COUNCIL OF EUROPE CONSEIL DE L'EUROPE

CPT/Inf (2007) 37

Report to the Maltese Government on the visit to Malta carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

from 15 to 21 June 2005

The Maltese Government has requested the publication of this report and of its responses. The Government's responses are set out in document CPT/Inf (2007) 38.

Strasbourg, 10 September 2007

CONTENTS

COPY OF THE LETTER TRANSMITTING THE CPT'S REPORT 3

I. INTRODUCTION.....4

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED 6

A. Preliminary remarks.....6

B. Ill-treatment.....11

C. Conditions of detention.....13

D. Removal of foreign nationals 15

E. Medical services.....16

APPENDIX 19

Copy of the letter transmitting the CPT's report

Strasbourg, 30 November 2005

Dear Sirs,

In pursuance of Article 10, paragraph 1, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, I enclose herewith the report to the Government of Malta drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its visit to Malta from 15 to 21 June 2005. The report was adopted by the CPT at its 58th meeting, held from 7 to 11 November 2005.

The recommendations, comments and requests for information made by the CPT are set out in bold type in paragraphs 10 to 14, 16 to 20, 23, 25, 26, 28 to 38, and 41 to 44 of the report. The CPT requests the Maltese authorities to provide within three months a response containing an account of action taken by them to implement the Committee's recommendations and setting out their reactions and replies to its comments and requests for information.

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

Yours faithfully,

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

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I. INTRODUCTION

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 Malta from 15 to 21 June 2005. The visit was one which appeared to the Committee "to be required in the circumstances" (cf. Article 7, paragraph 1, of the Convention).

The visit was of a targeted nature; its main purpose was to follow up the implementation of the recommendations made by the CPT concerning the detention centres for foreigners visited in January 2004 (cf. CPT/Inf (2005) 15). The delegation also sought information concerning the inquiry ordered by the Prime Minister, Mr Lawrence GONZI, into incidents at Safi Barracks in January 2005, as well as on some related issues raised by the President of the CPT in her letter of 3 February 2005 (cf. Appendix).

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

- Mauro PALMA (Head of delegation)

- Marc NÈVE.

They were supported by Fabrice KELLENS, Head of Unit of the CPT's Secretariat, and assisted by:

- Catherine PAULET, Psychiatrist, Head of the Regional Medical and Psychological Service, Baumettes Prison, Marseilles, France (expert)

- Salim GHOSTINE (interpreter)

- Chirine HAIDAR (interpreter).

3. The delegation visited the following places:

Police establishments

- Police Headquarters, Floriana
- Ta'Kandja Police Complex, Siggiewi
- Malta International Airport Custody Centre, Luqa
- Open Centre for Foreigners, Hal Far

Military establishments

- Lyster Barracks, 1st Regiment of the Armed Forces, Hal Far
- Safi Barracks, 3rd Regiment of the Armed Forces, Safi.

The delegation also went to Mount Carmel Psychiatric Hospital and to Corradino Correctional Facility, in order to meet foreign detainees and consult medical files.

4. The degree of co-operation received by the CPT's delegation from the authorities was very good.

At national level, the delegation held meetings with Tonio BORG, Deputy Prime Minister and Minister for Justice and Home Affairs, Judge Franco DE PASQUALE - who has been entrusted with the inquiry on the incidents at Safi Barracks in January 2005 - and Brigadier Carmel VASSALLO, Commander of the Armed Forces of Malta. In addition, it met a number of senior officials from the Ministry of Justice and Home Affairs, as well as from the Armed Forces.

The delegation also received excellent co-operation from both management and staff at local level. It was granted prompt access to each of the establishments visited and was provided with the facilities it required in order to carry out its task. Staff were aware of the possibility of a CPT visit and had at least some knowledge of the Committee's mandate.

The delegation is particularly grateful to Mr Charles DEGUARA, Permanent Secretary of the Ministry of Justice and Home Affairs and the CPT's liaison officer, who facilitated the delegation's work at very short notice and in a most efficient manner.

