical services

The medical service in the penitentiary system is organized according to the departmental principle. Together with a Central General Hospital at correctional institution No. 47 there are three specialized medical outfits for convicts with tuberculosis: a hospital at correctional colony No. 3 and medical treatment facilities Nos. 31 and 27 (the latter was visited by the experts). In addition, each correctional institution or PTDC has specialized medical subdivisions, the staffing determined by limits allocated to institutions. Most of the institutions have medical units with a specific infrastructure including beds. Personnel numbers also vary: from a medical room with one paramedic in PTDC No. 50 to the medical unit of PTDC No. 1 with personnel consisting of six doctors, four paramedics and four nurses.

Medical personnel are either officers of the penitentiary system or civilian employees. Medical subdivisions and personnel of the system are not connected with the overall health care system and are under command of the penitentiary administration, which negatively affects their professional independence. When introducing measures to reform a medical service, described in the “Umut” National Programme for Restructuring the Penitentiary System of the Kyrgyz Republic until 2010, it is important to take into consideration that the obligation to care for patients may often conflict with the position of the administration of a particular institution. This may give rise to problems of an ethical character and problems of choice. In order to guarantee independence of personnel in the issues of health care it is important that such personnel be closer connected with the main system of health care of society at large.

8.1. Medical examination on entry

In addition to the preventive function of medical services with regard to inhuman treatment⁴², they play a crucial role in early detection of diseases in individuals entering the system; medical services also protect the system from the spread of contagious diseases. The fulfilment of this task by medical departments is also problematic and does not meet minimum requirements set out for this aspect of their activities.

No PTDC has adequate and often even the basic laboratory equipment and preparations to conduct tests. New inmates are examined on entry by a member of staff but quite often such examination is reduced to their questioning and partial external examination (in the presence of wardens). After that those newly arrived are held in quarantine cells for up to ten days.

Medical subdivision of correctional institutions cannot carry out general tests, do not have mini-laboratories; they lack medical personnel, especially laboratory assistants, paramedics and therapists dealing with substance abuse. These problems make it extremely difficult for medics to fulfil their function of looking after the quarantine unit.

⁴² See *above*; Section 2. “Prevention of torture and other cruel, inhuman or degrading treatment or punishment. Right to freedom and personal security”.

International donors' aid enabled PTDC No. 1 to conduct a sputum test for TB but this test is not always conducted in time. By September it was planned to put in operation a photofluorographic unit, which had been idle at the time of the visit. Some PTDCs (No. 5 and others) use nearby medical treatment facilities for these purposes. PTDCs Nos. 3 and 4 do not conduct TB tests and perform check-ups at all.

8.2. Medical services

Medical services in places of imprisonment should provide proper treatment and care as well as relevant diet, physiotherapy, rehabilitation and any other specially required treatment on terms comparable to those used by patients outside such institutions.

The compliance with the said standard is complicated by the low level of equipment of medical subdivisions including supply of drugs. At the same time all institutions visited noted a recent resumption in the allocation of minimum budget funds. Thus, in 2006 correctional institution No. 8 was allocated 100 thousand Soms for these purposes. The administration purchased medical preparations and medicines locally.

Due to long-term operation, medical equipment in virtually all institutions is either not working or does not meet modern technical and medical requirements. The Central General Penitentiary Hospital at correctional institution No. 47 is situated in a run-down three-storey building constructed in 1916, which is extremely dilapidated inside and is crying out for renovation. There is no hot water. Rooms visited by the experts were dirty; many patients did not have bedding and pillows. Medical equipment is basic and extremely outdated; there is no operating table and equipment, appliances for gastroscopy and operations. At the time of the mission the Stefan Batory Foundation funded the renovation of the department for drug and alcohol abuse patients for 20 beds in accordance with its "Atlantis" Programme.

The same disastrous situation was noted in the majority of other medical subdivisions. Thus, correctional institution No. 10 does not have a photofluorographic unit, surgical instruments, an autoclave, quartz lamps, equipment for laboratory tests; correctional institution No. 19 does not have any dental equipment, surgical instruments, sterilizer and first aid materials, an autoclave, a photofluorographic unit, probes, catheters, colonic enema sets, etc. The majority of in-patient premises for prisoners are in an unsatisfactory and rundown state as well; although many institutions have started or are planning to start their renovation at the expense of external sources' funding. Patients are not provided with bedding and the bare necessities.

Hiring and retaining qualified medical personnel is a serious problem because of difficult work and low pay, especially in institutions situated outside big populated areas. Thus, in medical treatment institution No. 27 for convicts with TB, eight positions of phthisiotherapists are occupied by specialists of other medical specialities; in female correctional colony No. 2 the position of a gynaecologist is vacant; colony No. 10 cannot find a dentist; the PTDC No. 5 medical unit has only one doctor and one paramedic, with one position vacant, etc.

The lack of qualified personnel in its turn negatively affects the quality of medical help rendered. For example, on the day of the visit to correctional institution No. 8 there were 12 convicts in hospital care for whom there were no medical history records kept. Since there is no laboratory in this institution samples are taken to the medical centre situated in the area with a big delay; due to the absence of transport they take 20-30 days instead of the usual three days.

For the above mentioned reasons the system of consultation with particular specialists - eye specialist, neurologist, surgeon, etc. – has not been properly set up, they are not on staff of the institutions.

Similar to the situation with food and basic necessities, many prisoners in need of medical treatment arrange it on an individual basis at their own expense.

However, medical service is one of the major spheres of donor financial assistance, especially on the part of international organizations and specialized NGOs working with the attraction of foreign grants. Besides projects in PTDC No. 1 mentioned above, funds allocated by the international non-governmental organization “Médécins sans frontières” were used for laboratory equipment, a room for medical procedures, a paramedic room and cells for holding patients; financial support of the World Health Organization (WHO) to correctional institution No. 16 helped to renovate the room for medical procedures, the surgical room, the dentist’s room, the therapeutic room, the skin-and-venereal disease room, the paramedic’s room and the medical staff lounge (all rooms are equipped with necessary medical appliances); ICRI helped to equip a medical aid point in PTDC No. 50; and so on.

Due to concentration of all efforts (limited state participation, episodic external help and individual measures) at the time of the mission there were not any serious, recurrent and large-scale consequences of the above mentioned faults of medical service in the penitentiary system with the exception of the situation with TB. Mortality in the institutions was within the boundaries not exceeding that level one could expect considering the size of the system’s population. For example, the number of those who died from natural causes (non-violent death) over 2005 and 7 months of 2006 was: in PTDC No. 5, 4 people (2005) and 2 people (7 months of 2006); in correctional institution No. 8 – 2 and 3 people correspondingly, etc.

At the same time, under the existing circumstances the medical situation may be aggravated which would require urgent, consolidated and consistent efforts to rectify drawbacks in the sphere of penitentiary health care.

8.3. Tuberculosis and other contagious diseases

After a certain reduction in the number of fatalities caused by tuberculosis, since 2005 there appeared a tendency for their increase. In the first half of 2006 the mortality rate among TB patients rose by 35%. The dynamics in one of the main treatment institutions of this profile – No. 27 – are as follows: in 2001 this indicator was 227 individuals, in 2004 it dropped to 44, in 2005 it was 62 and in 2006, in the period before the visit it fell to 29.

At the same time, TB checks, not even conducted on a regular basis, reveal significant number of TB patients. Information about the results of fluorography conducted in 2006 in correctional institution No. 1 is particularly disturbing. It identified nearly 500 convicts who had TB before or are ill at present with TB in its various forms, which amounted to nearly 1/3 of the whole contingent. Poor daily living conditions (high humidity, overcrowding and so on), inadequate nutrition and other factors, including unfavourable trends in society with regard to the incidence of TB and combating it, are conducive to a persistent difficult epidemiological situation in the penitentiary system.

With such a background it is unacceptable for penitentiary sphere not to have an efficient and smoothly running system of mandatory screening (via a sputum test or by fluorography) of convicts on PTDC entry and on subsequent transfers. In all institutions visited the only working X-Ray machine was in the in-patient department of medical treatment institution No. 27. Furthermore, there is no regular annual screening of convicts with the use of mobile machinery. Correctional institution No. 10 has a 30 thousand Soms debt for the lease of the device from a civilian hospital. Correctional institution No. 8 did not conduct fluorography tests either in 2005 or in the expired period of 2006.

The timely escorting of TB patients from their institutions to specialized medical treatment colonies presents an acute problem. It especially applies to remote institutions (PTDCs Nos. 3, 4, 5 and correctional institution No. 10). For example, because of the remote location of the latter many of the TB convicts refuse to go to special institutions situated in Chuiskaya oblast.⁴³ With help from ICRC the colony began renovating the unit for TB patients; there is also a medical attendant in the colony to conduct treatment according to the DOTS system, which, however, will hardly help to significantly change the situation for the better.

