



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 3 December 2007

Secret
CPT (2007) 71

REPORT TO THE AUTHORITIES OF THE KINGDOM OF THE NETHERLANDS ON THE VISITS CARRIED OUT TO THE KINGDOM IN EUROPE, TO ARUBA AND TO THE NETHERLANDS ANTILLES BY THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(CPT)

FROM 4 TO 14 JUNE 2007

Adopted on 9 November 2007

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Copy of the letter transmitting the CPT's report

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Copy of the letter transmitting the CPT's report

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Strasbourg, 3 December 2007

Dear Mr Kuijer

In pursuance of Article 10, paragraph 1, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, I have the honour to enclose herewith the report drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its fourth periodic visit to the Kingdom of the Netherlands. The visit comprised visits to the Kingdom in Europe (4 to 14 June 2007), to Aruba (4 to 7 June 2007) and to the Netherlands Antilles (7 to 13 June 2007). The report was adopted by the CPT at its 64th meeting, held from 5 to 9 November 2007, and consists of three distinct parts in respect of the Kingdom in Europe (Part 1), Aruba (Part 2) and the Netherlands Antilles (Part 3).

The various recommendations, comments and requests for information formulated by the CPT are listed in Appendix I of each part of the report. As regards more particularly the CPT's recommendations having regard to Article 10 of the Convention, the Committee requests the Netherlands authorities to provide within **six months** a response giving a full account of action taken to implement them.

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

The CPT would ask, in the event of the response being forwarded in Dutch, that it be accompanied by an English or French translation. It would also be most helpful if the Netherlands authorities could provide a copy of the response in a computer-readable form.

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

Yours faithfully

Mauro PALMA
President of the European Committee for the
Prevention of Torture and Inhuman
or Degrading Treatment or Punishment

cc: Mr Rudy CROES, Minister of Justice of Aruba (Part 2 of the report)
Mr David DICK, Minister of Justice of the Netherlands Antilles (Part 3 of the report)
Mr Jacobus VAN DER VELDEN, Ambassador Extraordinary and Plenipotentiary,
Permanent Representative of the Netherlands to the Council of Europe, Strasbourg



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PART 1

PART 1 : VISIT TO THE KINGDOM IN EUROPE

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I. INTRODUCTION

A. Dates of the visit and composition of the delegation

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as "the Convention"), a delegation of the CPT carried out a visit to the Kingdom in Europe of the Netherlands from 4 to 14 June 2007.¹ The visit formed part of the CPT's fourth periodic visit to the Kingdom of the Netherlands.²

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

- Andres LEHTMETS (Head of the delegation)
- Haritini DIPLA
- Marc NÈVE.

They were supported by Marco LEIDEKKER of the CPT's Secretariat, and assisted by

- Jurgen VAN POECKE, Director of De Grubbe Youth detention centre in Everberg, Belgium (expert)
- Hildo BOS (interpreter)
- Lee MITZMANN (interpreter).

B. Establishments visited

3. The delegation visited the following places of detention:

Law enforcement establishments

The Hague:

- Burgemeester Patijnlaan Police Station
- Hoefkade Police Station

Rotterdam:

- Doelwaterplein Police Station
- Schiedamseweg Police Station
- Zuidplein Police Station

Establishments under the authority of the Ministry of Justice

- the terrorist departments at De Schie and Vught Prisons
- the detention boats "Kalmar" in Dordrecht and "Stockholm" in Rotterdam
- the Expulsion Centre at Rotterdam Airport
- the De Hartelborgt Youth Detention Centre in Spijkenisse.

¹ The visits to Aruba and the Netherlands Antilles are dealt with separately (cf. Part 2 and Part 3).

² The CPT's previous periodic visits to the Kingdom of the Netherlands took place in August/September 1992, November 1997 and February 2002.

C. Consultations held by the delegation

4. In the course of its activities in the Kingdom in Europe, the delegation met Guusje TER HORST, Minister of Interior, Ernst HIRSCH BALLIN, Minister of Justice, Nebahat ALBAYRAK, State Secretary of Justice, Peter VAN DER SANDE, deputy head of the National Agency of Correctional Institutions, as well as other senior officials from the Ministries of Justice, Interior and Health, and from the National Agency of Correctional Institutions. The delegation also held talks with Alex BRENNINKMEIJER, National Ombudsman. In addition, meetings were held with local officials in charge of the places visited and with representatives of non-governmental organisations active in areas of concern to the CPT.

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

D. Cooperation between the CPT and the Netherlands authorities

5. The degree of cooperation received by the CPT's delegation from the Netherlands authorities was excellent. In particular, the delegation was granted rapid access to the establishments it wished to visit and could meet in private persons deprived of their liberty with whom it wished to speak. Further, the delegation was granted access to all documentation it wanted to consult.

The CPT wishes to express its appreciation for the effective coordination and the quality of information provided by the liaison officer, Martin KUIJER, and his team.

6. Unlike during previous visits to the Netherlands, in the course of the 2007 visit the CPT's delegation was given immediate and unconditional access to all medical files and other documentation it wished to examine. Moreover, the delegation was informed by the Dutch authorities of a project to explicitly lay down in law the CPT's right of access to personal medical data, in order to ensure full implementation of the Convention's provisions. The CPT was pleased to learn of this positive development **and would like to be kept informed of progress towards the adoption of such a legal provision.**

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Law enforcement agencies

1. Preliminary remarks

7. As already described in previous CPT visit reports³, police custody (*in verzekeringstelling*) in the Netherlands can last up to three days and may, exceptionally, be extended by a further three days. Such police custody may be preceded by a period of up to six hours during which a person can be held in a police station for the purpose of examination (*ophouden voor onderzoek*).

Following a maximum period of six days and 15 hours⁴ in police detention, a person remanded in custody should, in principle, be transferred to a remand prison. However, an amendment to the Penitentiary Principles Act⁵, which entered into force in March 2002, authorises the detention of a remand prisoner in a police cell for a further ten days⁶. At the same time, a 2002 amendment to the Juvenile Detention Principles Act⁷ allows for juveniles between 16 and 18 years of age to be remanded in police stations for up to ten days. Children between the ages of 12 and 15 may also be remanded in a police cell for three days for the sole purpose of arranging transport to a youth institution⁸.

The decision to keep a person on remand in a police cell after expiration of police custody is made by the selection officer (*selectie functionaris*) of the prison service.

8. The reason for the 2002 amendments was to legalise a practice, already observed by the CPT in 1992 and in 2002, of using police cells for holding persons on remand. In response to the CPT's concern over the amendments, the Netherlands authorities reassured the Committee that detained persons would remain in police cells for as short a period as possible.

³ CPT/Inf (93) 15/ CPT/ Inf (97).

⁴ In principle, police questioning should not continue into the night, therefore the hours between midnight and 9 a.m. are not taken into account when calculating the length of the initial police examination. Including the nine hours between midnight and 9 a.m., a detainee may spend in total up to 15 hours in a police station during the initial examination phase. For identification purposes, this initial period can be extended by an additional six hours in those cases where the apprehended person is suspected of an offence for which custody may not be imposed.

⁵ Article 15a Penitentiary Principles Act.

⁶ Bringing the maximum length of detention in police cells to 16 days and 15 hours.

⁷ Article 16a Juvenile Detention Principles Act.

⁸ Article 16b Juvenile Detention Principles Act.

Interlocutors of the CPT's delegation estimated that detained persons remain, on average, for a total of between three and four days in police detention. However, the information gathered by the CPT's delegation during its visits to a number of police stations indicated that a significant number of persons spent between 10 and 14 days detained in a police cell. This appeared particularly to be the case for juveniles between 16 and 18 years of age; apparently this was due to capacity problems in juvenile detention facilities⁹. Also, following a decision by the Council of State of 19 June 2002¹⁰, immigration detainees may be detained in police stations for up to 14 days, and the delegation's findings would suggest that they do, indeed, spend longer than three to four days in police detention facilities.

9. The findings during the CPT's 2007 visit suggest that police cells are being used as surplus capacity for remand prisons and alien holding facilities. The CPT notes that a shortage of remand capacity, combined with a policy of keeping prison occupation rates below 100% (see paragraph 25) may encourage prolonged detention in police facilities. However, the fact remains that police facilities do not offer suitable accommodation for lengthy periods of detention, particularly as concerns juveniles. The CPT has already commented in previous reports¹¹ on the unsuitability of such arrangements. **The CPT recommends once again that the Netherlands authorities take appropriate measures to minimise the time detained persons have to spend in police cells. Moreover, particular efforts should be made to ensure that juveniles are not detained in police cells for prolonged periods and are transferred to appropriate juvenile detention facilities expeditiously. The CPT also recommends that immigration detainees be promptly transferred to suitable accommodation in keeping with their needs and status.**

2. Ill-treatment

10. As was the case in previous visits to the Kingdom in Europe, the CPT's delegation received no allegations of ill-treatment of persons detained by law enforcement agencies during the June 2007 visit. Indeed, most persons interviewed stated that they had been treated well by law enforcement officials at the time of their apprehension and during their custody.

That said, when visiting the Rotterdam Airport Expulsion Centre on 11 June 2007, the CPT's delegation was informed that on that particular day an Iranian woman had been interviewed by members of the Royal Dutch Constabulary investigating allegations of ill-treatment by officers of the Lelystad police service. **The CPT would like to be informed about the outcome of the investigation.**

⁹ Concerning persons serving a custodial sentence of less than 14 days (Rotterdam) or 7 days (The Hague) for non-payment of a fine, it transpired from interviews with custodial officers that generally no effort was made to transfer them to regular (low-security) prison facilities; their incarceration in police stations for the duration of their sentence therefore seemed to be an issue of standing policy.

¹⁰ Reference number: JV 2002/274. See also Aliens Circular A6/ 5.3.6.1

¹¹ See CPT/Inf (98) 15, paragraph 29.

3. Conditions of detention and regime

11. The delegation visited police stations in The Hague and Rotterdam. In The Hague, the Burgemeester Patijnlaan Police Station has 51 single-occupancy cells and was holding 35 persons on the day of the delegation's visit, while the Hoefkade Police Station has seven single-occupancy cells, which were empty at the time of the visit. The Doelwaterplein, Schiedamseweg and Zuidplein Police Stations in Rotterdam have 66, 22 and nine single-occupancy cells respectively and, at the time of the visit, were holding 37, 17 and two persons.

12. The Hague Burgemeester Patijnlaan Police Station and the Rotterdam Doelwaterplein Police Station serve as the central police detention facilities for their regions. Persons apprehended by officers attached to other police stations are, in principle, transferred to these central facilities, although the moment of transfer may vary from just after apprehension and initial examination¹² (Hoefkade Police Station) to after the expiration of police custody¹³ (Zuidplein Police Station).

Both central police stations had specific detention facilities for immigration detainees, who were accommodated in small dormitories.

13. As was already observed by the CPT in 2002¹⁴, custodial services in both central police stations are carried out by specially trained custodial officers, who are not involved in other aspects of police work (such as apprehension, street patrol and criminal investigations). In total, there were 80 custodial officers in the Burgemeester Patijnlaan Police Station and 50 in the Doelwaterplein Police Station.