5. At the end-of-visit talks held in Valletta on 21 June 2005, the delegation made an immediate observation under Article 8, paragraph 5, of the Convention. The observation, which was confirmed by the President of the CPT in a letter of 6 July 2005, concerned the medical care provided to irregular immigrants in detention centres. The delegation requested the authorities "to immediately take measures aimed at staffing each of the establishments visited with trained nurses and at organising regular visits by medical doctors"[1]. The delegation requested the authorities to provide information on the measures taken by the end of August 2005.

By letter of 8 November 2005, the Maltese authorities submitted preliminary information concerning the measures taken in response to the immediate observation made by the delegation (cf. paragraph 41). They also informed the CPT that the response of the Maltese authorities to the letter of the President of 6 July 2005 was being finalised and would shortly be submitted to the CPT.

6. The CPT would like to emphasise that the principle of co-operation set out in the Convention is not limited to steps taken to facilitate the task of a visiting delegation. It also requires that decisive action be taken, including at the highest political level, to improve the situation in the light of the Committee's recommendations.

Moreover, the CPT is concerned that certain information requested by the Committee concerning the incident at Safi Barracks on 13 January 2005 has still not been submitted (cf. paragraph 23).

The CPT calls upon the Maltese authorities to take all necessary measures to ensure full co-operation with the Committee, in line with Article 3 of the Convention.

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[1] This measure was already mentioned in the report on the visit made in January 2004 (cf. CPT (2005) 15, paragraph 53).

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Preliminary remarks

7. Since the January 2004 visit, irregular immigrants have been arriving on Malta's shores in ever-growing numbers. In summer 2005, the situation was so serious that it could easily be termed a national crisis, since the Maltese authorities' material and human resources were stretched to breaking point. Indeed, as they pointed out in their response to the CPT's report on the January 2004 visit[2]: "It has to be reiterated that the smallest EU member state, possessing very limited resources, and, to complicate matters, having one of the highest population densities in the world, cannot be expected to adequately address this complex and multi-faceted problem having roots beyond its shores by itself".

They continued: "Malta simply cannot be left to struggle alone and, at the same time, expected to uphold international obligations to the letter, with its resources stretched to the limit and carrying more than a proportional share of this human tragedy. Hence, Malta's determined insistence on the implementation of concrete burden-sharing initiatives both within the European Union as well as other international organisations actively involved in the area of irregular immigration. […] Malta will continue to insist that the European Union and its member states need to show solidarity with the border states that are bearing the brunt of this problem; at the same time, the countries of origin and the countries of transit must also shoulder their responsibilities"[3].

8. In this report, the CPT will be making a number of recommendations in the light of facts noted during its visit. Some of these recommendations will certainly not be very costly to implement. However, other measures required - such as the provision of proper holding centres, or longer-term accommodation in the country of hundreds, if not thousands, of foreign nationals, who have been processed and released without any real possibility of leaving the country - probably exceed the Maltese authorities' present resources. This is why the CPT wishes to insist at once on the crucial importance of a concerted effort by the international community - and particularly the European Union - to give Malta the help it needs to tackle the problems it faces today. Initiatives of this kind have reportedly already been taken by some countries bilaterally[4], and others - such as the holding of a conference on irregular immigration in the Mediterranean and the setting-up of a European emergency fund - have been announced at international level. The CPT hopes that these efforts will continue and be intensified. The CPT also hopes that the recommendations and comments in this report will make it easier for the authorities to determine priorities in the areas for which the Committee is responsible.

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2 Cf. CPT/Inf (2005) 16, p. 22.

3 Ibid., p. 23.

4 For example, the Netherlands and Ireland have promised to consider taking in a number of refugees or persons who have obtained a temporary status on humanitarian grounds.

9. In their reply to the report on the CPT's visit in January 2004 (cf. CPT/Inf (2005) 16), the Maltese authorities highlighted a number of measures taken in the field of irregular immigration. These measures will be considered below, in the light of the CPT delegation's findings during its visit in June 2005.