It should be noted that real help to combat TB, including necessary drug supply ("first line" drugs), renovation of premises, etc. was only rendered on the part of international organizations – first of all, ICRC, and an international non-governmental organization "Médecins sans frontières". This help is so valuable that, according to the personnel of medical treatment institution No. 27, without it the situation would have been absolutely hopeless.

Meetings with the management of both donor organizations confirmed their intent to continue and expand relevant activities in the Kyrgyz Republic (within the framework of funds allocated by WHO to implement the 5-year programme – introducing treatment according to the DOTS system and providing drugs of the so called "second line", etc.), which under the developed circumstances seems to be the only scenario of somewhat stabilising the situation with TB in the penitentiary system.

At the same time, almost entire shifting of the burden of measures onto the shoulders of international organizations will not radically change the situation with TB. The seriousness of problems starting with the worn-out state of accommodation and treatment infrastructure (up to a leaking roof in the in-patient department of

⁴³ In addition, whilst escorting, epidemiological norms are violated (the sick and healthy are transported in one specially equipped vehicle).

medical treatment institution No. 27⁴⁴) and finishing with the lack of quartz lamps and other equipment and absence of the proper nutrition system for TB patients, requires immediate involvement of the state bodies. It is in their competence to pursue a consistent policy to eliminate all shortcomings and provide uninterrupted treatment both with transfer from one institution to another and with patients' release from prison. At present interaction with civil treatment facilities, in the best-case scenario, comes to formal written notification.

Spontaneity of TB treatment has led to a substantial rise in the numbers of individuals ill with its multi-resistant form (multi-drug resistance). This problem is not being properly dealt with. Thus, in the in-patient department of medical treatment institution No. 27 patients with this form of TB are kept together with others. According to ICRC, they represent 30-40% of the total number of TB patients.

One more sore point is the issue of timely discharge from further serving their sentences of persons whose disease has reached its most serious, incurable stage. Considerations of humanity dictate application of the appropriate norm of the existing legislation of the Kyrgyz Republic. However, the adoption of the said measures is, as a rule, postponed due to the delays in the arrival of the MDPA special commission (in particular to correctional institution No. 10) and negative position of local courts with regard to such patients.

A certain number of personnel of the institutions that fell ill with TB testifies to the adverse epidemiological situation. For example, over the past five years 14 staff members of medical treatment institution No. 27 contracted TB, with four cases being identified during the month prior to the experts' visit.

The penitentiary system of the Kyrgyz Republic has also been facing the problem of HIV and AIDS. Convicts with these diagnoses are held in a number of the institutions (one convict in correctional institution No. 19, two convicts in the in-patient department of medical treatment institution No. 27, etc.). Diagnostics are conducted on the basis of voluntary checks. Prisoners are being educated about the character of the disease. According to the poll conducted in medical treatment institution No. 27, 30% did not object to sharing living space with HIV-infected. The latter were not segregated from other prisoners.

The "Atlantis" programme dedicated to fighting drug addiction and its consequences is a solid and successfully developing project supported by external donors (correctional institution No. 47, etc.). It is supported by the "Soros-Kazakhstan" Foundation. Some premises were renovated in a number of institutions to conduct treatment for drug addiction. Correctional institutions under the conditions of anonymity exchange syringes purchased with the money from external aid. Also, at the time of the visit, the Representation of the UNDP in the Kyrgyz Republic, with the financial help of the European Commission, was carrying out a project of constructing a rehabilitation centre for drug addicts.

⁴⁴ See *above* Section 4. "The conditions under which inmates are held".

PERSONNEL

9. Personnel

The crisis situation of the penitentiary system both in financial and operative-regime aspect has had a serious impact on its personnel.

It is especially apparent in correctional institutions most of which in the course of the above-mentioned 2005 events were taken over by convicts. In addition to attempts to murder and armed resistance, abuse and humiliation of personnel were widely spread. According to a number of governors of correctional institutions (No. 16 and others) many staff members were so demoralized and intimidated that they refused to enter the institution grounds and work with convicts.

During the visit to the institutions, even with consideration of some degree of stability, one could sense the depressed and low-spirited state of the personnel, especially of those who worked in direct contact with prisoners. Absence of basic respect for the personnel on the part of inmates, sometimes even for the management of an institution (correctional institution No. 8) has a negative impact upon the staff.

As mentioned already, together with the measures aimed at restoring the elements of regime and discipline, there were personnel replacements both on the level of MDPA and separate institutions. However, it was not possible to improve the personnel policy due to the shortage of qualified personnel and lack of properly motivated influx of new staff.

All the above-mentioned negative facts conducive to creating an unhealthy moral and psychological climate were combined with ignoring the interests of penitentiary system personnel. As a result, despite a high level of unemployment in the Kyrgyz Republic and extensive length of service of the majority of the staff, the problem of employee turnover and hiring qualified personnel is one of the main impediments for further proper functioning of the system. The authorities of the Kyrgyz Republic having realized the significance and importance of personnel, admittedly with a delay (only after the system was subjected to the threat of destruction) started to take steps in this direction.

From 1 April 2006 salaries of the penitentiary system employees were raised by 50%. However, even after their increase – for example in PTDC No. 1 – the average salary of a warden came to 2500, an officer – 3000 and a governor of an institution – 5500 Soms a month.

It should be specially noted that the staff did not express any claims regarding the salary arrears.

To create additional incentives for working in the penitentiary system a stepped up coefficient for calculating the length of service was introduced (1 year was equated to 1.5). Benefits for utility payments (50%) and free transport are important but in some cases only a formal factor. Thus, for example, the majority of

correctional institutions are situated in places without public transport (Nos. 19, 27, etc.). Moreover, under the conditions of budget deficit this mechanism of providing benefits is economically inexpedient – the budget does not cope with obligations on reimbursement benefits to utility and transport enterprises.

Nevertheless the said measures to some extent reduced the employee turnover and, according to MDPA management, even promoted the influx of new personnel into the system. Thus, for example, in correctional institution No. 16 only four out of 48 officer positions and only 2 out of 32 warden positions were vacant; in correctional institution No. 1 – correspondingly 3/63 and 3/33; in No. 8 – 3/41 and 2/25.

At the same time, it seems not right that the proposed National Programme provides for such measures as a one-off event and not as a system of measures on a regular basis.

The established practice of centralized distribution of uniforms and subsistence is considered by the system employees to be an important aspect of material provision of the institutions. However, one of the pressing issues requiring a solution is, in the opinion of all institutions without exception, the issue of timeliness and completeness of provision of personnel with uniforms. At the time of the experts' evaluation such provision was implemented only occasionally and not in a complete way: employees received parts of uniforms occasionally and in quantities not matching the exact number of people.

The state of infrastructure of the penitentiary institutions, their material and technical equipment and regime situation make extremely inadequate the staff/prisoner ratio, including PTDCs. For example, PTDC No. 1 had 196 personnel⁴⁵, with 71 officers and 125 wardens (the number of prisoners was 1697); in PTDC No. 3 there are 43 personnel and 123 prisoners; in PTDC No. 4 the correlation is 35/55, in PTDC No. 5 – 82/460, in PTDC No. 50 – 40/23. In correctional institutions this correlation is: No. 47⁴⁶ – 120/600; No. 10 – 72/824; No. 14⁴⁷ – 110/216; No. 8 – 66/869; No. 16 – 80/1090; No. 2 – 64/497; No. 27⁴⁸ – 57/617; No. 1 – 96/1500. Under existing conditions (especially in correctional institutions)⁴⁹ there is obviously not enough personnel, but instead of a mere increase of their number it is important to rethink the personnel policy in parallel with restructuring the system on the whole.

⁴⁵ Without taking into account so called “civilian” personnel, which, as a rule, may fulfil administrative functions (records management, accountancy and so on), replace some medical positions and work as support staff.

⁴⁶ Taking into account the hospital.

⁴⁷ Including PTDCs. In addition, security provision was carried out by fulltime personnel of the institution.

⁴⁸ Including an in-patient department for TB patients.

⁴⁹ Even with consideration of the external security function implemented by another department. In addition, at the time of the mission the convict population in correctional institutions was less compared with figures of the previous years and limits.

In optimising the work of the existing personnel an important role is played by the level of their technical equipment, which is also extremely low. Despite large areas occupied by the institutions (which requires uninterrupted communication between the employees), they practically do not have walkie-talkie sets. For example, in correctional institution No. 8 there were only 5 portable radio sets. The same situation applied to special means – in this institution there were only two pairs of handcuffs.