The establishment of a specialised custodial service for persons detained by the police, as is the case in The Hague and Rotterdam, is a very positive development, given the very specific nature of this task. Further, such a service could provide an important safeguard against ill-treatment; in order for that safeguard to be fully effective, custodial officers should have both the authority and the responsibility to verify whether basic rights of detained persons, such as notification of deprivation of liberty, access to a lawyer, etc., have been respected, and to take appropriate action if this is not the case.

In this respect, the CPT's delegation noted that custodial officers in the two central police detention facilities visited could play a more active role, in particular concerning exercise of the right of notification of deprivation of liberty (see paragraph 20). **The CPT would like to receive the comments of the Netherlands authorities on this point.**

¹² After a maximum of 15 hours.

¹³ After a maximum of six days, 15 hours.

¹⁴ CPT/ Inf (2002) 30; paragraph 14

14. Material conditions in police cells in the Netherlands are prescribed by the Regulation on police cell complexes (*Regeling Politiecellencomplex*). This Regulation sets standards for, amongst other things, cell size, luminosity, outdoor exercise and cell equipment. It also lists in detail the personal data to be registered during the admission process. Furthermore, it makes provision for the establishment of an independent visiting committee to monitor both the material conditions of police cells and the treatment of detainees. All police stations visited had set up such a committee, which is a very welcome state of affairs.

The single-occupancy cells in all the police stations visited were about 7m², which is a satisfactory size. They were equipped with in-cell toilet facilities, a call bell, a plinth with a mattress, and a table with chairs. The artificial lighting was adequate and in some cases there was access to natural light. Such lack of access to natural light in many police cells appears not to be in conformity with Article 6 (1) of the Regulation on police cell complexes which states that police detainees should be able to observe the cyclus of day- and night from their cells. **The CPT recommends that the standards with respect to access to natural light contained in Article 6 (1) of the Regulation on police cell complexes is implemented in all police cells in the Netherlands.**

The visited cells were on the whole clean and, with the exception of the Rotterdam Zuidplein Police Station, well ventilated. The delegation was informed that this particular police station would be renovated in the near future. **The CPT trusts that the opportunity will be taken to install adequate ventilation.**

With the exception of the Hoefkade Police Station (where detained persons spend only a few hours) all police stations visited were equipped with an outdoor exercise area.

15. In all the police stations visited, detained persons had access to reading material in different languages and were provided with access to the outdoor exercise yard for at least one hour a day.

No other activities were provided for criminal suspects. However, for immigration detainees, the Burgemeester Patijnlaan Police Station had a recreation room equipped with a television set and chairs; similar arrangements were found in Rotterdam. In the The Hague station, juvenile detainees were permitted, on occasion, to watch television in the recreation room.

16. The material conditions in the police cells and the detention regime were on the whole suitable for a stay of a few days. However, the reality is that significant numbers of persons are detained for much longer periods in police detention. For such lengthy stays, police stations are unsuitable and the CPT has already made recommendations in this respect (see paragraph 9 above).

4. Safeguards against ill-treatment

17. In the past, the CPT has examined in detail the safeguards against ill-treatment offered to persons deprived of their liberty by law enforcement agencies¹⁵ and has made a number of recommendations. With regard to the right of access to a lawyer, some promising developments were observed during the 2007 visit. However, in respect of the right of notification of custody to a third party, the situation remained very much unchanged.

a. notification of deprivation of liberty

18. In the report on the CPT's 2002 visit, reference was made to the possibility of holding a person under a regime of "all restrictions", in conformity with Article 62 (2) b of the Code of Criminal Procedure, whereby a person may be deprived of all outside contacts with the exception of access to a lawyer. Such a regime may be imposed "in the interest of the investigation" by a public prosecutor, an assistant public prosecutor, or an examining magistrate, depending on the legal stage of the detention.

Under certain conditions, the imposition of an all restrictions regime may lead to *de facto* incommunicado detention, particularly during the first stage of police detention when no contact with a lawyer is allowed (see paragraph 21). In the course of the 2007 visit, the CPT's delegation met with a number of detained persons who appeared to have been held under such conditions.

19. The CPT wishes to reiterate that, in principle, the right to notify one's deprivation of liberty should take effect as from the outset of deprivation of liberty. In other words, persons obliged to remain with the police should have the right to notify a third party immediately. This right could be made subject to certain exceptions designed to protect the legitimate interests of the police investigation, provided those exceptions are clearly circumscribed and made subject to appropriate safeguards. In particular, it must be ensured that the reasons for postponing contact with others are in order to protect evidence and not to create hardship and to put pressure on the detained person. Further, postponement of the right to notify deprivation of liberty should be balanced by the presence of other safeguards, such as immediate access to a lawyer. The threshold for application of an all restrictions regime should be particularly high in the case of minors.

In its 1997 visit report, the CPT stated that it considered the wording of Article 62 (2) b to be imprecise and requested the Netherlands authorities to amend it accordingly. The CPT repeated its recommendation in 2002. However, the Netherlands authorities did not respond to, or act upon, this recommendation in a meaningful manner. **The CPT reiterates its recommendation that the Netherlands authorities circumscribe more precisely the possibility to delay the exercise of the right of notification of deprivation of liberty and calls upon the Netherlands authorities to give a proper follow-up to this recommendation.**

¹⁵ See CPT/Inf (93) 15; paragraphs 34 to 55 and CPT/Inf (98) 15; paragraphs 30 to 39.

20. Another issue of ongoing concern for the CPT relates to Article 27 (1) of the Police Service Guidelines, which has still not been implemented properly with respect to the right of a detained person to contact a third party or relative.

Various detained persons, not placed under the regime of Article 62 (2) b, claimed that they had not been given the possibility to inform their families or others of their detention. Police officers, both custodial and investigative, confirmed, in most instances, the accuracy of these claims; they told the CPT's delegation that authorising contact with a third person was the responsibility of police officers dealing with the case and that, in most cases, authorisation was denied. Clearly, this practice does not conform with the legislation in force. **The CPT calls upon the Netherlands authorities to ensure that all detained persons not subjected to the restrictions of Article 62 (2) b of the Code of Criminal Procedure are given the opportunity to exercise effectively the right to notify a third party or relative as from the outset of detention.**

b. access to a lawyer

21. As the Netherlands authorities are well aware, the CPT considers that detained persons should systematically be entitled to access to a lawyer as from the outset of detention¹⁶. From the facts found during the 2007 visit, this is still not the case; access to a lawyer is still denied during the initial period of detention for examination purposes.

However, a few high-profile cases in which persons sentenced for serious crimes were found to have been falsely convicted have led the Netherlands authorities to reconsider, inter alia, the safeguards in place during police questioning. On 1 October 2006, a directive was adopted requiring the mandatory audio-visual recording of police interrogations in a number of specific cases involving minors below the age of 16 and people with learning disabilities. On 17 January 2007, a new directive with a much wider scope was adopted, which will enter into force at the beginning of 2008.

Although the mandatory audio-visual recording of police interrogations in certain cases is undoubtedly a step forward, it is certainly not sufficient from the perspective of the prevention of ill-treatment. The CPT considers it to be in the interest of both law enforcement officials and detained persons that no doubts exist concerning the latter's treatment while in police detention; immediate access to a lawyer remains the best safeguard against ill-treatment of persons in police detention. **The CPT reiterates its recommendation that the Netherlands authorities introduce the right of access to a lawyer from the outset of deprivation of liberty.**

22. In this context, the CPT's delegation was very interested to receive information about a pilot project in the regions of The Hague and Rotterdam, which allows for the right of access to a lawyer as from the outset of police detention. **The CPT would like to receive details regarding this pilot project and, in due course, would like to be informed of its results.**

¹⁶ See CPT/Inf (93) 15; paragraph 41 and CPT/Inf (98) 15; paragraph 34.

c. access to a doctor

23. On the whole, access to a doctor for persons in police detention was still guaranteed in a satisfactory manner. In all the police stations visited, detained persons had access to a doctor upon request. However, the delegation noted that in Doelwaterplein Police Station, medical examinations took place in the presence of custodial officers.

The CPT acknowledges that special security measures may be required in a particular case, when a security threat is perceived by medical staff. However, there can be no justification for police officers being *systematically* present during medical examinations; their presence violates medical confidentiality and is usually unnecessary from a security standpoint. Alternative solutions can and should be found to reconcile legitimate security requirements with the principle of medical confidentiality. One possibility might be the installation of a call system, whereby a doctor would be in a position to rapidly alert police officers in those exceptional cases when a detained person becomes agitated or threatening during a medical examination.

The CPT recommends that steps be taken at Rotterdam Doelwaterplein Police Station and, if appropriate, in other police establishments in the Netherlands, to ensure that all medical examinations are conducted out of the hearing and - unless the doctor concerned expressly requests otherwise in a given case - out of the sight of police staff.

24. The CPT has been informed that a person in police detention does not have the right of access to a doctor of his/her own choice. The Committee does not agree with this prohibition. Allowing detained persons the right to consult a doctor of their own choice is important regarding continuity of care and can provide an additional safeguard against ill-treatment. That said, if this were felt necessary, such an examination by the detained person's own doctor could take place in the presence of a state-appointed doctor. **The CPT recommends that the Netherlands authorities reconsider their position with respect to the right of access to a doctor of his/her own choice by persons detained in a police cell.**

B. Establishments under the authority of the Ministry of Justice

1. Preliminary remarks

25. It is noteworthy that, since 1990, the incarceration rate for adults in the Netherlands has risen from one of the lowest to one of the highest levels in Western Europe¹⁷. At the same time, the overall capacity in prisons and alien detention facilities has increased from 7,195 in 1990 to 17,630 in 2006¹⁸. The opening of new detention facilities is planned and in particular, the increase in the number of facilities for the administrative detention of immigration detainees is set to continue with, inter alia, the opening of a new detention facility in Zaandam and the further enlargement of an existing facility in Alphen aan den Rijn.

As the budget of the prison service has not increased proportionately with the growth in cell capacity, the Dutch National Agency for Correctional Institutions (NACI) has been forced to make significant economies, primarily by reducing activities and work for inmates and by cutting staff costs. Budgetary restraints, combined with the expansion of the prison estate, within a context of public pressure to reduce the rate of prisoner re-offending, has resulted in the Dutch prison service going through a period of ongoing transformation, through which more efficient and effective forms of detention are being sought.

As a result, the Dutch prison system has undergone significant changes since the CPT's visit to the Netherlands in 2002. One of the most visible alterations is the introduction of double-occupancy cells in a number of remand prisons; although the CPT's delegation did not visit any of these cells, it was told that these cells had been refurbished and enlarged to meet the needs of double occupancy. The CPT's delegation was also informed that the use of one cell by two inmates had not led to an increased level of inter-prisoner violence and that the pressure to absorb more prisoners had not resulted in overcrowding in prison facilities, thanks to the policy of keeping the occupation level in Dutch prisons below 100%. However, no information has been received as to whether additional custodial, medical or other staff have been deployed in prisons where double-occupancy cells have been introduced.