10. At the beginning of 2005, the Maltese Government published its policy on irregular immigrants, refugees and their integration[5]. This document lays down a number of principles, particularly with regard to the reception of irregular immigrants[6]. A national conference on irregular immigration was subsequently organised on 7-8 February 2005. It decided, among other things, that a task force should be set up to prepare a "national policy on irregular immigration", based on the broadest possible consensus. The task force itself comprised representatives of the government, the parliamentary opposition and NGOs, and the Head of the Immigration Department. **The CPT would like to receive information on the results of the work of the above-mentioned task force.**

In the same context, the CPT was informed that a Cabinet Sub-Committee, chaired by the Minister of Justice and the Interior, had been set up to follow questions relating to irregular immigration and provide ongoing operational co-ordination. Among other things, this Sub-Committee reportedly drew up an "emergency plan" and set up a new "Detention Service". **The CPT would like to receive more detailed information on this matter.**

11. One of the main problems noted by the CPT during its visit in January 2004 was the Maltese authorities' policy to systematically detain all irregular immigrants - including asylum-seekers - for an indefinite period, this policy aiming in particular at deterring others from seeking to enter illegally. As the delegation itself noted, this policy had damaging effects on the physical and psychological health of the foreign nationals concerned (cf. CPT/Inf (2005) 15, paragraph 57).

The CPT has taken note of the change made since then concerning the detention of asylum-seekers whose applications are still pending. Indeed, according to the Maltese authorities (cf. CPT/Inf (2002) 16, p. 24), detention would now be limited to one year maximum; this is a result of Directive 2003/9/EC of the Council of the European Union of 27 January 2003[7], laying down minimum standards for the reception of asylum-seekers in member States, which states in its Article 11 that all asylum-seekers must be given access to the labour market within one year of applying for asylum. That said, information recently received by the CPT suggests that the Directive in question has yet to be formally incorporated into Maltese law and, for that reason, is not always properly applied[8]. **The CPT would like to receive the Maltese authorities' comments on this subject.**

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5 "Irregular Immigrants, Refugees and Integration", Policy Document, Ministry for Justice and Home Affairs and Ministry for the Family and Social Solidarity).

6 Subjects covered include regulations and procedures, detention of asylum-seekers, repatriation of illegal immigrants, etc.

7 Official Journal of the European Union, L31/18, 6.2.2003.

8 For example, some ten foreign nationals in B Block at Safi Barracks have reportedly been detained for more than a year (cf. files N° 04K01, O4K011, 040016, 040023, 04R001, 04R002, 04R003, 04R007, 04R009, 04R011, 04R012).

Moreover, **the CPT wishes to know whether this change also applies to other foreign nationals detained in holding centres (i.e. those who have not applied for asylum or those whose applications have been finally rejected).**

12. The CPT has also taken note of the Maltese authorities' statement that "vulnerable persons" - such as mothers with children and unaccompanied minors - are released once they have been identified and medically examined (cf. CPT/Inf (2005)16, p. 24).

In this connection, when it visited the holding centre at Lyster Barracks, the delegation met two mothers (one with a baby, one with a young child) and a pregnant woman, who had been there for several days. In addition, in some of the holding centres visited (as well as in the Unit for irregular immigrants at Mount Carmel Psychiatric Hospital), the delegation found indications of the stay of unaccompanied minors.

Questioned on this point, local officials said that the immigration authorities held unaccompanied minors until examinations (particularly X-ray examinations) had shown that they were indeed under-age. In some cases considered by the delegation, this procedure had lasted several months[9]. **The CPT recommends that action be taken to ensure that procedures used to establish the minority of young unaccompanied immigrants who enter the country irregularly be given priority.**

That said, the very concept of "vulnerable persons" seemed ambiguous[10]. It was not clear, for example, whether it covered persons who were suffering from severe physical or mental disorders or who had been victims of torture or ill-treatment. **The CPT would like to receive explanations concerning the criteria applied in this respect.**

13. Another question which preoccupied the CPT after the January 2004 visit was the availability of an effective legal remedy, allowing irregular immigrants to contest the lawfulness of their detention before a court (cf. CPT/Inf(2005)15, paragraphs 15 to 18).