Of all the institutions correctional colony No. 14 alone mentioned personnel training (on the specifics of working with juvenile offenders). The occasional nature of events (seminars, workshops, etc.) conducted within the framework of NGOs' and international organizations' activities and involving an insignificant number of staff, lack of resources and low quality of training in the MDPA Educational Centre do not allow for efficient improvement of qualifications and training of the personnel.

MONITORING

10. Monitoring

According to existing legislation, the most important part of monitoring the state of affairs in penitentiary institutions (in addition to the internal monitoring) rests with prosecution bodies represented by a specialized public prosecutor's office which supervises the law enforcement in the penitentiary system.⁵⁰ The Ombudsman (Akyikatchi) and his staff pay significant attention to this aspect too.

At the same time, international practices testify to the necessity of independent public monitoring of penitentiary institutions. With consideration of the developed situation the maximum openness of the system for monitoring on the part of civil society is one of the most important means of its successful reform. The penitentiary system of the Kyrgyz Republic does not have permanent public bodies for on-site monitoring. The Public Supervisory Board at KR MJ should only be viewed as an additional component element of a relevant structure. It cannot replace the expanded system of public monitoring, which should neither be subordinate to nor formed by the Ministry itself.

Non-governmental organizations' access to work in the penitentiary system is impeded by a centralized procedure they have to follow to obtain permission from a Deputy Minister of Justice. In practice NGOs are only able to secure support for programmes that only have some element of monitoring. Such monitoring is conducted episodically, restrictively and not systematically. It does not involve any mechanisms for long-term cooperation where any recommendations may be given or monitoring exercised; there is no confidential access to prisoners, etc. Often, the only way to conduct such narrow monitoring is to implement programmes of material and technical assistance to the institutions. Such practices should be eradicated urgently. Fully-fledged independent monitoring is not only an efficient means of providing rights and freedoms in penitentiary institutions but also an important additional tool for efficient management of such institutions. Monitoring should not hinge upon the programmes of material and technical assistance to the institutions.

The Kyrgyz Republic is not a member of such specialized international monitoring instruments. As a result, the possibility of on-going international cooperation with them in the area of protection of rights of prisoners and a systematic dialogue on the use of international experience and recommendations is practically ruled out. In this regard it is necessary as early as possible to consider accession to the Optional Protocol to the UN Convention against Torture, Cruel, Inhuman or Degrading Types of Treatment or Punishment.

⁵⁰ At the time of the visit the reform of public prosecutor's supervision in this area was in progress, which in the south of the Kyrgyz Republic (special public prosecutor's office was abolished) has led to some problems with the timeliness of public prosecutor's participation in the procedures on hearing cases about release on parole and resolving other issues within the competence of the public prosecutor's office.

It is also important to emphasize that another important international instrument - Protocol No. 1 to the European Convention to Prevent Torture, Inhuman or Degrading Treatment or Punishment - is accessible to the Kyrgyz Republic. Although this Convention was adopted under the aegis of the Council of Europe, it provides for accession of states, which are not members of the Council of Europe. Taking into account the efficiency and potency of its mechanism, accession to it would be an important and, perhaps, crucial step, demonstrating the openness for international monitoring and, as a consequence, attracting more international donor aid to the penitentiary sphere.

CONCLUSIONS AND RECOMMENDATIONS

11. Conclusions and recommendations

In the course of further restructuring the penitentiary system the experts recommend that observations and remarks made throughout the report be taken into consideration. Additionally, experts consider it necessary to emphasize some aspects and make the following conclusions, which can be used in the prospective amendment of the “Umut” National Programme for Restructuring the Kyrgyz Republic Penitentiary System until 2010 as well as in establishing priorities in the area of attracting international assistance for its implementation:

1. The transition from the barracks-type camp conditions of holding convicts to the cell placement principle should be established as a strategic direction of development for the penitentiary system. Based on that it is necessary to revisit the adopted decisions on the development of the system of institutions (as is envisaged in the “Umut” National Programme for Restructuring the Kyrgyz Republic Penitentiary System until 2010). The cell placement principle does not exclude and, on the contrary, contemplates the dynamic differentiation and modification of regimes. The creation of appropriate subdivisions within the framework of some institutions can also provide for the entire spectrum of regimes.

2. As a short-term prospective it is necessary to consistently apply regime measures including mandatory observation of the internal routine, restoration of local areas and carrying out other measures ensuring controllability. Providing for proper security is important for normal working of penitentiary institutions and their adequate functioning as places of imprisonment.

3. Primarily, the system’s restructuring should focus on minimizing the negative impact of criminal subculture. This aspect, which, in fact, has been neglected in the existing version of the “Umut” National Programme for Restructuring the Kyrgyz Republic Penitentiary System until 2010, not being paid meticulous attention to and urgent measures in this direction not being taken, the experts would challenge the success of all other transformations.

4. A considerable scale of financial abuse and corruption is one of the most important factors subject to consideration in restructuring the system and establishing priorities and volumes of efficient donor assistance. In this connection urgent development of potent measures ensuring its minimization and elimination are required.

5. Although the penitentiary system needs a dramatic increase of funding in order to prevent its professional destruction, demoralization and physical demolition it should be borne in mind that many problems can and should be resolved without attracting additional funds, by way of improving the quality of management at the local level. Moreover, substantial finances can be released if legislators adopt an extensive and systematic package of documentation aimed at humanizing the criminal policy, its increased differentiation and individualization by way of creating an authority (an MDPA body) for executing punishments, which do not involve

deprivation of freedom. Such steps have a priority nature and should be undertaken in the near future.

6. In parallel with ensuring higher norms of living space for respective categories of individuals deprived of freedom it is necessary to declare this in the Programme and to secure legally internationally accepted minimum standards of living space per prisoner. These standards should form the basis for establishing the holding capacity of penitentiary institutions.

7. Top-priority and pressing measures aimed at a reform of the accommodation infrastructure of penitentiary institutions have to be specifically documented. To this end the priorities of specific institutions have to be outlined in an annex to the National Programme.

8. Overall, the financing of the penitentiary system must be treated as a priority. Expenses for catering and provision with basic necessities (subsistence expenses) must be considered a mandatory (protected) budget item, subject to complying with minimum requirements at the very least.

9. Concurrent with urgent and consistent measures aimed at rectifying drawbacks in the area of penitentiary health care, when implementing the projected steps for restructuring medical services, it is necessary to ensure the independence of its personnel and provide for its close connection with the central health care system. Fighting tuberculosis should still be considered as one of the priorities to attract the assistance of international donors. However, shifting nearly all the burden of measures onto international organizations exclusively, will not allow for radical change of the situation. It is necessary to develop a special national programme to deal with this issue.

10. Human resources provision for restructuring of the penitentiary system should be considered as one of its essential constituents. Together with advancing the level of professionalism and improving the moral-and-psychological health of the personnel, a set of measures aimed at the on-going improvement of the material and financial well-being of the personnel should be included in the “Umut” National Programme for Restructuring the Kyrgyz Republic Penitentiary System until 2010. Instead of increasing the number of the staff it is necessary to effectively use the available human resources and improve the level of their professionalism whilst developing and restructuring the system on the whole.

11. The time has come to abolish the death penalty by legislation and to develop appropriate types of punishment under the conditions of full rejection of the death penalty in conformity with the international standards in this area.

12. Focus should be placed on the penitentiary institutions’ goal of detecting and preventing cases of torture and other cruel, inhuman or degrading treatment and punishment on the part of the police and other law-enforcement bodies as well as on the goal of detecting and preventing any breaches of the right to freedom and personal security. Cases of transferring inmates back to police bodies and other law-

enforcement organizations should become a rare exception, with the introduction of this “exception rule” being paid special attention to. The above-mentioned should be supported by a system of measures to develop the penitentiary infrastructure.

13. Emphasis should be placed on the necessity to comply with the rule requiring preliminary assessment of the real risk of torture and inappropriate treatment to which individuals deprived of freedom can be subjected, when transferred into the jurisdiction of another state. Should there be any such risk these individuals must not be transferred into the jurisdiction of another state since this may result in the violation of a number of international commitments of the Kyrgyz Republic.

14. In addition to the introduction of an efficient system of alternative measures of restraint and punishment, due attention should be paid to the development of a proper criminal procedure policy, streamlining and upgrading efficiency of court operation and minimization of corruption.

15. Together with targeted changes in the legal framework, provision should be made for a rejection of negative bias towards relations with the outer world (parcels, visits, correspondence, landline telephone communication and so on) and establishing more humane rules with individual restrictions based on relevant grounds and an option to appeal such decisions.

16. Special effort should be exerted to develop opportunities for employment, education and involvement of the individuals deprived of freedom in other socially oriented activities.

17. The concept of disciplinary isolation should be subject to reconsideration because presenting an additional element of punishment, it frequently implies even more unsatisfactory living conditions and even more unacceptable restrictions (denial of walks, etc.).