The CPT would like to receive the following information:

- **the criteria for accommodation in double-occupancy cells;**
- **whether additional staff have been deployed in prisons where double cell occupancy has been introduced.**

Further, the Committee would like to receive confirmation that double-occupancy cells have indeed been enlarged before entering into service and, if so, it would like to be informed about the cell space per prisoner in a double-occupancy cell.

¹⁷ In 2006, 128 prisoners per 100,000 inhabitants (source: International Centre for Prison Studies).

¹⁸ Source: International Centre for Prison Studies (Numbers exclude capacity in forensic psychiatric hospitals and juvenile detention institutions).

26. Another recent development was the establishment of the Inspectorate for the Implementation of Sanctions (*Inspectie voor de Sanctietoepassing*) in 2005. Previously, prison inspections were carried out by the Council for the Application of Criminal Law and Youth Protection¹⁹. The new Inspectorate is attached to the Ministry of Justice and is staffed, inter alia, by former prison directors. It is authorised to carry out unannounced visits; its reports and conclusions become public and are published on its website, and copies are also sent to Parliament. The establishment of the Inspectorate has not resulted in changes to the system of independent supervisory boards attached to each prison²⁰.

27. The 2007 visit took place on the eve of an even more far-reaching restructuring of the Dutch prison system through the concept of “Measured Detention and Treatment” (*Detentie en Behandeling op Maat*). It provides for the introduction of three basic forms of prison detention in the Netherlands: remand; short-term sentences (of up to four months); and long-term sentences. As the four-month period of detention is considered too short for adequately preparing a prisoner for re-integration into society and the period of detention for prisoners on remand is unpredictable, all activities related to re-integration (which includes work and education) will not be available to these categories of prisoners.

The CPT’s delegation was told that, due to ongoing discussions with staff unions, the plan has been temporarily put on hold, but that the NACI-management remained firmly committed to introducing this new concept.

For the CPT, it is too early to comment upon the concept of Measured Detention and Treatment. However, the Committee would like to emphasise that this new concept should not lead to an impoverished regime whereby prisoners are left to their own devices for most of the time. Continuing attempts should be made to involve prisoners, both sentenced and remanded, in purposeful communal activities.

The CPT would like to be informed about the evolution and implementation of the new concept of Measured Detention and Treatment.

28. The CPT’s delegation observed that the fire at the Schiphol Airport detention centre in October 2005, which caused the death of 11 immigration detainees, has had a profound impact on safety regulations in Dutch prisons; in almost every establishment visited, fire-safety improvements were being installed.

29. The CPT’s delegation visited the terrorist departments at De Schie and Vught Prisons (See Section II.B.3) as well as the facilities for the administrative detention of irregular migrants on the detention boats “Kalmar” in Dordrecht and “Stockholm” in Rotterdam, and at the Rotterdam Airport Expulsion Centre (See Section II.B.4). In addition, the CPT’s delegation examined for the first time the treatment of persons held at the De Hartelborgt Closed State Youth Detention Centre in Spijkenisse (See Section II.B.5).

¹⁹ See CPT/ Inf (93) 15; paragraph 144.

²⁰ See CPT/ Inf (93) 15; paragraph 144.

30. All facilities visited have similar provisions with respect to complaints, discipline, sanctions and monitoring by outside bodies. These provisions have been described extensively in previous reports and require no further comment by the CPT²¹.

However, the delegation noted that a comprehensive register of disciplinary measures was not in place in any of the establishments visited. Instead, imposed sanctions were recorded in the prisoner's personal file and in the daily logbook. In the CPT's view, the introduction of a separate register for sanctions merits consideration as it increases managerial overview and facilitates inspection by external bodies. This is particularly important when sanctions are usually imposed by heads of unit and not by the director, as is the case in the Netherlands. **The CPT recommends the introduction of a comprehensive sanctions register in all establishments under the Ministry of Justice.**

The delegation noted that all detained persons placed in an isolation cell, whether prisoners, irregular immigrants or juveniles, are made to wear a short gown without trousers or even underwear, making it difficult for inmates to preserve their personal dignity. **The Committee recommends that more suitable clothing be provided to detained persons placed in isolation.**

2. Ill-treatment

31. As was the case in previous visits to the Kingdom of the Netherlands in Europe, the CPT's delegation did not receive any allegations of recent physical ill-treatment by prison officers during the 2007 visit. However, in the light of some cases examined relating to events over the last three years, the CPT does have some concerns with respect to the reporting and proper examination of allegations of ill-treatment.

32. One of the most effective means of preventing ill-treatment by prison officers lies in the diligent examination by the competent authorities of all relevant information regarding possible ill-treatment which comes to their attention, whether or not that information takes the form of a formal complaint; failing to do so will contribute to creating a climate of impunity. In this connection, judges, prosecutors and investigators are in a particularly crucial position. Vigilance and a proactive stance adopted by the management of prisons can also make a vital contribution to combating impunity.

33. In the course of its visit, the CPT's delegation was made aware of one case of ill-treatment and two cases of alleged ill-treatment that had taken place during the previous three years. The case of ill-treatment dates back to 2004 and concerns De Noordsingel remand prison in Rotterdam. The two cases of alleged ill-treatment are both concerned with failed attempts to deport immigration detainees: the first incident in June 2006 at the Rotterdam Airport Expulsion Centre and the other in July 2006 on the Stockholm detention boat.

²¹ See CPT/ Inf (93) 15; paragraphs 135 to 145.

34. The ill-treatment at De Noordsingel remand prison, on 13 February 2004, received some coverage in the Dutch media. It involved a fight between an inmate and prison officers, which resulted in the inmate receiving punches after having being brought under control by the officers. Despite the presence of prison staff, including a unit-director, the incident was only investigated about 14 months later after one of the prison officers involved in the incident had filed a complaint against the inmate. During the subsequent hearing, the court was informed about the inmate's version of the events and ordered a full investigation. As a result, one officer was sentenced to 200 hours of community work and a suspended prison sentence of two months. A perjury case against the unit-director is still pending.

35. The alleged ill-treatment at the Rotterdam Airport Expulsion Centre took place in the early morning of 27 June 2006. Officials of the transport service of NACI attempted to move a detainee from his cell to a vehicle in order to be taken on a plane and deported. A struggle ensued, during which an official from the transport service apparently used excessive force against the detainee, including kicks to the head. By some accounts, the detainee temporarily lost consciousness as a result. Later that morning, employees from the Expulsion Centre, who had witnessed the incident, drew up a report for the Centre's management. Significant parts of the incident, in particular those related to the use of excessive force, were apparently left out of the report and the management of the Expulsion Centre only became aware of allegations of excessive use of force at a later stage. After the report was rewritten, it was handed over to the transport service for investigation. The transport service concluded that there were no indications for any wrongdoing by its staff. However, the management of the Expulsion Centre considered that the investigation had not been thorough, as the staff who had been on duty on 27 June 2006 had never been interviewed about the incident. Therefore, on 3 April 2007 the NACI-Bureau for Safety and Integrity was asked to carry out an investigation into the events on 27 June 2006. The investigation is still ongoing.

36. In a letter of 25 July 2006, a spiritual adviser attached to the Stockholm detention boat, informed the management of an account of ill-treatment by staff during an aborted expulsion attempt on 20 July 2006. He reported that an immigration detainee claimed to have been kicked, and hit on the head with a helmet while being transported to the airport. Documentation sent to the CPT's delegation by the authorities indicates that this detainee was examined by a doctor when he returned to the Stockholm immediately after the failed expulsion and that during the examination he made allegations of having been beaten. From the files available to the CPT's delegation, it was unclear whether any investigation had taken place.

When asked about the follow-up to the spiritual adviser's letter, the director of the Stockholm told the CPT's delegation that an investigation had been carried out by a head of department, and that the allegations had been found to be untrue. It should be noted that due to the holiday period, the investigation had taken place two months after the alleged incident, by which time the immigration detainee had already been expelled. Further, there was no written report on the investigation.

37. It is noteworthy that the three cases referred to above were not revealed through a formal reporting mechanism. Also, efforts appeared to have been made to either "soften" (at the Rotterdam Airport Expulsion Centre) or conceal (at De Noordsingel remand prison) the incidents. In the case of the detainee from the Stockholm, the alleged ill-treatment was not properly reported and no trace could be found of the investigation that had apparently taken place.

From subsequent discussions with prison managers, it transpired that there is, at present, no common NACI-procedure in operation that sets out how to deal with allegations of ill-treatment. Even the involvement of the NACI's Bureau for Safety and Integrity is not mandatory, besides receiving a notification of an allegation of ill-treatment. Instead, responsibility for dealing with allegations of ill-treatment is left in the hands of the director of the establishment concerned.

38. The three cases highlighted above demonstrate a clear need for the Dutch National Agency for Correctional Institutions to draw up and implement a comprehensive procedure on how to deal with allegations of ill-treatment. Such a procedure should include, at a minimum, mandatory reporting of all relevant events to the management of the establishment and NACI-headquarters, in order to maintain a local and national overview of allegations of ill-treatment within establishments under the responsibility of NACI.

Further, it is essential that investigations into allegations of ill-treatment are not carried out by officials of the establishment where the alleged ill-treatment took place or by officials of other services allegedly involved in the incident. On the contrary, for an investigation into possible ill-treatment to be effective, it is vital that the persons responsible for carrying it out are independent, both from those persons implicated in the events and, ideally, the NACI. Any investigation into ill-treatment, whatever its quality, could be compromised if it is not perceived to be totally independent. Further, prosecutorial authorities must exercise close and effective supervision of the operational conduct of an investigation into alleged ill-treatment by public officials.

In addition, a proper investigation into alleged ill-treatment must be capable of withstanding possible *post facto* scrutiny by other bodies or by the public. Therefore, records should be made of all steps taken during the investigation and of all persons interviewed and locations visited. Such records should be kept for an extended period. **The CPT recommends that the Netherlands authorities draft a comprehensive procedure on how to deal with allegations of ill-treatment within establishments under the responsibility of the National Agency of Correctional Institutions, taking into account the above remarks.**

3. The terrorist departments at De Schie and Vught Prisons

a. introduction

39. The murder of the film director Theo van Gogh in 2004, combined with the impact of the international fight against terrorism since 2001, has led the Netherlands authorities to reconsider its approach towards violent religious fundamentalism. One specific concern related to prisons serving as recruiting grounds for future terrorists. Consequently, it was decided to take preventive measures and, in September 2006, a so-called terrorist department was opened at Vught Prison. The department may receive male and female prisoners who are either sentenced or on remand.

A second terrorist department opened in mid-January 2007 at the all-male high-security De Schie Prison in Rotterdam. Initially, it was intended to transfer five male inmates from Vught Prison but, due to tensions in the Vught terrorist department related to the mixed detention of male and female prisoners, the Minister of Justice ordered the transfer of the two female inmates to De Schie.

At the time of the visit, eight male prisoners were being held in the terrorist department at Vught Prison and two women in the terrorist department at De Schie Prison.