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9 For example, foreign nationals claiming to be minors, who arrived in Malta in October and November 2004, were still waiting in April 2005 (eight months later) for the results of the procedure initiated to determine that they were under-age.

10 Certain indications (elderly people, people with disabilities, mothers with babies, and pregnant women) can be found in the Government policy document referred to in paragraph 10.

The CPT has taken note of the Maltese authorities' decision to provide a new remedy before the Immigration Appeals Board[11], allowing any detained foreign national to contest the "reasonable" character of the period of detention being imposed on him/her. This is certainly a step in the right direction, but the CPT wishes to point out that it does not entirely satisfy its earlier recommendation on this subject. In fact, significant restrictions were from the outset imposed on the Board's powers[12].

In particular, it should be noted that, although these restrictions are indeed exceptions of the kind referred to in the revised Guidelines on the detention of asylum-seekers, issued by the Office of the High Commissioner for Refugees in February 1999, in those Guidelines it is detention of asylum-seekers which is the exception, and not the rule. In other words, the exceptions provided for by the HCR are being used "against the grain".

The CPT recommends that the Maltese authorities amend the Immigration Act in the light of the above comments.

14. In this connection, the CPT had also indicated (cf. CPT/Inf (2005) 15, paragraph 18) that appeal proceedings brought against detention measures imposed on foreign nationals must always include a hearing of the person concerned, who must also be given legal aid and, if necessary, the free services of an interpreter. Moreover, detained foreign nationals must be expressly informed of the existence of this appeal procedure. **The CPT would like to receive details of action taken on these points** (cf. also on the last point, paragraph 16).

15. At the end of its visit in January 2004, the CPT also made a number of recommendations on the asylum procedure (cf. CPT/Inf (2005) 15, paragraphs 31 to 36), since the length of the asylum procedure - and thus of the period of detention associated with it - was in itself a problem. The CPT has taken note of the many efforts made by the Maltese authorities in this matter, and particularly the recruitment of a Deputy Commissioner for Refugees and of additional lawyers. Moreover, a second Appeals Board for Refugees has been set up, and the Government has recruited two lawyers to provide free legal advice for asylum-seekers who bring appeal proceedings. That said, although marked progress has been made on the time taken to examine asylum proceedings[13], efforts are still needed, particularly on information for asylum-seekers, legal advice and effectiveness of remedies.

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11 Cf. Section 25A of the Immigration Act as amended on 6 August 2004.

12 "(10) The Board shall only grant release from custody …where in its opinion the continued detention of such person is, taking into account all the circumstances of the case, unreasonable as regards duration or because there is no reasonable prospect of deportation within a reasonable time.
(11) The Board shall not grant such release in the following cases: (a) when the identity of the applicant including his nationality has yet to be verified, in particular where the applicant has destroyed his travel or identify documents or used fraudulent documents in order to mislead the authorities; (b) when elements on which any claim by applicant under the Refugees Act is based, have to be determined, where the determination thereof cannot be achieved in the absence of detention; (c) where the release of the applicant could pose a threat to public security or public order".

13 Between 1 January and 30 June 2005, the Commissioner for Refugees received 745 asylum applications (covering 778 persons). By June 2005, 524 applications (549 persons) had been dealt with, 109 (114 persons) were still pending, and 86 applications (88 persons) had still to be opened. Pending cases included those of 69 unaccompanied minors. The results of procedures completed were as follows: in 21 cases (27 persons) refugee status was awarded, in 318 cases (325 persons) "humanitarian protection" was granted, 192 applications (203 persons) were rejected, and 19 (21 persons) were withdrawn by the applicants (HCR, 07/2005).

16. At the time of the visit, the information provided for asylum seekers - particularly when the "initial questionnaire" (English/French/Arabic) was distributed - was still inadequate. In this connection, the CPT welcomes the Maltese authorities' recent decision to prepare an "information pack" (cf. CPT/Inf (2005) 16, p. 25), emphasising the rights and duties of foreign nationals, and including information on the asylum procedure, which will be available in several languages. **The CPT would like to receive a copy of this pack as soon as it becomes available**.