18. It is necessary to expedite a process creating an efficient system of independent public monitoring of the penitentiary system both on the national and local levels. The success of restructuring and the effectiveness of the penitentiary system to a great extent hinges on this recommendation being fulfilled.

19. In order to develop the appropriate national mechanisms and to ensure the meaningful international monitoring and reliable cooperation in the area of protection of the rights of individuals deprived of freedom, and to use the experience of specialized international instruments, accession is recommended to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Types of Treatment or Punishment. It is also expedient to use such an international law instrument as Protocol No. 1 to the European Convention for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment. The accession to the general movement and openness of the system for international monitoring should be considered as a condition and essential guarantee of receiving considerable international donor aid.

20. Under the developed situation the external, with regard to the penitentiary system, aid, including international aid, is a crucial and decisive factor in providing for the basic activities of the system and administration of the penitentiary function of the state. At the same time, such aid should not release the state from the relevant obligations and lead to its replacement in this area.

21. Taking into consideration the entire set of factors (seriousness of the situation aggravated by the dominance of criminal subculture, corruption and abuse in the system, the necessity of urgent large-scale and comprehensive aid, large number of donors not acting together) in order to provide efficient external help it is necessary to make it systematic and to think out the organizational forms of its international coordination. Without such a unified coordination mechanism the efficiency of aid will be neutralized by the negative trends in the penitentiary system (corruption, absence of transparency, disorganization, influence of criminal subculture and so on).

List of abbreviations

CP - Capital punishment

CPT - Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment)

ICRC - International Committee of the Red Cross

KR MDPA - Kyrgyz Republic Main Directorate of Penal Affairs

KR MJ - Kyrgyz Republic Ministry of Justice

KR PC - Kyrgyz Republic Penal Code

NGO - Non-Governmental Organization

OSCE - Organization for Security and Cooperation in Europe

OSCE ODIHR - OSCE Office for Democratic Institutions and Human Rights

PCT - Premises of Cell-Type

PIC - Punitive Isolation Cell

PRI - Penal Reform International

PTDC - pre-trial detention centre

TDF - Temporary Detention Facility

UNDP - United Nations Development Programme

WHO – World Health Organization

APPENDIX

Extract from the publication “The CPT Standards”

II. Imprisonment

Extract from the 2nd General Report [CPT/Inf (92) 3]

44. In introduction, it should be emphasised that the CPT must examine many questions when visiting a prison. Of course, it pays special attention to any allegations of ill-treatment of prisoners by staff. However, all aspects of the conditions of detention in a prison are of relevance to the CPT's mandate. Ill-treatment can take numerous forms, many of which may not be deliberate but rather the result of organisational failings or inadequate resources. The overall quality of life in an establishment is therefore of considerable importance to the CPT. That quality of life will depend to a very large extent upon the activities offered to prisoners and the general state of relations between prisoners and staff.

45. The CPT observes carefully the prevailing climate within an establishment. The promotion of constructive as opposed to confrontational relations between prisoners and staff will serve to lower the tension inherent in any prison environment and by the same token significantly reduce the likelihood of violent incidents and associated ill-treatment. In short, the CPT wishes to see a spirit of communication and care accompany measures of control and containment. Such an approach, far from undermining security in the establishment, might well enhance it.

46. Overcrowding is an issue of direct relevance to the CPT's mandate. All the services and activities within a prison will be adversely affected if it is required to cater for more prisoners than it was designed to accommodate; the overall quality of life in the establishment will be lowered, perhaps significantly. Moreover, the level of overcrowding in a prison, or in a particular part of it, might be such as to be in itself inhuman or degrading from a physical standpoint.

47. A satisfactory programme of activities (work, education, sport, etc.) is of crucial importance for the well-being of prisoners. This holds true for all establishments, whether for sentenced prisoners or those awaiting trial. The CPT has observed that activities in many remand prisons are extremely limited. The organisation of regime activities in such establishments - which have a fairly rapid turnover of inmates - is not a straightforward matter. Clearly, there can be no question of individualised treatment programmes of the sort which might be aspired to in an establishment for sentenced prisoners.

However, prisoners cannot simply be left to languish for weeks, possibly months, locked up in their cells, and this regardless of how good material conditions might be within the cells. The CPT considers that one should aim at ensuring that prisoners in remand establishments are able to spend a reasonable part of the day (8 hours or more) outside their cells, engaged in purposeful activity of a varied nature. Of course, regimes in establishments for sentenced prisoners should be even more favourable.

48. Specific mention should be made of outdoor exercise. The requirement that prisoners be allowed at least one hour of exercise in the open air every day is widely accepted as a basic safeguard (preferably it should form part of a broader programme of activities). The CPT wishes to emphasise that **all prisoners without exception** (including those undergoing cellular confinement as a punishment) should be offered the possibility to take outdoor exercise daily. It is also axiomatic that outdoor exercise facilities should be reasonably spacious and whenever possible offer shelter from inclement weather.

49. Ready access to proper toilet facilities and the maintenance of good standards of hygiene are essential components of a humane environment.

In this connection, the CPT must state that it does not like the practice found in certain countries of prisoners discharging human waste in buckets in their cells (which are subsequently "slopped out" at appointed times). Either a toilet facility should be located in cellular accommodation (preferably in a sanitary annex) or means should exist enabling prisoners who need to use a toilet facility to be released from their cells without undue delay at all times (including at night).

Further, prisoners should have adequate access to shower or bathing facilities. It is also desirable for running water to be available within cellular accommodation.

50. The CPT would add that it is particularly concerned when it finds a combination of overcrowding, poor regime activities and inadequate access to toilet/washing facilities in the same establishment. The cumulative effect of such conditions can prove extremely detrimental to prisoners.

51. It is also very important for prisoners to maintain reasonably good contact with the outside world. Above all, a prisoner must be given the means of safeguarding his relationships with his family and close friends. The guiding principle should be the promotion of contact with the outside world; any limitations upon such contact should be based exclusively on security concerns of an appreciable nature or resource considerations.

The CPT wishes to emphasise in this context the need for some flexibility as regards the application of rules on visits and telephone contacts vis-à-vis prisoners whose families live far away (thereby rendering regular visits impracticable). For example, such prisoners could be allowed to accumulate visiting time and/or be offered improved possibilities for telephone contacts with their families.

52. Naturally, the CPT is also attentive to the particular problems that might be encountered by certain specific categories of prisoners, for example: women, juveniles and foreigners.

53. Prison staff will on occasion have to use force to control violent prisoners and, exceptionally, may even need to resort to instruments of physical restraint. These are clearly high risk situations insofar as the possible ill-treatment of prisoners is concerned, and as such call for specific safeguards.

A prisoner against whom any means of force have been used should have the right to be immediately examined and, if necessary, treated by a medical doctor. This examination should be conducted out of the hearing and preferably out of the sight of non-medical staff, and the results of the examination (including any relevant statements by the prisoner and the doctor's conclusions) should be formally recorded and made available to the prisoner. In those rare cases when resort to instruments of physical restraint is required, the prisoner concerned should be kept under constant and adequate supervision. Further, instruments of restraint should be removed at the earliest possible opportunity; they should never be applied, or their application prolonged, as a punishment. Finally, a record should be kept of every instance of the use of force against prisoners.

54. Effective grievance and inspection procedures are fundamental safeguards against ill-treatment in prisons. Prisoners should have avenues of complaint open to them both within and outside the context of the prison system, including the possibility to have confidential access to an appropriate authority. The CPT attaches particular importance to regular visits to each prison establishment by an independent body (eg. a Board of visitors or supervisory judge) possessing powers to hear (and if necessary take action upon) complaints from prisoners and to inspect the establishment's premises. Such bodies can *inter alia* play an important role in bridging differences that arise between prison management and a given prisoner or prisoners in general.

55. It is also in the interests of both prisoners and prison staff that clear disciplinary procedures be both formally established and applied in practice; any grey zones in this area involve the risk of seeing unofficial (and uncontrolled) systems developing. Disciplinary procedures should provide prisoners with a right to be heard on the subject of the offences it is alleged they have committed, and to appeal to a higher authority against any sanctions imposed.

Other procedures often exist, alongside the formal disciplinary procedure, under which a prisoner may be involuntarily separated from other inmates for discipline-related/security reasons (eg. in the interests of "good order" within an establishment). These procedures should also be accompanied by effective safeguards. The prisoner should be informed of the reasons for the measure taken against him, unless security requirements dictate otherwise⁵¹, be given an opportunity to present his views on the matter, and be able to contest the measure before an appropriate authority.

56. The CPT pays particular attention to prisoners held, for whatever reason (for disciplinary purposes; as a result of their "dangerousness" or their "troublesome" behaviour; in the interests of a criminal investigation; at their own request), under conditions akin to solitary confinement.