40. The concern of the Netherlands authorities, that prisons may become breeding places for violent religious fundamentalism or other forms of extremism, is one shared with authorities in other jurisdictions. It falls outside the remit of the CPT's mandate to comment on the decision to establish separate "terrorism departments" or to speculate whether such a measure will contribute to curbing terrorist recruitment. However, the CPT does not wish to withhold from the Dutch authorities that, during the visits to the two departments, some of the delegation's interlocutors expressed their fear that on the terrorist departments, dedicated prisoners with fundamentalist religious principles could influence the less religious inmates. The matter was in particular brought up during the delegation's visit to the De Schie Prison and was also evident in the written reports made available to the delegation.

b. procedures for placement and extension of placement in the terrorist departments

41. Placement in a high-security terrorist department is governed by Article 20a of the Regulation on classification, placement and transfer of detainees (*Regeling selectie, plaatsing en overplaatsing van gedetineerden*), whereby a person charged with, or sentenced for, a terrorist offence, or of spreading a message of extremism among fellow inmates, may be placed in a terrorism department by order of the selection officer²². The delegation was told by various interlocutors that such a placement is automatic in cases where the criteria of Article 20a are met. This would imply that there is no comprehensive risk-assessment governing such placement, in contrast to what is stated in Article 22 of the Regulation on classification, placement and transfer of detainees. This regulation prescribes the drawing up of a "risk profile" based on three criteria: the offence, relevant police information, and behaviour during previous imprisonment. In this respect, the CPT's delegation was struck by the fact that a number of inmates placed in the restricted high-security regime of a terrorist department, had previously been under a full community regime, apparently without affecting the safety of staff or other inmates. One of the prisoners had even been assigned a cleaning job which allowed him to move around the establishment with a certain degree of liberty.

42. The CPT is of the firm view that placement of a prisoner in a department with a high-security regime should be based on a comprehensive individual risk assessment, and should not be an automatic result of the type of sentence imposed. Nevertheless, the Committee understands that in the case of an inmate charged with a terrorist offence, the precaution of placement under a high-security regime as an immediate exceptional preventive measure may be appropriate. Further, in the view of the CPT, inmates should only be held in special high-security units such as terrorist departments for as long as they are deemed to pose a particular risk. Therefore, placement in the departments should be subject to review at regular intervals, in particular in the case of a preventive placement such as that indicated above.

²² Placement in a terrorist department may be contested by an appeal to the Council for the Application of Criminal Law. Such appeals were dealt with on 27 March 2007 and 15 May 2007 and rejected as the legal procedures were applied correctly.

As Dutch law stands at present, an inmate who has been placed in a terrorist department will remain there until either a few months before release from prison or on acquittal by a court. No regular review of such a placement takes place except as regards those inmates placed in a terrorist department for spreading a message of extremism. In these cases, Article 26a of the Regulation limits the placement of such inmates to 12 months, although it may be extended each year for a further 12 months by the selection officer. However, Article 26a does not explicitly spell out the criteria the selection officer should take into account when deciding on an extension.

The CPT recommends the introduction of a regular review of placement in a terrorist department, based upon criteria clearly laid down in law. Further, the CPT recommends the introduction of a comprehensive risk assessment process as the basis for placement in a terrorist department.

c. material conditions

43. In De Schie Prison, construction works were ongoing in the terrorist department to create two separate units, each with seven single-occupancy cells. In general, the department offered good material conditions; the cells measured around 10 m², were clean and equipped with in-cell sanitation, and had sufficient access to both natural light and artificial lighting. The department contained a kitchen, an association room and a well-equipped fitness room. The yard for outdoor exercise, although rather oppressive due to the surrounding high walls, was sufficient in size and provided shelter from inclement weather.

There were also two isolation cells, located in the corridor adjacent to the segregation department, which were held in reserve for inmates from the terrorist department. The two recently constructed cells had no windows, but received daylight through a tube in the ceiling, containing an ingenious system of mirrors. Apparently, the luminosity in the cells was in conformity with the legal criteria. Nevertheless, the lack of windows rendered the cells oppressive and unsuitable for isolation purposes, in particular in the Dutch context where seclusion may last up to 14 days. According to the director, the cells would not be brought into service in their current state and he had asked that they be redesigned. **The CPT would like to receive confirmation that the two isolation cells will be redesigned before being used.**

44. The material conditions in the 18 cells of the terrorist department at Vught Prison were of a distinctively lower standard. The building that currently accommodates the terrorist department was previously the location of the (Temporary) Extra Security Institution ((T)EBI), and was described in the CPT's 1997 visit report²³. In the 1997 visit report, recommendations were made with respect to the poor ventilation and the limited access to natural light in the cells, due to the frosted glass panels obscuring the windows. In their response, the Netherlands authorities indicated that the entire ventilation system had been replaced following the CPT's visit. However, during the 2007 visit, similar shortcomings with respect to ventilation and lighting were observed by the delegation. Further, the cells at Vught Prison were designed to ensure that prison officers would have an immediate overview of the cell when looking through the wide hatch in the door. As the toilet facilities are exposed, prison staff are supposed to knock before opening the hatch or entering the cells. However, the delegation received several complaints, and observed for itself, that prison staff did not always comply with this requirement, causing embarrassment for the prisoner.

The delegation was informed that by 2009 the terrorist department would be relocated to other premises and that the existing building would be turned into a museum. Nevertheless, in order to improve, in the meantime, the living environment for inmates and staff alike, the **CPT recommends that improvements be made with respect to the ventilation and lighting arrangements at the Vught Prison terrorist department.**

d. regime

45. The CPT's position concerning restricted regimes on high-security units is well known to the Netherlands authorities and there has been an extensive exchange of views on this matter in the past. The CPT considers that 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 concerning their activities (thus fostering a sense of autonomy and personal responsibility). Special efforts should be made to develop a good atmosphere within high-security units. The aim should be to build positive relations between staff and prisoners. Further, particular attention should be paid to the mental health of prisoners placed in these departments.

²³ CPT/Inf (98) 15; paragraph 59.

46. Inmates held in the terrorist departments are totally separated from other prisoners and both departments are classified as “extensively secured”²⁴, one level below that of the Extra Security Institution (EBI) at Vught Prison²⁵. In fact, the regime in the terrorist departments is in many ways similar to that on the EBI; for instance, prisoners are subjected to strip searches whenever they have open visits (i.e. without glass partition) and, as a rule, are handcuffed for all escorts within the establishment. The handcuffs are removed for visits by family members or lawyers, and during outdoor exercise and sports, but not for other appointments such as with the dentist or the hairdresser. In each department, there is also a procedure in place to prevent potentially dangerous objects being used against staff and other inmates; in Vught, inmates are required to hand over objects such as spoons, toothbrush and even spectacles, before the cell door is opened and in De Schie these objects have to be shown to a custodial officer. However, in contrast to the EBI, interaction with staff is possible, and indeed encouraged.

47. In the terrorist departments, the inmate’s individualised regime is determined by the director of the establishment. According to the prisoners interviewed by the delegation at Vught Prison, recreation and outdoor exercise initially had to be taken individually, but, following complaints from inmates, this policy was changed. At the time of the visit, prisoners could associate and undertake outdoor exercise in pre-established groups, consisting of two or three prisoners; these groups are constituted in consultation with the public prosecutor’s office and the police. Nevertheless, the small scale of the departments provides limited flexibility as to the composition of the groups. If a group breaks up due to a disciplinary measure against one of its members or due to personal tensions, the restrictive regime is more likely to resemble isolation. For instance, in the course of the visit, it appeared that at Vught Prison, one inmate, involved in a religious dispute with other group members, had been unwilling for some time to participate in any group activity. At De Schie Prison in early 2007, one of the two inmates underwent five days of solitary confinement in her cell as a disciplinary measure for illicitly passing a copy of the house rules to her lawyer. Automatically, her punishment significantly limited human contact for the only other woman prisoner. Moreover, after the five days of solitary confinement, the communal activities were not immediately restored; for some time both inmates had their recreation and outdoor exercise separately. **The CPT recommends that the Netherlands authorities take measures to ensure that prisoners are not, by default, kept in conditions equivalent to isolation.**

48. The CPT understands that one of the two women detained at De Schie Prison has recently been released by court decision. In this context, **the CPT would like to be informed of the measures taken to prevent the complete social isolation of the remaining female prisoner in the terrorist department at De Schie Prison.**

²⁴ Article 13 (1) b of the Penitentiary Principles Act.

²⁵ The EBI regime was described in CPT/ Inf (98) 15; paragraphs 58 to 70 and CPT/ Inf (2002) 30; paragraphs 33 to 43.

49. According to the daily programme, inmates in the terrorist departments have between two and two and a half hours out-of-cell time for outdoor exercise and recreation. In addition, there are a few other out-of-cell activities every week, such as cooking and visits. Within their cells, prisoners are allowed to have a limited number of objects, such as pre-selected books and magazines and a television set. Further, a prisoner may request permission to undertake individual educational or recreational activities, such as language courses or music lessons, which take place in the prisoner's cell.

The regime in place in both terrorist departments is security-driven and therefore very restrictive. In defence of the EBI-regime, the Netherlands authorities have repeatedly emphasised the security aspect and, in particular, the above average risk of escape and disruption of the normal prison regime for inmates placed in the EBI²⁶. The CPT considers that, in the absence of a comprehensive individual risk assessment, this reasoning is difficult to justify in respect of inmates such as those currently held in the terrorist departments of De Schie and Vught Prisons. **The CPT would like to receive the comments of the Netherlands authorities on the above-mentioned concerns highlighted by the Committee.**

e. contacts with the outside world

50. Inmates placed in the terrorist departments are entitled to a one-hour visit (under open conditions or with a glass partition) and two ten-minute phone calls per week. They may be visited by a maximum of ten different persons, all of whom are subject to prior screening. According to the prisoners at Vught Prison, the initial screening of visitors and callers takes between six weeks and two months. During this period no visits are allowed and no telephone calls may be made. Persons who have been granted the right to visit the prisoners may also be contacted by telephone. All telephone calls and all conversations during the visits are recorded.