In this context, **the CPT also wishes to emphasise the importance, for the foreign nationals concerned, of receiving regularly updated information on the progress of their case**[14].

17. That said, the delegation is most concerned by the fact that the appeals procedure - although it refers to a "hearing" of the foreign national - takes place *in camera* without the person being heard[15]. Since, in Malta, the decisions of the Refugees' Appeals Board are not themselves open to appeal[16], **the CPT recommends that the hearing of the foreign national concerned be mandatory.**

18. The CPT was pleased to note that in their response to the report on the visit in January 2004 (cf. CPT/Inf (2005) page 14), the Maltese authorities stated that "an appeal before the Immigration Appeals Board has a suspensive effect" (cf/ Immigration Act, Section 14(1) and 25 A(5)). However, the CPT was recently informed that amendments to the Refugees Act were being examined in Parliament. Among various measures being considered was the possibility for the authorities to immediately remove an irregular immigrant, if the Refugee Commissioner rejects, as manifestly ill founded, the asylum application made by the person concerned, notwithstanding any appeal lodged under article 7 of the same Act.

The CPT wishes to recall that in its report on the visit in January 2004, the Committee stated, as regards safeguards foreseen concerning the removal of irregular immigrants: "Further, in view of the potential gravity of the interests at stake, the Committee considers that a decision involving the removal of a person from a State's territory should be appealable before another body of an independent nature prior to its implementation, and that such appeal should have a suspensive effect" (cf. CPT/Inf (2005) 15, paragraph 30). **The CPT recommends the Maltese authorities to maintain the suspensive effect of an appeal lodged before the Immigration Appeals Board.**

19. Moreover, it seems that the Maltese authorities wish to add another criterion to the list of those under which the Refugee Commissioner may declare an asylum claim manifestly ill founded[17]. A claim "which is substantially the same as one already submitted by the applicant or by another applicant and which was, after examination, refused by a Commissioner" would be considered as being manifestly ill founded and therefore automatically rejected by the Refugee Commissioner. **The CPT wonders if, in acting in this way, the authorities are not putting at risk the obligation to consider every asylum claim individually, on a case by case basis.**

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14 The recruitment of social workers and legal advisors to the new Detention Service should make it possible to provide the foreign nationals concerned with more regular information.

15 In their response, the Maltese authorities indicated that the decision to hear, in person, the foreign national concerned was left to the entire discretion of the Appeals Board for Refugees (cf. CPT/Inf (2005) 16, p. 15).

16 Except for cases taken up by the Minister of Justice and for exceptional appeals provided for Section 7(9) of the Refugee Act.

17 Cf. Act to amend the Refugees Act, Article 2 (c).

B. Ill-treatment

20. With very few exceptions, the CPT delegation heard no allegations of deliberate physical ill-treatment of irregular immigrants by members of the police or armed forces in the various institutions visited. However, **some allegations of racist insults were received**.

21. The most serious incident took place on 13 January 2005 at about 8.15 a.m. in B Block at Safi Barracks. A group of some 80 to 90 foreign nationals, who were being held in this camp, refused to return to their rooms after exercising in the open air. The foreign nationals involved were of various nationalities, and were protesting at the length of their detention. Their protest took the form of a classic "sit-in". The camp commandant tried to persuade them to return to their rooms, but they refused. They asked to meet the local press and representatives of international human rights organisations[18], but this was refused. In the meantime, representatives of the local press (journalists, photographers and TV crews) had arrived on the scene, along with police reinforcements who took up their positions on the other side of the fence, outside the compound. Meanwhile, a military intervention squad, consisting of some 120 men, had been summoned and issued with riot gear (helmets, shields, truncheons). The demonstrators had collected in a group against the football field fence, where the soldiers surrounded them. At one point, a first team of soldiers tried to break into the group of demonstrators and seize the one whom they had identified to be one of the ringleaders. A scuffle ensued and the demonstration was broken up by force. A TV crew filmed the whole scene, and the press photographers took several hundred pictures. The demonstrators who were still in detention in June 2005 and who met with the CPT delegation, all claimed that some soldiers had used excessive force in breaking up the demonstration, and had violently beaten some of them who were already under control, sitting or lying on the ground. The accounts of other witnesses, and the films and photographs seen by the delegation, corroborate these allegations.