The principle of proportionality requires that a balance be struck between the requirements of the case and the application of a solitary confinement-type regime, which is a step that can have very harmful consequences for the person concerned. Solitary confinement can, in certain circumstances, amount to inhuman and degrading

⁵¹ This requirement has subsequently been reformulated as follows: the prisoner should be informed in writing of the reasons for the measure taken against him (it being understood that the reasons given might not include details which security requirements justify withholding from the prisoner).

treatment; in any event, all forms of solitary confinement should be as short as possible.

In the event of such a regime being imposed or applied on request, an essential safeguard is that whenever the prisoner concerned, or a prison officer on the prisoner's behalf, requests a medical doctor, such a doctor should be called without delay with a view to carrying out a medical examination of the prisoner. The results of this examination, including an account of the prisoner's physical and mental condition as well as, if need be, the foreseeable consequences of continued isolation, should be set out in a written statement to be forwarded to the competent authorities.

57. The transfer of troublesome prisoners is another practice of interest to the CPT. Certain prisoners are extremely difficult to handle, and the transfer of such a prisoner to another establishment can sometimes prove necessary. However, the continuous moving of a prisoner from one establishment to another can have very harmful effects on his psychological and physical well being. Moreover, a prisoner in such a position will have difficulty in maintaining appropriate contacts with his family and lawyer. The overall effect on the prisoner of successive transfers could under certain circumstances amount to inhuman and degrading treatment.

Extract from the 7th General Report [CPT/Inf (97) 10]

12. In the course of several of its visits during 1996, the CPT once again encountered the evils of **prison overcrowding**, a phenomenon which blights penitentiary systems across Europe. Overcrowding is often particularly acute in prisons used to accommodate remand prisoners (i.e. persons awaiting trial); however, the CPT has found that in some countries the problem has spread throughout the prison system.

13. As the CPT pointed out in its 2nd General Report, prison overcrowding is an issue of direct relevance to the Committee's mandate (cf. CPT/Inf (92) 3, paragraph 46).

An overcrowded prison entails cramped and unhygienic accommodation; a constant lack of privacy (even when performing such basic tasks as using a sanitary facility); reduced out-of-cell activities, due to demand outstripping the staff and facilities available; overburdened health-care services; increased tension and hence more violence between prisoners and between prisoners and staff. This list is far from exhaustive. The CPT has been led to conclude on more than one occasion that the adverse effects of overcrowding have resulted in inhuman and degrading conditions of detention.

14. To address the problem of overcrowding, some countries have taken the route of increasing the number of prison places. For its part, the CPT is far from convinced that providing additional accommodation will alone offer a lasting solution. Indeed, a number of European States have embarked on extensive programmes of prison building, only to find their prison populations rising in tandem with the increased capacity acquired by their prison estates. By contrast, the existence of policies to limit or modulate the number of persons being sent to prison has in certain States made an important contribution to maintaining the prison population at a manageable level.

15. The problem of prison overcrowding is sufficiently serious as to call for cooperation at European level, with a view to devising counter strategies. Consequently, the CPT was most pleased to learn that work on this subject has recently begun within the framework of the European Committee on Crime Problems (CDPC). The CPT hopes that the successful conclusion of that work will be treated as a priority.⁵²

Extract from the 11th General Report [CPT/Inf (2001) 16]

Staff-prisoner relations

26. The cornerstone of a humane prison system will always be properly recruited and trained prison staff who know how to adopt the appropriate attitude in their relations with prisoners and see their work more as a vocation than as a mere job. Building positive relations with prisoners should be recognised as a key feature of that vocation.

Regrettably, the CPT often finds that relations between staff and prisoners are of a formal and distant nature, with staff adopting a regimented attitude towards prisoners and regarding verbal communication with them as a marginal aspect of their work. The following practices frequently witnessed by the CPT are symptomatic of such an approach: obliging prisoners to stand facing a wall whilst waiting for prison staff to attend to them or for visitors to pass by; requiring prisoners to bow their heads and keep their hands clasped behind their back when moving within the establishment; custodial staff carrying their truncheons in a visible and even provocative manner. Such practices are unnecessary from a security standpoint and will do nothing to promote positive relations between staff and prisoners.

The real professionalism of prison staff requires that they should be able to deal with prisoners in a decent and humane manner while paying attention to matters of security and good order. In this regard prison management should encourage staff to have a reasonable sense of trust and expectation that prisoners are willing to behave themselves properly. The development of constructive and positive relations between prison staff and prisoners will not only reduce the risk of ill-treatment but also enhance control and security. In turn, it will render the work of prison staff far more rewarding.

Ensuring positive staff-inmate relations will also depend greatly on having an adequate number of staff present at any given time in detention areas and in facilities used by prisoners for activities. CPT delegations often find that this is not the case. An overall low staff complement and/or specific staff attendance systems which diminish the possibilities of direct contact with prisoners, will certainly impede the development of positive relations; more generally, they will generate an insecure environment for both staff and prisoners.

⁵² On 30 September 1999, the Committee of Ministers of the Council of Europe adopted Recommendation No. R (99) 22 concerning prison overcrowding and prison population inflation.

It should also be noted that, where staff complements are inadequate, significant amounts of overtime can prove necessary in order to maintain a basic level of security and regime delivery in the establishment. This state of affairs can easily result in high levels of stress in staff and their premature burnout, a situation which is likely to exacerbate the tension inherent in any prison environment.

Inter-prisoner violence

27. The duty of care which is owed by custodial staff to those in their charge includes the responsibility to protect them from other inmates who wish to cause them harm. In fact, violent incidents among prisoners are a regular occurrence in all prison systems; they involve a wide range of phenomena, from subtle forms of harassment to unconcealed intimidation and serious physical attacks.

Tackling the phenomenon of inter-prisoner violence requires that prison staff be placed in a position, including in terms of staffing levels, to exercise their authority and their supervisory tasks in an appropriate manner. Prison staff must be alert to signs of trouble and be both resolved and properly trained to intervene when necessary. The existence of positive relations between staff and prisoners, based on the notions of secure custody and care, is a decisive factor in this context; this will depend in large measure on staff possessing appropriate interpersonal communication skills. Further, management must be prepared fully to support staff in the exercise of their authority. Specific security measures adapted to the particular characteristics of the situation encountered (including effective search procedures) may well be required; however, such measures can never be more than an adjunct to the above-mentioned basic imperatives. In addition, the prison system needs to address the issue of the appropriate classification and distribution of prisoners.

Prisoners suspected or convicted of sexual offences are at a particularly high risk of being assaulted by other prisoners. Preventing such acts will always pose a difficult challenge. The solution that is often adopted is to separate such prisoners from the rest of the prison population. However, the prisoners concerned may pay a heavy price for their – relative – security, in terms of much more limited activities programmes than those available under the normal prison regime. Another approach is to disperse prisoners suspected or convicted of sexual offences throughout the prison concerned. If such an approach is to succeed, the necessary environment for the proper integration of such prisoners into ordinary cell blocks must be guaranteed; in particular, the prison staff must be sincerely committed to dealing firmly with any signs of hostility or persecution. A third approach can consist of transferring prisoners to another establishment, accompanied by measures aimed at concealing the nature of their offence. Each of these policies has its advantages and disadvantages, and the CPT does not seek to promote a given approach as opposed to another. Indeed, the decision on which policy to apply will mainly depend on the particular circumstances of each case.

Prison overcrowding

28. The phenomenon of prison overcrowding continues to blight penitentiary systems across Europe and seriously undermines attempts to improve conditions of detention. The negative effects of prison overcrowding have already been highlighted in previous General Reports.⁵³ As the CPT's field of operations has extended throughout the European continent, the Committee has encountered huge incarceration rates and resultant severe prison overcrowding. The fact that a State locks up so many of its citizens cannot be convincingly explained away by a high crime rate; the general outlook of members of the law enforcement agencies and the judiciary must, in part, be responsible.

In such circumstances, throwing increasing amounts of money at the prison estate will not offer a solution. Instead, current law and practice in relation to custody pending trial and sentencing as well as the range of non-custodial sentences available need to be reviewed. This is precisely the approach advocated in Committee of Ministers Recommendation N° R (99) 22 on prison overcrowding and prison population inflation. The CPT very much hopes that the principles set out in that important text will indeed be applied by member States; the implementation of this Recommendation deserves to be closely monitored by the Council of Europe.

Large capacity dormitories

29. In a number of countries visited by the CPT, particularly in central and eastern Europe, inmate accommodation often consists of large capacity dormitories which contain all or most of the facilities used by prisoners on a daily basis, such as sleeping and living areas as well as sanitary facilities. The CPT has objections to the very principle of such accommodation arrangements in closed prisons and those objections are reinforced when, as is frequently the case, the dormitories in question are found to hold prisoners under extremely cramped and insalubrious conditions. No doubt, various factors - including those of a cultural nature - can make it preferable in certain countries to provide multi-occupancy accommodation for prisoners rather than individual cells. However, there is little to be said in favour of - and a lot to be said against - arrangements under which tens of prisoners live and sleep together in the same dormitory.