Inmates have unlimited access to a lawyer. However, in order to avoid strip-searches (cf paragraph 46), some prisoners prefer to meet their lawyers behind a transparent partition rather than have an open visit. Further, the CPT has received information about a number of restrictions imposed upon lawyers meeting their clients in open visits. **The CPT recommends that the security measures be reviewed in the terrorist departments with respect to contact between prisoners and their lawyers in order to ensure that they are not having an unduly negative impact on the quality of their legal defence.**

51. Prisoners have the right to send and receive mail. All mail is checked and, if it contains information that is considered sensitive, is confiscated by the prison administration. Mail directed to or received from bodies or persons listed under Article 37 of the Penitentiary Principles Act is confidential and exempted from checks by the prison administration. In this respect, the CPT's delegation noted that the Committee is not listed in Article 37. **The CPT would like to receive confirmation that mail addressed to, and originating from, the CPT is dealt with in a confidential manner. Further, the Committee would like to be informed whether prisoners are notified of any mail that is withheld by the prison administration.**

²⁶ CPT/Inf (99) 5, paragraph 29.

f. medical issues

52. As was the case in respect of the EBI, all physical examinations of inmates in a terrorist department by a doctor took place in the presence of custodial staff. The Dutch authorities explained that, in respect of EBI-prisoners, security issues were paramount, and that prison officers must be present during medical examinations due to the increased risk of prisoners absconding. However, in the absence of a comprehensive individual risk assessment, this argument does not apply vis-à-vis inmates placed in a terrorist department. Further, such a state of affairs contravenes medical confidentiality and can inhibit the establishment of a doctor-patient relationship. Consequently, **the CPT recommends that the manner in which medical care is delivered to inmates held in terrorist departments be reviewed; more specifically, all medical examinations should be conducted out of the hearing and - unless the doctor concerned requests otherwise in a given case - out of the sight of prison officers.**

53. In principle, all inmates in the terrorist departments remain handcuffed during medical examinations by a doctor, unless the doctor visits the prisoner in his/ her cell. The handcuffing of inmates during medical consultations outside their cells infringes their dignity and inhibits the development of a proper doctor-patient relationship (and is possibly detrimental to the establishment of an objective medical finding). **The CPT recommends that the Netherlands authorities cease handcuffing prisoners during medical examinations outside their cells.**

4. Facilities for immigration detainees

a. introduction

54. As stated above, the CPT's delegation visited the Stockholm detention boat in Rotterdam, the Kalmar detention boat in Dordrecht and the Rotterdam Airport Expulsion Centre. On the detention boats, aliens are held for the purpose of establishing their identity and nationality. In principle, immigration detainees for whom there are no remaining administrative impediments to expulsion, are transferred to the Expulsion Centre at Rotterdam Airport or Schiphol Airport.

At the time of the visit, the two detention boats, both moored to the quay, were holding male detainees, while the Rotterdam Airport Expulsion Centre was accommodating single women and couples, as well as men. The CPT's delegation was pleased to note that it did not encounter children in any of the facilities visited, in conformity with a recent decision by the State Secretary of Justice.

55. According to the Netherlands authorities, the two detention boats serve as temporary accommodation in cases of unexpected overcrowding; the Stockholm will close in 2010 and the Kalmar in 2012. The boats were selected for the detention of immigration detainees as they could be made operational more quickly and with fewer administrative formalities than any land facility.

The location of the Rotterdam Airport Expulsion Centre is also considered temporary and should move from its current site in about two years. **The CPT would like to receive detailed information concerning the plans to relocate the Rotterdam Airport Expulsion Centre.**

56. At present, the legislation governing the administrative detention of immigration detainees does not provide for an absolute time limit for detention pending deportation for certain categories of detained aliens²⁷. **The CPT invites the Netherlands authorities to introduce an absolute time limit for the detention of all foreign nationals under aliens legislation** (as is already the case in the majority of European countries).

b. material conditions

57. The detention boats were originally designed as floating hostels, providing accommodation for professionals working away from home. The official capacity of the Stockholm is 472 detainees, and for the Kalmar, 496. At the time of the visit, they were holding 422 and 107 detainees, respectively. Both boats have a similar layout: they are three storeys high, with the immigrant detainees accommodated in two, four or six-person rooms. The rooms for four persons contained a sleeping area and a living area, the latter being equipped with a table and four chairs; the rooms were sufficient in size. The two and six-person rooms were also adequate in size, with seating facilities in the centre. All rooms were equipped with toilet facilities and a refrigerator. The rooms were grouped into eight units; each of which had a recreation room.

In many aspects living conditions could be considered acceptable. However, the narrow corridors and low ceilings on both boats led to an oppressive environment and the boats were poorly ventilated, resulting in problems of humidity. In addition, none of the four outdoor yards on each boat provided shelter from inclement weather and the outdoor exercise yards used by inmates in solitary confinement were totally unsuitable, providing very little access to fresh air.

58. The CPT is aware of the ongoing discussions with respect to the suitability of boats as detention facilities in the Netherlands. For instance, the Stockholm was inspected jointly by the Inspectorate for the Implementation of Sanctions and the Council for the Application of Criminal Law and Youth Protection in April 2006. Their report made several recommendations, such as the installation of more spacious outdoor exercise yards. The report also referred to the maximum length of stay on the boats; it stated that, due to the conditions, immigration detainees should not be held on the boats for longer than six months. Following the report, several improvements were made. Nevertheless, judicial decisions of 11 December 2006 and 26 April 2007 laid down that immigration detainees should not be accommodated on the boats for longer than six months. The NACI has also applied the rulings to detainees held on the Kalmar. Indeed, the delegation did not meet any detainees who had stayed on the boats for longer than six months.

The CPT agrees that the boats are unsuitable for long-term detention and that they cannot easily be transformed into acceptable detention facilities. **The CPT recommends that the Netherlands authorities cease, at the earliest opportunity, to use boats as facilities for immigration detainees. In the meantime, it recommends that measures be taken to decrease the humidity on the Stockholm and Kalmar, to allow detainees in solitary confinement to have access to more suitable outdoor exercise yards and to install shelters against inclement weather in all the exercise yards.**

²⁷ See Article 6.5.3.5 of part A of the Aliens circular.

59. The Rotterdam Airport Expulsion Centre is housed in a former hangar directly adjacent to Rotterdam Airport. With a capacity of 212, on the day of the delegation's visit, the Centre was accommodating 110 detainees in single and double rooms, grouped into several units. Overall the material conditions in the Centre were significantly better than on the detention boats. That said, the outdoor exercise yards were not ideal; they were long, narrow cages, shielded from public view by plastic sheeting, which resulted in a somewhat confined atmosphere. The Expulsion Centre has a medical unit with three rooms, where detainees with mental disorders are accommodated. This unit has been allocated additional time from a nurse.

c. regime

60. In the past, the Netherlands authorities have been commended by the CPT for providing a varied and stimulating regime for immigrant detainees, including work, recreation, language or computer education, sports, library, music and handicraft²⁸. In 2007 the findings were markedly different; many activities were no longer available while others were reduced to a strict minimum. The regime on the two detention boats was particularly meagre, with detainees having a total of 18 hours of activities a week, including one hour of daily outdoor exercise, library visits (one hour a week), outdoor activity (three hours a week) and the option of visiting the shop three times a week. There were no educational activities, and work (cleaning and laundry) was available for only a few detainees. However, on the Kalmar the regime was slightly more developed as detainees could benefit from the presence of a sports instructor during outdoor exercise and there was a full-time librarian.

Within their units, detainees were generally free to leave their rooms and visit the unit's recreation room. However, a more restrictive regime was in operation in the admission department of both boats. In these departments, detainees were required to remain in their rooms for 10 days when they were not participating in activities, in order to be available for administrative arrangements linked to their expulsion. Consequently, they spent some 21 hours or more per day confined to their rooms.

61. It has been over 10 years since the CPT last visited an immigration detention centre in the Netherlands and the delegation noted the extent to which the Dutch approach to the administrative detention of immigration detainees has changed, largely duplicating the transformation in the prison system. Indeed, both forms of detention are linked by Article 9 of the Penitentiary Principles Act. Facilities used for the administrative detention of immigration detainees, such as the two detention boats, are classified as remand prisons; thus, the regime applied to immigration detainees is similar to that of remand prisoners. Moreover, the CPT understands that immigration detainees are normally held under a limited community regime²⁹ in conformity with Article 21 of the Penitentiary Principles Act and Article 3 of the Penitentiary Order.

The CPT would like to receive clarification as to the reason(s) for the decision to classify immigration detention centres as remand prisons.

²⁸ CPT/ Inf (98) 15; paragraph 93.

²⁹ Under a limited community regime, inmates are only allowed to associate during organised activities.

62. The CPT is aware that it may be necessary to deprive persons of their liberty for a period under aliens legislation in order to facilitate their expulsion. However, it is concerned by the linkage of two dissimilar forms of detention and sees no reason for immigration detainees to be held in prison facilities under a limited community regime. In the view of the CPT, such persons should be accommodated in specifically designed centres, offering material conditions and a regime appropriate to their legal status. The CPT recognises that special precautions might have to be taken vis-à-vis certain foreign nationals detained under aliens legislation (e.g. for disciplinary, health or security reasons). However, to apply a limited community regime indiscriminately to all detained aliens cannot be justified.

The CPT recommends that the Netherlands authorities reconsider their approach towards the detention of immigration detainees, in the light of the above remarks. Immigration detainees should have access to a full community regime and the additional restrictions for detainees in the admission departments should be reviewed.

63. The Rotterdam Airport Expulsion Centre has a slightly different regime, as it is governed by the Border Accommodation Regime Regulations Decision (*Reglement Regime Grenslogies*). Immigration detainees are allowed to move around their unit freely for most of the day, and have a well-equipped recreation room at their disposal. Further, each unit has access to a large interior court for half the day. In addition, one hour of outdoor exercise per day is guaranteed. Although few activities were organised, the regime was more lenient and therefore somewhat better adapted to the needs and status of migrant detainees.

d. staffing

64. The staff of centres for immigration detainees have a particularly onerous task. Firstly, there will inevitably be communication difficulties caused by language barriers. Secondly, many detained persons will find the fact that they have been deprived of their liberty when they are not suspected of any criminal offence difficult to accept. Thirdly, there is a risk of tension between detainees of different nationalities or ethnic groups. Consequently, the CPT places a premium upon the supervisory staff in such centres being carefully selected and receiving appropriate training. Staff should possess both well-developed qualities in the field of interpersonal communication and cultural sensitivity, given the diverse backgrounds of the detainees. Further, at least some of them should have relevant language skills. Further, they should be taught to recognise possible symptoms of stress reactions displayed by detained persons and to take appropriate action.

65. On the two detention boats and in the Rotterdam Airport Expulsion Centre, the staff consisted of both employees of a private security company and regular prison officers attached to the so-called NACI-prison officers pool, a unit that provides officers to prisons with a staff shortage. On the day of the visit, the Stockholm had 220 custodial staff (110 prison officers from the pool and 110 employees from a private security company), and the Kalmar had a complement of around 155 (of whom 66% were employed by a private security company). Of the 130 custodial staff at the Rotterdam Airport Expulsion Centre about 50% were employed by a private security firm. Each of the three facilities also employed specialised staff, such as social workers, spiritual counsellors and psychologists.

66. There is a certain division of tasks between regular prison officers and private security staff and some senior posts are reserved for regular NACI-staff. However, in principle all functions could be carried out by any custodial staff. As a rule, on every unit, there should always be at least one NACI-prison officer on duty; nevertheless, **the delegation observed that this was not always the case.**

67. Private security staff told the delegation that before taking up their duties, they had to complete two courses: one was on self-defence and the other was an induction course on prison work. However, the latter course did not cover the intercultural and interpersonal aspects of working in a detention facility for immigration detainees.