That same day, 26 of the foreign nationals who had taken part in the demonstration were taken to St Luke's Hospital for treatment. Fourteen of them were able to return to the camp that day, nine were kept in hospital for 24 hours, and the remaining three, who were more seriously injured, stayed in hospital for 3, 5 and 11 days respectively. Visits by representatives of NGOs or international organisations (HCR) were suspended while the injured foreign nationals were in hospital, and lawyers were allowed to visit only 36 hours later, in the presence of military guards.

22. On the day of the incident, the Prime Minister, Mr Lawrence Gonzi, asked Mr Franco Depasquale, a retired judge[19], to conduct an inquiry under the Inquiries Act of 1977 (Chapter 273).

He was given the following brief:

- "to examine all the circumstances leading to the use of force;
- to establish whether the use of force was justified and proportional;
- to examine anything ancillary to the issues above mentioned;
- to make any recommendations he deems necessary in consequence to his conclusions".

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18 A visit by an UNHCR representative was scheduled for that day, but was postponed for 24 hours because of the incident.

19 He is also President of the Police Supervisory Board.

23. On 3 February 2005, the President of the CPT wrote to the Maltese authorities (cf. Appendix), asking them to provide certain information by 17 February 2005. In a letter dated 9 February 2005, those authorities stated that "this public enquiry, ordered by the Prime Minister himself, is in line with the approach adopted by the CPT in its January 2004 visit report, which recommended the holding of a thorough and independent investigation following any serious incident/allegation … Since [the] enquiry is presently still ongoing, it is not deemed appropriate or ethical to comment any further at this particular stage".

When it visited Malta in June 2005, the delegation pointed out to the Maltese authorities that the CPT President's request of 3 February 2005 mainly applied to purely factual information, which in no way interfered with the inquiry, and called on them to provide this information forthwith. **The CPT requests that the authorities forward this information without further delay.**

24. During its visit, the delegation had two meetings with Judge Depasquale, at which it asked him for more information on his terms of reference and powers, and for information on the procedure followed and the first inquiry findings. It appeared that, by mid-June 2005, Judge Depasquale had interviewed 36 foreign nationals involved in the incidents (including 25 of the 26 taken to St Luke's Hospital for treatment, the one still to be interviewed being the one most seriously injured), 34 doctors from St Luke's Hospital, the Commander of the Maltese Armed Forces, 3 soldiers from the intervention squad, other soldiers who had been present, and 4 journalists. The file on the inquiry included records of these hearings, relevant medical documents from St Luke's Hospital, an internal armed forces report, and hundreds of photographs and video clips. Judge Depasquale told the delegation that he would be concluding his inquiry shortly.

25. At the end of its visit to Malta, the CPT delegation expressed the hope that the inquiry entrusted to Judge Depasquale by the Prime Minister would soon be concluded, and that it would receive a copy of the findings. It also hoped that "should any potentially criminal acts be identified by Judge Depasquale, a criminal investigation will be immediately carried out into the matter and the necessary steps taken to ensure that the perpetrators of such acts are brought to justice without delay". It added "should no potential criminal responsibility be identified by Judge Depasquale, the delegation is of the opinion that the nature (administrative), purpose (a systemic approach) and inherent limitations (absence of coercive powers) of his inquiry would justify the relevant authorities starting, *ex officio*, a criminal investigation into the above-mentioned incident".