Large-capacity dormitories inevitably imply a lack of privacy for prisoners in their everyday lives. Moreover, the risk of intimidation and violence is high. Such accommodation arrangements are prone to foster the development of offender subcultures and to facilitate the maintenance of the cohesion of criminal organisations. They can also render proper staff control extremely difficult, if not impossible; more specifically, in case of prison disturbances, outside interventions involving the use of considerable force are difficult to avoid. With such accommodation, the appropriate allocation of individual prisoners, based on a case by case risk and needs assessment, also becomes an almost impossible exercise. All these problems are exacerbated when the numbers held go beyond a reasonable occupancy level; further, in such a situation the excessive burden on communal

⁵³ 2nd General Report - CPT/Inf (92) 3, paragraph 4, and 7th General Report - CPT/Inf (97) 10, paragraphs 12-15.

facilities such as washbasins or lavatories and the insufficient ventilation for so many persons will often lead to deplorable conditions.

The CPT must nevertheless stress that moves away from large-capacity dormitories towards smaller living units have to be accompanied by measures to ensure that prisoners spend a reasonable part of the day engaged in purposeful activities of a varied nature outside their living unit.

Access to natural light and fresh air

30. The CPT frequently encounters devices, such as metal shutters, slats, or plates fitted to cell windows, which deprive prisoners of access to natural light and prevent fresh air from entering the accommodation. They are a particularly common feature of establishments holding pre-trial prisoners. The CPT fully accepts that specific security measures designed to prevent the risk of collusion and/or criminal activities may well be required in respect of certain prisoners. However, the imposition of measures of this kind should be the exception rather than the rule. This implies that the relevant authorities must examine the case of each prisoner in order to ascertain whether specific security measures are really justified in his/her case. Further, even when such measures are required, they should never involve depriving the prisoners concerned of natural light and fresh air. The latter are basic elements of life which every prisoner is entitled to enjoy; moreover, the absence of these elements generates conditions favourable to the spread of diseases and in particular tuberculosis.

The CPT recognizes that the delivery of decent living conditions in penitentiary establishments can be very costly and improvements are hampered in many countries by lack of funds. However, removing devices blocking the windows of prisoner accommodation (and fitting, in those exceptional cases where this is necessary, alternative security devices of an appropriate design) should not involve considerable investment and, at the same time, would be of great benefit for all concerned.

Transmissible diseases

31. The spread of transmissible diseases and, in particular, of tuberculosis, hepatitis and HIV/AIDS has become a major public health concern in a number of European countries. Although affecting the population at large, these diseases have emerged as a dramatic problem in certain prison systems. In this connection the CPT has, on a number of occasions, been obliged to express serious concerns about the inadequacy of the measures taken to tackle this problem. Further, material conditions under which prisoners are held have often been found to be such that they can only favour the spread of these diseases.

The CPT is aware that in periods of economic difficulties - such as those encountered today in many countries visited by the CPT - sacrifices have to be made, including in penitentiary establishments. However, regardless of the difficulties faced at any given time, the act of depriving a person of his liberty always entails a duty of care which calls for effective methods of prevention, screening, and treatment. Compliance with this duty by public authorities is all the more important when it is a question of care required to treat life-threatening diseases.

The use of up-to date methods for screening, the regular supply of medication and related materials, the availability of staff ensuring that prisoners take the prescribed medicines in the right doses and at the right intervals, and the provision when appropriate of special diets, constitute essential elements of an effective strategy to combat the above-mentioned diseases and to provide appropriate care to the prisoners concerned. Similarly, material conditions in accommodation for prisoners with transmissible diseases must be conducive to the improvement of their health; in addition to natural light and good ventilation, there must be satisfactory hygiene as well as an absence of overcrowding.

Further, the prisoners concerned should not be segregated from the rest of the prison population unless this is strictly necessary on medical or other grounds. In this connection, the CPT wishes to stress in particular that there is no medical justification for the segregation of prisoners solely on the grounds that they are HIV-positive.

In order to dispel misconceptions on these matters, it is incumbent on national authorities to ensure that there is a full educational programme about transmissible diseases for both prisoners and prison staff. Such a programme should address methods of transmission and means of protection as well as the application of adequate preventive measures. More particularly, the risks of HIV or hepatitis B/C infection through sexual contacts and intravenous drug use should be highlighted and the role of body fluids as the carriers of HIV and hepatitis viruses explained.

It must also be stressed that appropriate information and counseling should be provided before and - in the case of a positive result - after any screening test. Further, it is axiomatic that patient-related information should be protected by medical confidentiality. As a matter of principle, any interventions in this area should be based on the informed consent of the persons concerned.

Moreover, for control of the above-mentioned diseases to be effective, all the ministries and agencies working in this field in a given country must ensure that they co-ordinate their efforts in the best possible way. In this respect the CPT wishes to stress that the continuation of treatment after release from prison must be guaranteed.⁵⁴

High security units

32. In every country there will be a certain number of prisoners considered to present a particularly high security risk and hence to require special conditions of detention. The perceived high security risk of such prisoners may result from the nature of the offences they have committed, the manner in which they react to the constraints of life in prison, or their psychological/psychiatric profile. This group of prisoners will (or at least should, if the classification system is operating satisfactorily) represent a very small proportion of the overall prison population. However, it is a group that is of particular concern to the CPT, as the need to take exceptional measures vis-à-vis such prisoners brings with it a greater risk of inhuman treatment.

⁵⁴ See also "Health care services in prisons", section "transmittable diseases".

Prisoners who present a particularly high security risk should, within the confines of their detention units, enjoy a relatively relaxed regime by way of compensation for their severe custodial situation. In particular, they should be able to meet their fellow prisoners in the unit and be granted a good deal of choice about activities. Special efforts should be made to develop a good internal atmosphere within high-security units. The aim should be to build positive relations between staff and prisoners. This is in the interests not only of the humane treatment of the unit's occupants but also of the maintenance of effective control and security and of staff safety.

The existence of a satisfactory programme of activities is just as important - if not more so - in a high security unit than on normal location. It can do much to counter the deleterious effects upon a prisoner's personality of living in the bubble-like atmosphere of such a unit. The activities provided should be as diverse as possible (education, sport, work of vocational value, etc.). As regards, in particular, work activities, it is clear that security considerations may preclude many types of work which are found on normal prison location. Nevertheless, this should not mean that only work of a tedious nature is provided for prisoners.

It is axiomatic that prisoners should not be subject to a special security regime any longer than the risk they present makes necessary. This calls for regular reviews of placement decisions. Such reviews should always be based on the continuous assessment of the individual prisoner by staff specially trained to carry out such assessment. Moreover, prisoners should as far as possible be kept fully informed of the reasons for their placement and, if necessary, its renewal; this will *inter alia* enable them to make effective use of avenues for challenging that measure.

Life-sentenced and other long-term prisoners

33. In many European countries the number of life-sentenced and other long-term prisoners is on the increase. During some of its visits, the CPT has found that the situation of such prisoners left much to be desired in terms of material conditions, activities and possibilities for human contact. Further, many such prisoners were subject to special restrictions likely to exacerbate the deleterious effects inherent in long-term imprisonment; examples of such restrictions are permanent separation from the rest of the prison population, handcuffing whenever the prisoner is taken out of his cell, prohibition of communication with other prisoners, and limited visit entitlements. The CPT can see no justification for indiscriminately applying restrictions to all prisoners subject to a specific type of sentence, without giving due consideration to the individual risk they may (or may not) present.

Long-term imprisonment can have a number of desocialising effects upon inmates. In addition to becoming institutionalised, long-term prisoners may experience a range of psychological problems (including loss of self-esteem and impairment of social skills) and have a tendency to become increasingly detached from society; to which almost all of them will eventually return. In the view of the CPT, the regimes which are offered to prisoners serving long sentences should seek to compensate for these effects in a positive and proactive way.

The prisoners concerned should have access to a wide range of purposeful activities of a varied nature (work, preferably with vocational value; education; sport; recreation/association). Moreover, they should be able to exercise a degree of choice over the manner in which their time is spent, thus fostering a sense of autonomy and personal responsibility. Additional steps should be taken to lend meaning to their period of imprisonment; in particular, the provision of individualized custody plans and appropriate psycho-social support are important elements in assisting such prisoners to come to terms with their period of incarceration and, when the time comes, to prepare for release. Further, the negative effects of institutionalization upon prisoners serving long sentences will be less pronounced, and they will be better equipped for release, if they are able effectively to maintain contact with the outside world.