Custodial staffing on the two detention boats reflected the temporary nature of these facilities and their qualification as remand prisons. In particular, the CPT has some misgivings about the training given to private security staff currently working in the detention facilities for immigration detainees. In the CPT's view, that training is insufficient to enable such staff to undertake other than passive security duties, thus reinforcing the carceral atmosphere already very evident on the boats. **The CPT would like to receive the comments of the Netherlands authorities on this point.**

e. use of restraints

68. On the detention boat Kalmar, the delegation found that an immigration detainee, placed in isolation as a punishment for tampering with the sprinkler installation, had had his arms and legs restrained after he had once again tampered with the fire safety devices in the isolation cell itself. He remained restrained until transferred to the isolation department at Vught Prison, some 24 hours later. Although, the isolation cells were equipped with CCTV, in order to ensure visual supervision, there was no continuous and direct monitoring by staff of the detained person whilst restrained.

The director confirmed the delegation's findings and explained that restraining a detainee until his transfer to Vught Prison was standard practice on both the Kalmar and the Stockholm, whenever a detainee placed in isolation was found tampering with the sprinklers. She also stated that the length of time a detainee would be kept restrained depended on how long it took to transfer him to Vught Prison.

69. The CPT is seriously concerned by the practice of restraining detainees in isolation for lengthy periods without medical justification; such a practice could very well be considered as ill-treatment. In the Committee's view, means of restraint in addition to placement in an isolation cell should only be applied to an agitated or violent prisoner and should rarely last for more than a few hours, unless there is a medical condition requiring this. And in the latter case, the decision to resort to the use of means of restraint should be taken by a doctor and there must always be a constant, direct personal supervision of the person restrained. Means of restraint should be removed at the earliest opportunity; it should never be applied, or its application prolonged, as a punishment.

The CPT recommends that the Netherlands authorities immediately cease the practice of applying physical means of restraint to detained persons who tamper repeatedly with the sprinkler system on the Kalmar and Stockholm detention boats; such detainees should be transferred to a suitable alternative facility without delay.

f. medical care

70. In general, the level of medical care provided on the boats and at the Rotterdam Airport Expulsion Centre was acceptable. There was access to a wide range of health care staff (a medical doctor, nurses, a dentist and a psychiatrist, as well as other medical specialists) and they were sufficient in number. Further, all new arrivals were medically examined within 24 hours. However, during the night neither a doctor nor a nurse was present or even on call in any of the three facilities visited. Instead, in the event of a medical necessity, an external emergency service was called.

The CPT recommends that someone competent to provide first aid, preferably a person with a recognised nursing qualification, always be present on the premises of the detention boats and the Rotterdam Airport Expulsion Centre, including at night. Further, a medical doctor should always be on call.

71. The delegation was somewhat concerned by the arrangements in place with respect to detainees with psychiatric illnesses. For instance, on the Stockholm, the delegation met a man who appeared to be suffering from a serious psychiatric disorder. Due to his erratic behaviour, he was kept in isolation and visited daily by a medical doctor and psychologist and weekly by a psychiatrist. There were ongoing attempts by the management of the Stockholm to arrange a transfer to a more suitable environment, such as an Individual Support Department (*Individuele Begeleidingsafdeling*) in a regular prison. However, due to lack of space elsewhere, this man was finally accommodated in the medical unit of the Rotterdam Airport Expulsion Centre. Here, the CPT's delegation met with him a few days later; his condition was unchanged.

In the light of the above remarks, **the CPT would like to receive the comments of the Netherlands authorities on the arrangements for psychiatric care for immigration detainees.**

- g. contact with the outside world

72. On the two boats, as well as in the Rotterdam Airport Expulsion Centre, detainees were entitled to a one-hour weekly visit. The CPT's delegation was told that, on the Stockholm, the initiative had been taken to make use of external volunteers to visit immigration detainees who would otherwise not receive visits. This is a very welcome initiative **which, if deemed successful, should certainly be considered by other immigration detention facilities. The CPT also invites the Netherlands authorities to explore the possibility of increasing the visiting entitlement to at least two hours a week.**

There was unlimited access to a telephone to make a ten-minute call. However, there was no possibility to make a reverse-charge call, limiting considerably the possibilities for contact for detainees without sufficient means. **The CPT recommends that the Netherlands authorities verify the situation regarding the cost of telephone calls and the possibility of other communications.**

5. Youth detention facilities

- a. introduction

73. The delegation visited, for the first time, the De Hartelborgt Closed State Youth Detention Centre, in Spijkenisse. It did not visit the much smaller annex in the Rotterdam borough of Kralingen.

74. Under Dutch criminal law, juveniles who have committed a criminal offence may be sentenced to imprisonment for a maximum of two years, if they are between 16 and 18 years of age, or to one year's imprisonment if they are between 12 and 16. A juvenile may also be sentenced to placement in a juvenile institution (*PIJ-maatregel*), which is, in fact, a treatment order. Such a treatment order is initially imposed for two years, but may be prolonged to a maximum of four or, under certain conditions, even to six years, depending on the nature of the criminal offence and the juvenile's personality. Both juvenile imprisonment and treatment orders are executed in youth detention centres under the responsibility of the National Agency for Correctional Institutions of the Ministry of Justice.

In exceptional cases, young persons between the ages of 18 and 21 may be sentenced under juvenile provisions in criminal law and held in juvenile detention centres³⁰, resulting in such centres accommodating young persons ranging from 12 to 26 years of age.

³⁰ See Article 77c of the Criminal Code.

75. Youth detention centres may also accommodate juveniles placed under a civil law provision. In recent years, there has been growing resistance to the placement of juveniles on civil and penal law provisions in the same establishment, and a strict separation between the two categories is now under preparation. This will result in a significant number of youth detention centres being transferred to the Ministry of Health. However, De Hartelborgt will remain under the responsibility of the Ministry of Justice.

The CPT's delegation was informed that De Hartelborgt is currently in the process of transforming its pedagogical approach from one based on containment to one that is more therapeutic. A number of modifications to its organisation are envisaged.

76. The establishment has 95 places for juvenile imprisonment and 26 for treatment - 15 beds in three intensive care units and a psychiatric department (FOBA³¹) consisting of two units of five and six beds respectively. It is the only youth centre in the Netherlands with a FOBA and it admits juveniles with psychiatric disorders that cannot be treated in other juvenile centres. Although De Hartelborgt caters for boys, the FOBA admits girls as well. At the time of the visit, the establishment had five vacant places.

b. ill-treatment

77. The CPT's delegation did not receive any allegations of ill-treatment by members of staff. On the contrary, staff at De Hartelborgt were generally described as acting in a correct manner by those residents with whom the delegation met.

c. material conditions

78. The material conditions were very good. All residents had their own room, equipped with a bed, cupboard, chair, table and call bell, in conformity with the Regulation on requirements of rooms in juvenile detention facilities (*Regeling eisen kamer justitiële jeugdinrichtingen*). The rooms had good artificial lighting and access to natural light, and were well-ventilated. All rooms had shower and toilet facilities. The accommodation was divided into 12 units (including the FOBA and Intensive Care units), each of which had direct access to a sizeable exercise yard. All units had a large common room, equipped with a table, chairs, sofas and a kitchen.

Further, the establishment had a sports hall with various amenities (such as a climbing wall), several education facilities and a well-stocked library.

79. In the isolation unit, there were two rooms that could be used as short-term accommodation for new residents for whom there was temporarily no place on the De Bolder reception unit. These rooms were sparsely furnished, containing only a bed; **they should be equipped with a table and chair.**

³¹ FOBA stands for "Forensische Observatie- en Begeleidingsafdeling".

The outdoor exercise yard attached to the isolation unit was also used by the residents of the FOBA. The yard was in fact a room with high, tiled walls and a roof; fresh air and light came through frameless windows placed high-up, which meant that juveniles could not enjoy the sensation of being outside. Unsurprisingly, juveniles often forewent their right to outdoor exercise. **The CPT recommends that the outdoor exercise yard of the isolation department be redesigned.**

d. staffing

80. The custody and care of juveniles deprived of their liberty is a particularly challenging task. The staff called upon to fulfil that task should be carefully selected for their personal maturity and ability to cope with the challenges of working with - and safeguarding the welfare of - this age group. More particularly, they should be committed to working with young people, and be capable of guiding and motivating the juveniles in their charge. All such staff should receive professional training, both during induction and on an ongoing basis, and benefit from appropriate external support and supervision in the exercise of their duties.

In total, De Hartelborgt has 273 mixed-gender staff from a wide range of professions, including six psychologists, four social workers, 108 group leaders and medical staff. However, the delegation was told that the establishment experiences difficulties in recruiting qualified staff, in particular, medical staff, such as psychiatrists, and properly trained group leaders; for instance, on the FOBA there was a psychiatrist present for only 66% of the time provided for and not all the nurses' positions were filled. Apparently, many medical and other professionals are not attracted by the prospect of working with challenging juveniles. The shortage of group leaders is resolved by employing, inter alia, former military personnel, who are given on-the-job training. This situation is exacerbated by the high turnover of staff as is illustrated by the fact that the majority of experienced staff on the Very Intensive Care, De Talie unit, will be leaving in the near future.

81. A high rate of staff turnover combined with the difficulty in recruiting new, well-trained staff, obviously has an impact on the quality of care provided. Even with the current staff complement, De Hartelborgt may experience serious difficulties in achieving its goal of adopting a more therapeutic approach. **In the light of the above remarks, the CPT would like to receive the comments of the Netherlands authorities on how they intend to tackle the staffing challenges.**

e regime

82. Most newly admitted residents are placed on the De Bolder reception unit, where they are kept under observation for about one week, after which they are placed on a suitable unit. Article 22 of the Juvenile Detention Principles Act states that residents should participate in communal activities for at least 12 hours a day on weekdays, and eight-and-a-half hours during the weekend. Indeed, the juveniles on the regular units spent most of the day between 8 a.m. and 9 p.m. outside their rooms in the company of other residents. On weekdays, there are various vocational training courses, such as metalwork, woodwork and catering. Education is mandatory for all residents of De Hartelborgt and is provided by Horizon, an association not affiliated with De Hartelborgt. However, due to a lack of staff, lessons are regularly cancelled.

83. For juveniles placed in an intensive care or a FOBA unit, the Juvenile Detention Principles Act prescribes fewer communal activities: six hours on weekdays and four hours during the weekend.

The out-of-room time required by law was certainly not being met for the residents placed on the De Talie intensive care unit. Juveniles spent up to 22 hours a day in their rooms, apparently to reduce the risk of violence that might occur if they interacted socially with other residents. Moreover, despite their placement on an intensive care unit and their sentence to treatment, there was little interaction with staff during the time they were confined to their rooms, apparently due to staff shortages. At least one of the juveniles on the unit had been transferred from another juvenile detention centre where, due to his violent behaviour, he had spent prolonged periods deprived of social interaction with other residents and with minimum contact with staff.

The CPT has misgivings about the approach to the juveniles on De Talie. Lengthy seclusion with little contact with staff can hardly be described as appropriate treatment, and is difficult to reconcile with the pedagogical objectives of placement in a juvenile detention facility. Where a juvenile, who is not subject to a disciplinary regime, is not allowed to associate with other juveniles for most of the day due to concerns for safety or mental or physical health, there should be much greater interaction with staff. Such interaction prevents the juvenile from being totally isolated and ensures that he benefits from his placement in a youth detention facility. **The CPT recommends that the Netherlands authorities take the necessary measures to improve the regime afforded to juveniles on the De Talie unit, in the light of the above remarks.**

84. The delegation was particularly concerned by the regime of one particular young man accommodated on De Talie. His file did not make reference to extreme violence or other behavioural difficulties. Yet, after his arrival at De Hartelborgt from a juvenile establishment in Vught, he spent around three-and-a-half months on the FOBA, during which time he was not on any medication. He was then transferred to De Talie, where he spent up to 22 hours a day alone in his room, pursuing recreational and educational activities. Curiously, it seems that in Vught he had been placed under a normal regime.

Staff explained that this young man had been sentenced to a treatment measure for a terrorist offence, and out of fear that he would recruit others to violent religious fundamentalism, it was decided that he should remain separated from other residents. It is intended that his regime will become slightly more lenient in the course of his detention in De Hartelborgt; for instance, it was intended that he would participate in the educational activities of another unit soon after the CPT's visit.

In this case, placement on the De Talie unit was related to the young man's offence rather than to his behaviour; such a placement could be considered as a preventive measure. However, from the files seen by members of the delegation there were no indications that he had in fact attempted to recruit other residents for violent religious purposes. Even if attempts to recruit others had been made, immediate placement in a regime of isolation is a draconian measure for a person of such an age, especially as there was no indication that other, less drastic measures had been attempted previously. **The CPT would like to receive the comments of the Netherlands authorities on this case.**

85. In principle, for every resident at De Hartelborgt a pedagogical plan (*verblijfsplan*) or a treatment plan (*behandelplan*) is drawn up after six weeks, which should involve the parents or guardians of the juvenile and the juvenile himself. The plan is reviewed every 12 weeks. However, the delegation found that a majority of juveniles did not have a pedagogical or a treatment plan; for instance, only 21 pedagogical plans had been drafted for 2007. One of the reasons provided was the unpredictable length of stay for remanded residents. Further, it appeared that no plan was drawn up if a juvenile was expected to remain for less than three months in the institution.

A pedagogical or treatment plan is a necessary tool for staff in focusing attention on problematic behaviour in a juvenile. Without such a plan, staff tend to focus too much on containment and control. **The CPT recommends that the Netherlands authorities ensure that greater efforts are made to draw up an individualised pedagogical or treatment plan for each resident of De Hartelborgt.**

f. disciplinary sanctions and order measures

86. The Juvenile Detention Principles Act empowers the Director to impose both order measures³² and disciplinary sanctions³³; either may lead to a placement in a segregation cell on the isolation department. The decision to impose an order measure or a disciplinary sanction is delegated to the head of unit, and the procedure provides for the hearing of the resident concerned. The decision is handed down in writing and may be appealed.

Both order measures and disciplinary sanctions may be imposed in “the interest of the order and safety of the establishment or the undisturbed execution of the detention”; the delegation found that the distinction between the two categories was not clear. Nor did staff appear to be certain about the difference. However, for a juvenile there is a marked difference between an order measure and a disciplinary sanction, as the former entails placement in a segregation cell for a maximum of two days, while the latter is for seven days.

In the CPT’s view, order measures and disciplinary sanctions serve distinct purposes and should therefore not be mixed. An order measure is imposed in the interest of the institution and its residents and staff, and thus aims at protection and prevention, while a disciplinary sanction is intended to correct the juvenile’s behaviour, and thus has a pedagogical objective.

The CPT recommends that operational guidelines be drafted to ensure that there is a clear distinction between the application of an order measure and a disciplinary sanction.

87. The CPT is particularly concerned about the placement of juveniles in conditions resembling solitary confinement, a measure which can rapidly have harmful consequences for them. The Committee considers that resort to such a measure must be regarded as highly exceptional. If juveniles are held separately from others, this should be for the shortest possible period of time and, in all cases, they should be guaranteed appropriate human contact, granted access to reading material and offered at least one hour of outdoor exercise every day.

³² Cf. Articles 24 and 25 Juvenile Detention Principles Act.

³³ Cf. Articles 54 and 55 Juvenile Detention Principles Act.

In De Hartelborgt, the delegation observed that a juvenile placed in isolation did have access to reading material and was offered daily outdoor exercise. However, the juvenile is left to his own devices most of the time without any contact with staff. The CPT considers that the pedagogical effect of a disciplinary sanction will be reinforced if staff remain actively involved with the juvenile while he is placed in isolation, for instance by carrying out targeted activities with the juvenile. **The CPT recommends that measures be taken in this direction.**

88. Despite clear guidance given by legislation and house rules as to the disciplinary sanctions authorised in De Hartelborgt, the delegation noted that other, non-official, punishments were applied by staff. For instance, during the visit, juveniles placed on De Bolder were collectively punished because one of the residents refused to carry out a certain task; they all lost the privileges they had earned in the course of their stay on that unit. Further, the delegation was informed that some residents were told that they would be transferred to the spare rooms on the isolation unit if they would not follow instructions.

The CPT does not agree with staff imposing non-official punishments. Non-official punishments by definition have neither safeguards nor supervision by senior management and there is a risk that they will be applied arbitrarily, thereby undermining the pedagogical climate in a juvenile detention facility. Further, given the broad range of means to discipline juveniles that are already available to staff, the application of additional measures does not appear to be necessary. The Committee also strongly disagrees with the application of collective sanctions; disciplining an entire unit when only a few misbehave severs the link between conduct and sanction. It also transmits to the residents a sign of staff weakness. **The CPT recommends that the Netherlands authorities send a clear message to the staff of De Hartelborgt that disciplinary sanctions or order measures other than those described in the house rules and relevant legislation are not permitted.**

89. Another concern for the delegation was the use of the so-called “time-out”, whereby a juvenile is sent to his room in order to cool down. The application of the time-out varies throughout the institution with respect to length and cause, and it is not recorded. While the CPT fully understands that staff should have the possibility to intervene immediately if the behaviour of a juvenile warrants it, a time-out should not become an informal equivalent to a disciplinary sanction or an order measure, but without their safeguards. **The CPT recommends that clear instructions be given to the staff of De Hartelborgt about the proper application of a time-out.**

90. Juveniles transferred to the isolation department were systematically handcuffed, even when they were only being temporarily placed in an isolation cell due to a room search. Moreover, contrary to the internal rules in place, residents of the FOBA were handcuffed during their transfer to the isolation department.

In many instances, the use of handcuffs during transfers is unnecessary, for example, when a juvenile is cooperative during his transfer to the isolation department. **The CPT recommends that the Netherlands authorities review the systematic use of handcuffs for all transfers to the isolation unit; their application should in each case be based upon a risk assessment. Further, the Netherlands authorities should remind FOBA staff not to handcuff residents when they are being transferred to the isolation department.**

g. means of restraints

91. Every establishment where restraints are in use should have a comprehensive, carefully developed, policy on their application. The involvement and support of both staff and management in elaborating the policy is essential. Such a policy should make clear which means of restraint may be used, under what circumstances they may be applied, the practical means of their application, the supervision required and the action to be taken once the measure is terminated.

The policy should also contain sections on other important issues such as: staff training; complaints policy; internal and external reporting mechanisms; and debriefing. In the CPT's opinion, such a comprehensive policy is not only a major support for staff, but is also helpful in ensuring that residents and their guardians or proxies understand the rationale behind any measure of restraint that may be imposed.

92. In De Hartelborgt the use of restraints is governed by the Juvenile Detention Principles Act, the Regulation on the use of mechanical means of restraint on juveniles (*Regeling toepassing mechanische middelen jeugdigen*) and an internal protocol. The legislation and rules in force lay down a wide range of norms regarding the application of means of restraint. For example, juveniles below the age of 16 may be restrained for a maximum of 12 hours, while those aged 16 and older for periods up to 24 hours. Direct, personal and continuous supervision by staff is mandatory when there is a risk of suffocation. In other cases, supervision is carried out by means of regular inspection (every 30 minutes) and the use of a CCTV-camera. It should be noted that at the time of the visit, no cases of the use of means of restraint had taken place at De Hartelborgt during 2007.

The CPT considers that the rules on the use of means of restraint with respect to juveniles should be tightened. In those exceptional cases that juveniles are restrained, they should be the subject of direct, personal and continuous supervision and not only those judged to be at risk of suffocating. Further, the use of means of restraint should be for the shortest possible time (usually minutes or a few hours) and not such lengthy periods as currently provided for in the legislation. In the CPT's view, a staff member present in the room may have a calming effect on a restrained juvenile as well as being able to provide immediate assistance if needed. Further, such a presence is helpful in ensuring that means of restraint are applied for no longer than absolutely necessary

The CPT recommends that the Regulation on the use of mechanical means of restraint on juveniles be reviewed, in the light of the above remarks.

93. At De Hartelborgt, the application of means of restraint is registered in the daily logbook, but there is no separate mechanical restraints register. In order to enhance oversight over the use of means of restraint for management and inspection purposes, the CPT considers that such a register should be introduced. The entries in this register should include the times at which the mechanical restraints measure began and ended, the circumstances of the case, the reasons for resorting to such measures, the type of measure, the name of the doctor who order or approved it, and an account of any injuries sustained by inmates or staff.

The CPT recommends the introduction of a special register on the application of mechanical restraints.

h. forced medical treatment and other medical issues

94. Residents of the FOBA may be administered medication against their will. In principle, 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.

In De Hartelborgt, the administration of medication against the will of a resident follows a detailed protocol which describes the various steps to be taken before the forced administration of medication may be carried out, as well as after-care provided to the juvenile³⁴. Any administration of forced medication is reported to various external authorities, including the Health Care Inspectorate and the supervisory committee.

The CPT welcomes the detailed protocol in force and the close monitoring by the Health Care Inspectorate and other authorities with respect to the forced medical treatment of FOBA residents.

95. The CPT's delegation noted the absence of a comprehensive medical file for FOBA residents at De Hartelborgt. The psychiatrist, nurses and physician all kept their own files, which were not accessible to other medical staff. At the same time, the computerised medical file did not contain all the information necessary for health-care providers; for instance, information regarding administered medication could only be found in the units and not in the medical ward. **The CPT recommends the introduction of a comprehensive medical file for FOBA residents at De Hartelborgt.**

³⁴

'Protocol gedwongen geneeskundige handelingen in een Justitiële jeugdinrichting'.

APPENDIX I

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

Cooperation between the CPT and the Netherlands authorities

requests for information

- on the progress towards the adoption of legal provisions concerning the CPT's right of access to personal medical data (paragraph 6).

Law enforcement agencies

Preliminary remarks

recommendations

- the Netherlands authorities to take appropriate measures to minimise the time detained persons have to spend in police cells. Particular efforts should be made to ensure that juveniles are not detained in police cells for prolonged periods and are transferred to appropriate juvenile detention facilities expeditiously. Further, immigration detainees should be promptly transferred to suitable accommodation in keeping with their needs and status (paragraph 9).