III. Health care services in prisons

Extract from the 3rd General Report [CPT/Inf (93) 12]

30. Health care services for persons deprived of their liberty is a subject of direct relevance to the CPT's mandate.⁵⁵ An inadequate level of health care can lead rapidly to situations falling within the scope of the term "inhuman and degrading treatment". Further, the health care service in a given establishment can potentially play an important role in combating the infliction of ill-treatment, both in that establishment and elsewhere (in particular in police establishments). Moreover, it is well placed to make a positive impact on the overall quality of life in the establishment within which it operates.

31. In the following paragraphs, some of the main issues pursued by CPT delegations when examining health care services within prisons are described. However, at the outset the CPT wishes to make clear the importance which it attaches to the general principle - already recognized in most, if not all, of the countries visited by the Committee to date - that prisoners are entitled to the same level of medical care as persons living in the community at large. This principle is inherent in the fundamental rights of the individual.

32. The considerations which have guided the CPT during its visits to prison health care services can be set out under the following headings:

- a. Access to a doctor
- b. Equivalence of care
- c. Patient's consent and confidentiality
- d. Preventive health care
- e. Humanitarian assistance
- f. Professional independence
- g. Professional competence.

a. Access to a doctor

33. When entering prison, all prisoners should without delay be seen by a member of the establishment's health care service. In its reports to date the CPT has recommended that every newly arrived prisoner be properly interviewed and, if necessary, physically examined by a medical doctor as soon as possible after his admission. It should be added that in some countries, medical screening on arrival is carried out by a fully qualified nurse, who reports to a doctor. This latter approach could be considered as a more efficient use of available resources.⁵⁶

⁵⁵ Reference should also be made to Recommendation No. R (98) 7 concerning the ethical and organizational aspects of health care in prison, adopted by the Committee of Ministers of the Council of Europe on 8 April 1998.

⁵⁶ This requirement has subsequently been reformulated as follows: every newly-arrived prisoner should be properly interviewed and physically examined by a medical doctor as soon as possible after his admission; save for in exceptional circumstances, that interview/examination should be carried out on the day of admission, especially insofar as remand establishments are concerned. Such medical screening on admission could also be performed by a fully qualified nurse reporting to a doctor.

It is also desirable that a leaflet or booklet be handed to prisoners on their arrival, informing them of the existence and operation of the health care service and reminding them of basic measures of hygiene.

34. While in custody, prisoners should be able to have access to a doctor at any time, irrespective of their detention regime (as regards more particularly access to a doctor for prisoners held in solitary confinement, see paragraph 56 of the CPT's 2nd General Report: CPT/Inf (92) 3). The health care service should be so organised as to enable requests to consult a doctor to be met without undue delay.

Prisoners should be able to approach the health care service on a confidential basis, for example, by means of a message in a sealed envelope. Further, prison officers should not seek to screen requests to consult a doctor.

35. A prison's health care service should at least be able to provide regular out-patient consultations and emergency treatment (of course, in addition there may often be a hospital-type unit with beds). The services of a qualified dentist should be available to every prisoner. Further, prison doctors should be able to call upon the services of specialists.

As regards emergency treatment, a doctor should always be on call. Further, someone competent to provide first aid should always be present on prison premises, preferably someone with a recognised nursing qualification.

Out-patient treatment should be supervised, as appropriate, by health care staff; in many cases it is not sufficient for the provision of follow-up care to depend upon the initiative being taken by the prisoner.

36. The direct support of a fully-equipped hospital service should be available, in either a civil or prison hospital.

If recourse is had to a civil hospital, the question of security arrangements will arise. In this respect, the CPT wishes to stress that prisoners sent to hospital to receive treatment should not be physically attached to their hospital beds or other items of furniture for custodial reasons. Other means of meeting security needs satisfactorily can and should be found; the creation of a custodial unit in such hospitals is one possible solution.

37. Whenever prisoners need to be hospitalised or examined by a specialist in a hospital, they should be transported with the promptness and in the manner required by their state of health.

b. Equivalence of care

i) general medicine

38. A prison health care service should be able to provide medical treatment and nursing care, as well as appropriate diets, physiotherapy, rehabilitation or any other necessary special facility, in conditions comparable to those enjoyed by patients in the

outside community. Provision in terms of medical, nursing and technical staff, as well as premises, installations and equipment, should be geared accordingly.

There should be appropriate supervision of the pharmacy and of the distribution of medicines. Further, the preparation of medicines should always be entrusted to qualified staff (pharmacist/nurse, etc.).

39. A medical file should be compiled for each patient, containing diagnostic information as well as an ongoing record of the patient's evolution and of any special examinations he has undergone. In the event of a transfer, the file should be forwarded to the doctors in the receiving establishment.

Further, daily registers should be kept by health care teams, in which particular incidents relating to the patients should be mentioned. Such registers are useful in that they provide an overall view of the health care situation in the prison, at the same time as highlighting specific problems which may arise.

40. The smooth operation of a health care service presupposes that doctors and nursing staff are able to meet regularly and to form a working team under the authority of a senior doctor in charge of the service.

ii) psychiatric care

41. In comparison with the general population, there is a high incidence of psychiatric symptoms among prisoners. Consequently, a doctor qualified in psychiatry should be attached to the health care service of each prison, and some of the nurses employed there should have had training in this field.

The provision of medical and nursing staff, as well as the layout of prisons, should be such as to enable regular pharmacological, psychotherapeutic and occupational therapy programmes to be carried out.

42. The CPT wishes to stress the role to be played by prison management in the early detection of prisoners suffering from a psychiatric ailment (eg. depression, reactive state, etc.), with a view to enabling appropriate adjustments to be made to their environment. This activity can be encouraged by the provision of appropriate health training for certain members of the custodial staff.

43. A mentally ill prisoner should be kept and cared for in a hospital facility which is adequately equipped and possesses appropriately trained staff. That facility could be a civil mental hospital or a specially equipped psychiatric facility within the prison system.

On the one hand, it is often advanced that, from an ethical standpoint, it is appropriate for mentally ill prisoners to be hospitalised outside the prison system, in institutions for which the public health service is responsible. On the other hand, it can be argued that the provision of psychiatric facilities within the prison system enables care to be administered in optimum conditions of security, and the activities of medical and social services intensified within that system.

Whichever course is chosen, the accommodation capacity of the psychiatric facility in question should be adequate; too often there is a prolonged waiting period before a necessary transfer is effected. The transfer of the person concerned to a psychiatric facility should be treated as a matter of the highest priority.

44. A mentally disturbed and violent patient should be treated through close supervision and nursing support, combined, if considered appropriate, with sedatives. Resort to instruments of physical restraint shall only very rarely be justified and must always be either expressly ordered by a medical doctor or immediately brought to the attention of such a doctor with a view to seeking his approval. Instruments of physical restraint should be removed at the earliest possible opportunity. They should never be applied, or their application prolonged, as a punishment.

In the event of resort being had to instruments of physical restraint, an entry should be made in both the patient's file and an appropriate register, with an indication of the times at which the measure began and ended, as well as of the circumstances of the case and the reasons for resorting to such means.

c. Patient's consent and confidentiality

45. Freedom of consent and respect for confidentiality are fundamental rights of the individual. They are also essential to the atmosphere of trust which is a necessary part of the doctor/patient relationship, especially in prisons, where a prisoner cannot freely choose his own doctor.

i) patient's consent

46. Patients should be provided with all relevant information (if necessary in the form of a medical report) concerning their condition, the course of their treatment and the medication prescribed for them. Preferably, patients should have the right to consult the contents of their prison medical files, unless this is inadvisable from a therapeutic standpoint.

They should be able to ask for this information to be communicated to their families and lawyers or to an outside doctor.

47. Every patient capable of discernment is free to refuse treatment or any other medical intervention. Any derogation from this fundamental principle should be based upon law and only relate to clearly and strictly defined exceptional circumstances which are applicable to the population as a whole.

A classically difficult situation arises when the patient's decision conflicts with the general duty of care incumbent on the doctor. This might happen when the patient is influenced by personal beliefs (eg. refusal of a blood transfusion) or when he is intent on using his body, or even mutilating himself, in order to press his demands, protest against an authority or demonstrate his support for a cause.

In the event of a hunger strike, public authorities or professional organisations in some countries will require the doctor to intervene to prevent death as soon as the patient's consciousness becomes seriously impaired. In other countries, the rule is to

leave clinical decisions to the doctor in charge, after he has sought advice and weighed up all the relevant facts.

48. As regards the issue of medical research with prisoners, it is clear that a very cautious approach must be followed, given the risk of prisoners' agreement to participate being influenced by their penal situation. Safeguards should exist to ensure that any prisoner concerned has given his free and informed consent.