Ill-treatment

requests for information

- on the outcome of the investigation into the allegations of ill-treatment by officers of the Lelystad police service referred to in paragraph 10 (paragraph 10).

Conditions of detention and regime

recommendations

- the standards with respect to access to natural light contained in Article 6 (1) of the Regulation on police cell complexes to be implemented in all police cells in the Netherlands (paragraph 14).

comments

- the CPT trusts that ventilation will be improved in the cells of Rotterdam Zuidplein Police Station when this establishment is renovated (paragraph 14).

requests for information

- comments on the more active role that custodial officers in the central police detention facilities in The Hague and Rotterdam could play in the exercise of the right of notification of deprivation of liberty (paragraph 13).

Safeguards against ill-treatment

recommendations

- the Netherlands authorities to circumscribe in law more precisely the possibility to delay the exercise of the right of notification of deprivation of liberty (paragraph 19);
- the Netherlands authorities to ensure that all persons detained by the police who are not subjected to the restrictions of Article 62 (2) b of the Code of Criminal Procedure, are given the opportunity to exercise effectively the right to notify a third party or relative as from the outset of detention (paragraph 20);
- the Netherlands authorities to introduce the right of access to a lawyer from the outset of deprivation of liberty (paragraph 21);
- steps to be taken at Rotterdam Doelwaterplein Police Station and, if appropriate, in other police establishments in the Netherlands, to ensure that all medical examinations are conducted out of the hearing and - unless the doctor concerned expressly requests otherwise in a given case - out of the sight of police staff (paragraph 23);
- the Netherlands authorities to reconsider their position with respect to the right of access to a doctor of his/her own choice by persons detained in a police cell (paragraph 24).

requests for information

- details of the pilot project in the regions of The Hague and Rotterdam allowing for the right of access to a lawyer as from the outset of police detention and, in due course, information on the results (paragraph 22).

Establishments under the authority of the Ministry of Justice

Preliminary remarks

recommendations

- a comprehensive sanctions register to be introduced in all establishments under the Ministry of Justice (paragraph 30);
- more suitable clothing to be provided to detained persons placed in isolation (paragraph 30).

requests for information

- the criteria for accommodation in double-occupancy cells (paragraph 25);
- whether additional staff have been deployed in prisons where double cell occupancy has been introduced (paragraph 25);
- confirmation that double-occupancy cells have indeed been enlarged before entering into service and, if so, information about the cell space per prisoner in a double-occupancy cell (paragraph 25);
- on the evolution and implementation of the new concept of Measured Detention and Treatment (paragraph 27).

Ill-treatment

recommendations

- the Netherlands authorities to draft a comprehensive procedure on how to deal with allegations of ill-treatment within establishments under the responsibility of the National Agency of Correctional Institutions, taking into account the remarks made in paragraphs 31 to 38 (paragraph 38).

The terrorist departments at De Schie Prison and Vught Prisons

recommendations

- a regular review of placement in a terrorist department to be introduced, based upon criteria clearly laid down in law (paragraph 42);
- a comprehensive risk assessment process to be introduced as the basis for placement in a terrorist department (paragraph 42);
- improvements to be made with respect to the ventilation and lighting arrangements at the Vught Prison terrorist department (paragraph 44);
- the Netherlands authorities to take measures to ensure that prisoners are not, by default, kept in conditions equivalent to isolation (paragraph 47);
- security measures to be reviewed in the terrorist departments with respect to contact between prisoners and their lawyers in order to ensure that they are not having an unduly negative impact on the quality of their legal defence (paragraph 50);
- the manner in which medical care is delivered to inmates held in terrorist departments to be reviewed; more specifically, all medical examinations should be conducted out of the hearing and - unless the doctor concerned requests otherwise in a given case - out of the sight of prison officers (paragraph 52);
- the Netherlands authorities to cease handcuffing prisoners during medical examinations outside their cells (paragraph 53).

requests for information

- confirmation that the two isolation cells in De Schie Prison will be redesigned before being used (paragraph 43);
- on the measures taken to prevent the complete social isolation of the remaining female prisoner in the terrorist department at De Schie Prison (paragraph 48);
- comments on the Committee's concerns with respect to the regime in place in the terrorist departments (paragraph 49);
- confirmation that mail addressed to, and originating from, the CPT is dealt with in a confidential manner. Further, the Committee would like to be informed whether prisoners are notified of any mail that is withheld by the prison administration (paragraph 51).

Facilities for immigration detainees

recommendations

- the Netherlands authorities to cease, at the earliest opportunity, to use boats as facilities for immigration detainees (paragraph 58);
- measures to be taken in the meantime to decrease the humidity on the Stockholm and Kalmar detention boats, to allow detainees in solitary confinement to have access to more suitable outdoor exercise yards and to install shelters against inclement weather in all the exercise yards (paragraph 58);
- the Netherlands authorities to reconsider their approach towards the detention of immigration detainees, in the light of the remarks in paragraph 62. Immigration detainees should have access to a full community regime and the additional restrictions for detainees in the admission departments should be reviewed (paragraph 62);
- the Netherlands authorities to cease immediately the practice of applying physical means of restraint to detained persons who tamper repeatedly with the sprinkler system on the Kalmar and Stockholm detention boats; such detainees should be transferred to a suitable alternative facility without delay (paragraph 69);
- someone competent to provide first aid, preferably a person with a recognised nursing qualification, should always be present on the premises of the detention boats and the Rotterdam Airport Expulsion Centre, including at night. Further, a medical doctor should always be on call (paragraph 70);
- the Netherlands authorities to verify the situation regarding the cost of telephone calls and the possibility of other communications (paragraph 72).

comments

- the Netherlands authorities are invited to introduce an absolute time limit for the detention of all foreign nationals under alien legislation (paragraph 56);
- the delegation observed that there was not always an NACI-prison officer on duty in every unit (paragraph 66);
- if deemed successful, the use on the Stockholm of external volunteers to visit immigration detainees who would otherwise not receive visits should certainly be considered by other immigration detention facilities (paragraph 72);
- the Netherlands authorities are invited to explore the possibility of increasing the visiting entitlement to at least two hours a week (paragraph 72).

requests for information

- detailed information concerning the plans to relocate the Rotterdam Airport Expulsion Centre (paragraph 55);
- clarification as to the reason(s) for the decision to classify immigration detention centres as remand prisons (paragraph 61);
- comments on the training given to private security staff currently working in the detention facilities for immigration detainees (paragraph 67);
- comments on the arrangements for psychiatric care for immigration detainees (paragraph 71).

Youth detention facilities (De Hartelborgt Closed State Youth Detention Centre)

recommendations

- the outdoor exercise yard of the isolation department at the De Hartelborgt Centre to be redesigned (paragraph 79);
- the Netherlands authorities to take the necessary measures to improve the regime afforded to juveniles on the De Talie unit (paragraph 83);
- the Netherlands authorities to ensure that greater efforts are made to draw up an individualised pedagogical or treatment plan for each resident of De Hartelborgt (paragraph 85);
- operational guidelines to be drafted to ensure that there is a clear distinction between the application of an order measure and a disciplinary sanction (paragraph 86);
- measures to be taken in De Hartelborgt to ensure that staff remain actively involved with juveniles placed in isolation (paragraph 87);
- the Netherlands authorities to send a clear message to the staff of De Hartelborgt that disciplinary sanctions or order measures other than those described in the house rules and relevant legislation are not permitted (paragraph 88);
- clear instructions to be given to the staff of De Hartelborgt about the proper application of a time-out (paragraph 89);
- the Netherlands authorities to review the systematic use of handcuffs for all transfers to the isolation unit: their application should in each case be based upon a risk assessment. Further, the Netherlands authorities should remind FOBA staff not to handcuff residents when they are being transferred to the isolation department (paragraph 90);

- the Regulation on the use of mechanical means of restraint on juveniles to be reviewed, in the light of the remarks made in paragraphs 91 and 92 (paragraph 92);
- a special register on the application of mechanical restraints to be introduced in De Hartelborgt (paragraph 93);
- a comprehensive medical file for FOBA residents at De Hartelborgt to be introduced (paragraph 95).

comments

- the two rooms in the isolation unit that could be used as short term accommodation for new residents should be equipped with a table and chair (paragraph 79).

requests for information

- in the light of the remarks in paragraphs 80 and 81, how the Netherlands authorities intend to tackle the staffing challenges at De Hartelborgt (paragraph 81);
- comments of the Netherlands authorities on the case referred to in paragraph 84 (paragraph 84).

APPENDIX II

**LIST OF THE AUTHORITIES AND OTHER PERSONS
WITH WHICH THE CPT'S DELEGATION HELD CONSULTATIONS**

State authorities

Ministry of Interior

- Ms G. TER HORST Minister
- Ms R. DAS DORES Police expert

Ministry of Justice

- Mr E. HIRSCH BALLIN Minister
- Ms N. ALBAYRAK State Secretary of Justice
- Ms M. DAAMS Legal Adviser, Directorate of Legislation
- Ms T. DOPHEIDE Legal Advisor, Directorate of Legislation and Liaison Officer to the CPT
- Ms J. DREESSEN Legal Advisor, Directorate of Legislation and Liaison Officer to the CPT
- Ms H. KARREMANS Advisor, Directorate of Sanctions and Prevention Policy
- Mr K. KRIJNEN Programme manager
- Mr M. KUIJER Legal Advisor, Directorate of Legislation and Chief Liaison Officer to the CPT
- Ms I. OTTING Advisor, Judicial Youth Policy Department
- Mr H. PETHKE Senior Advisor, Judicial System Department.
- Mr R. ZUIDEMA Advisor, Immigration Policy Department

National Agency of Correctional Institutions

- Mr P. van der SANDE Deputy Head and Sector Director of Prisons
- Ms S. BEUMER Head of Implementation Sector of Prisons
- Mr C. HERSTEL Deputy Head, Sector of Custodial Clinics
- Mr E. NIJMAN Deputy Head, Sector of Special Facilities
- Mr P. VISARIUS Head of Individual Management and Selection Department, Sector of Prisons
- Ms R. WESTERHOF Legal Advisor, Legal Section
- Mr R. de WILDE Account manager, Sector of Young Offender Institutions

National Police Investigations Department

- Mr H. TRIP Director

Inspectorate for the Implementation of Sanctions

- Mr W. MEURS Chief Inspector
- Mr M. TUMMERS Deputy Chief Inspector

Inspectorate for youth care

- Mr C. de FRETES Inspector
- Mr R. BRUIJN Member of staff

Health Care Inspectorate

- Mr. M. de WIT Inspector

Office of the National Ombudsman

- Mr A. BRENNINKMEIJER National Ombudsman
- Mr S. SJOUKE Senior Adviser

Council for the Application of Criminal Law and Youth Protection

- Mr Y. van KUIJK Deputy Member
- Mr P. MEVIS Member of the Prison Section
- Mr P. MOLENAAR Director
- Mr P. PLOOIJ Chief of administration of justice

Non-governmental organisations

Dutch Section of Amnesty International
Dutch Section of Defense for Children

Others

- Mr M. MOERING Professor of Penology at the University of Leiden