The rules applied should be those prevailing in the community, with the intervention of a board of ethics. The CPT would add that it favours research concerning custodial pathology or epidemiology or other aspects specific to the condition of prisoners.

49. The involvement of prisoners in the teaching programmes of students should require the prisoners' consent.

ii) confidentiality

50. Medical secrecy should be observed in prisons in the same way as in the community. Keeping patients' files should be the doctor's responsibility.

51. All medical examinations of prisoners (whether on arrival or at a later stage) should be conducted out of the hearing and - unless the doctor concerned requests otherwise - out of the sight of prison officers. Further, prisoners should be examined on an individual basis, not in groups.

d. Preventive health care

52. The task of prison health care services should not be limited to treating sick patients. They should also be entrusted with responsibility for social and preventive medicine.

i) hygiene

53. It lies with prison health care services - as appropriate acting in conjunction with other authorities - to supervise catering arrangements (quantity, quality, preparation and distribution of food) and conditions of hygiene (cleanliness of clothing and bedding; access to running water; sanitary installations) as well as the heating, lighting and ventilation of cells. Work and outdoor exercise arrangements should also be taken into consideration.

Insalubrity, overcrowding, prolonged isolation and inactivity may necessitate either medical assistance for an individual prisoner or general medical action vis-à-vis the responsible authority.

*ii) transmittable diseases*⁵⁷

54. A prison health care service should ensure that information about transmittable diseases (in particular hepatitis, AIDS, tuberculosis, dermatological infections) is regularly circulated, both to prisoners and to prison staff. Where appropriate, medical control of those with whom a particular prisoner has regular contact (fellow prisoners, prison staff, frequent visitors) should be carried out.

55. As regards more particularly AIDS, appropriate counselling should be provided both before and, if necessary, after any screening test. Prison staff should be provided with ongoing training in the preventive measures to be taken and the attitudes to be adopted regarding HIV-positivity and given appropriate instructions concerning non-discrimination and confidentiality.

56. The CPT wishes to emphasise that there is no medical justification for the segregation of an HIV+ prisoner who is well.⁵⁸

iii) suicide prevention

57. Suicide prevention is another matter falling within the purview of a prison's health care service. It should ensure that there is an adequate awareness of this subject throughout the establishment, and that appropriate procedures are in place.

58. Medical screening on arrival, and the reception process as a whole, has an important role to play in this context; performed properly, it could identify at least certain of those at risk and relieve some of the anxiety experienced by all newly-arrived prisoners.

Further, prison staff, whatever their particular job, should be made aware of (which implies being trained in recognising) indications of suicidal risk. In this connection it should be noted that the periods immediately before and after trial and, in some cases, the pre-release period, involve an increased risk of suicide.

59. A person identified as a suicide risk should, for as long as necessary, be kept under a special observation scheme. Further, such persons should not have easy access to means of killing themselves (cell window bars, broken glass, belts or ties, etc).

Steps should also be taken to ensure a proper flow of information - both within a given establishment and, as appropriate, between establishments (and more specifically between their respective health care services) - about persons who have been identified as potentially at risk.

iv) prevention of violence

60. Prison health care services can contribute to the prevention of violence against detained persons, through the systematic recording of injuries and, if appropriate, the provision of general information to the relevant authorities. Information could also be

⁵⁷ See also "Imprisonment", section "transmissible diseases".

⁵⁸ Subsequently reformulated as follows: there is no medical justification for the segregation of a prisoner solely on the grounds that he is HIV positive.

forwarded on specific cases, though as a rule such action should only be undertaken with the consent of the prisoners concerned.

61. Any signs of violence observed when a prisoner is medically screened on his admission to the establishment should be fully recorded, together with any relevant statements by the prisoner and the doctor's conclusions. Further, this information should be made available to the prisoner.

The same approach should be followed whenever a prisoner is medically examined following a violent episode within the prison (see also paragraph 53 of the CPT's 2nd General report: CPT/Inf (92) 3) or on his readmission to prison after having been temporarily returned to police custody for the purposes of an investigation.

62. The health care service could compile periodic statistics concerning injuries observed, for the attention of prison management, the Ministry of Justice, etc.

v) social and family ties

63. The health care service may also help to limit the disruption of social and family ties which usually goes hand in hand with imprisonment. It should support - in association with the relevant social services - measures that foster prisoners' contacts with the outside world, such as properly-equipped visiting areas, family or spouse/partner visits under appropriate conditions, and leaves in family, occupational, educational and socio-cultural contexts.

According to the circumstances, a prison doctor may take action in order to obtain the grant or continued payment of social insurance benefits to prisoners and their families.

e. Humanitarian assistance

64. Certain specific categories of particularly vulnerable prisoners can be identified. Prison health care services should pay especial attention to their needs.

i) mother and child

65. It is a generally accepted principle that children should not be born in prison, and the CPT's experience is that this principle is respected.

66. A mother and child should be allowed to stay together for at least a certain period of time. If the mother and child are together in prison, they should be placed in conditions providing them with the equivalent of a creche and the support of staff specialised in post-natal care and nursery nursing.

Long-term arrangements, in particular the transfer of the child to the community, involving its separation from its mother, should be decided on in each individual case in the light of pedo-psychiatric and medico-social opinions.

ii) adolescents

67. Adolescence is a period marked by a certain reorganisation of the personality, requiring a special effort to reduce the risks of long-term social maladjustment.

While in custody, adolescents should be allowed to stay in a fixed place, surrounded by personal objects and in socially favourable groups. The regime applied to them should be based on intensive activity, including socio-educational meetings, sport, education, vocational training, escorted outings and the availability of appropriate optional activities.

iii) prisoners with personality disorders

68. Among the patients of a prison health care service there is always a certain proportion of unbalanced, marginal individuals who have a history of family traumas, long-standing drug addiction, conflicts with authority or other social misfortunes. They may be violent, suicidal or characterised by unacceptable sexual behaviour, and are for most of the time incapable of controlling or caring for themselves.

69. The needs of these prisoners are not truly medical, but the prison doctor can promote the development of socio-therapeutic programmes for them, in prison units which are organised along community lines and carefully supervised.

Such units can reduce the prisoners' humiliation, self-contempt and hatred, give them a sense of responsibility and prepare them for reintegration. Another direct advantage of programmes of this type is that they involve the active participation and commitment of the prison staff.

iv) prisoners unsuited for continued detention

70. Typical examples of this kind of prisoner are those who are the subject of a short-term fatal prognosis, who are suffering from a serious disease which cannot be properly treated in prison conditions, who are severely handicapped or of advanced age. The continued detention of such persons in a prison environment can create an intolerable situation. In cases of this type, it lies with the prison doctor to draw up a report for the responsible authority, with a view to suitable alternative arrangements being made.

f. Professional independence

71. The health-care staff in any prison is potentially a staff at risk. Their duty to care for their patients (sick prisoners) may often enter into conflict with considerations of prison management and security. This can give rise to difficult ethical questions and choices. In order to guarantee their independence in health-care matters, the CPT considers it important that such personnel should be aligned as closely as possible with the mainstream of health-care provision in the community at large.

72. Whatever the formal position under which a prison doctor carries on his activity, his clinical decisions should be governed only by medical criteria.

The quality and the effectiveness of medical work should be assessed by a qualified medical authority. Likewise, the available resources should be managed by such an authority, not by bodies responsible for security or administration.

73. A prison doctor acts as a patient's personal doctor. Consequently, in the interests of safeguarding the doctor/patient relationship, he should not be asked to certify that a prisoner is fit to undergo punishment. Nor should he carry out any body searches or examinations requested by an authority, except in an emergency when no other doctor can be called in.

74. It should also be noted that a prison doctor's professional freedom is limited by the prison situation itself: he cannot freely choose his patients, as the prisoners have no other medical option at their disposal. His professional duty still exists even if the patient breaks the medical rules or resorts to threats or violence.

g. Professional competence

75. Prison doctors and nurses should possess specialist knowledge enabling them to deal with the particular forms of prison pathology and adapt their treatment methods to the conditions imposed by detention.

In particular, professional attitudes designed to prevent violence - and, where appropriate, control it - should be developed.

76. To ensure the presence of an adequate number of staff, nurses are frequently assisted by medical orderlies, some of whom are recruited from among the prison officers. At the various levels, the necessary experience should be passed on by the qualified staff and periodically updated.

Sometimes prisoners themselves are allowed to act as medical orderlies. No doubt, such an approach can have the advantage of providing a certain number of prisoners with a useful job. Nevertheless, it should be seen as a last resort. Further, prisoners should never be involved in the distribution of medicines.

77. Finally, the CPT would suggest that the specific features of the provision of health care in a prison environment may justify the introduction of a recognised professional speciality, both for doctors and for nurses, on the basis of postgraduate training and regular in-service training.