As present, a copy of Judge Depasquale inquiry has still not been received. In this regard, the CPT wishes to stress that the effectiveness of any criminal investigation is closely linked to the diligence with which Judge Depasquale's inquiry is carried out. **The CPT reiterates its request to receive a copy of this inquiry as soon as it is available.**

26. Apart from the above inquiry, **the CPT wishes to recall its requests for copies of the findings of the inquiries into allegations of ill-treatment involving members of the police at the Ta'Kandja Police Complex on 4 September 2002[20] and 28 December 2003[21].**

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20 Cf. CPT/Inf (2005) 15, paragraphs 20 and 21

21 Cf. CPT/Inf (2005) 15, paragraph 24

C. Conditions of detention

27. At the time of the visit, a very large majority of detained foreign nationals were still housed in poor, and sometimes unacceptable, conditions. In fact, most of the establishments concerned - which could be used to accommodate hundreds of foreign nationals - had never been designed for that purpose. The delegation will not give another detailed description of those premises which have already been visited in the past.

28. The delegation was particularly concerned to see that, at Safi Barracks[22], a hundred or so foreign nationals had again been housed in tents or metal hangars ("Nissen" huts) since July 2004, contrary to the CPT's express recommendation, a few months before, that these facilities never again be used to accommodate detainees, regardless of the period. Many detainees who spoke to the delegation said that living conditions in that section of the camp were very harsh (extreme heat in the metal hangars in summer and severe cold in the tents in winter). Moreover, the conditions in which food was distributed in that part of the camp were unacceptable. On the day of the delegation's visit, the noodles being served for lunch were delivered by jeep, in two large plastic tubs without lids or any other hygienic protection.

The CPT accordingly welcomed the Maltese authorities' decision, announced during the visit, to transfer the foreign nationals concerned from "Nissen" huts to a building in the same camp within the next two weeks, and decommission the "Nissen" huts facilities completely. **The CPT would like to receive confirmation that these detainees have indeed been transferred, and the "Nissen" huts dismantled**.

Having said that, the building itself - a warehouse converted to accommodate 198 persons - was not ideal, as the Maltese authorities themselves admitted. The sleeping quarters had no ceilings, the building (being open to the roof) would be difficult to heat in winter, the adjacent exercise yard was too small for the potential number of detainees, etc. The CPT considers that use of this building should be temporary only, pending the entry into service of another building (with a reported capacity of 224 places), which was under construction in the same complex. **The CPT would like to receive up-to-date information on the use of the converted warehouse, and on progress made with the new building which was being constructed at the time of the visit.**

29. Conditions in B Block at Safi Barracks, which was accommodating 112 immigrants at the time of the visit, also left something to be desired. Some of the dormitories were overcrowded, and the sanitary facilities were generally in a deplorable state. Moreover, apart from a few cubicles/dormitories, the rooms were unheated in winter. **The CPT recommends that the Maltese authorities take steps to remedy these defects.**

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22 Cf. CPT/Inf (2005) 15 paragraphs 42, 47 and 50.

30. Conditions in Lyster Barracks[23] were slightly better. Foreign nationals in these barracks were accommodated in two separate zones, one open and the other closed. At the time of the visit, 74 foreign nationals were being accommodated in the holding centre (47 on the ground floor, where families, married couples and women were housed, and 27 unmarried men on the first floor). Some of the rooms were overcrowded, and the harmful effects of this were accentuated by the fact that only one hour of outdoor exercise was allowed every day. **The CPT recommends that efforts be made to increase the daily outdoor exercise period for foreign nationals held in Lyster Barracks.**

31. In spite of a decision, taken ten years ago by the Maltese authorities, to stop using the Ta'Kandja Police Complex[24] to accommodate irregular immigrants, the Complex was still in use. The two dormitories had recently been renovated, but still offered a prison-type accommodation and were also overcrowded. These conditions would have been slightly more acceptable if more periods of outdoor exercise had been allowed, but this - regrettably - was not the case. **The CPT recommends that the two dormitories in the Ta'Kandja Police Complex be used only in emergencies, and for short periods; these premises are not suitable for permanent use as a holding centre.**

32. The CPT had clearly indicated in the past that, at the Floriana Police Lock-Up[25], the dormitories for irregular immigrants should be used for short stays only. At the time of the 2005 visit, some 120 foreign nationals were nevertheless being accommodated there, in two badly overcrowded dormitories, for extended periods (up to several months). Because of their characteristics (in particular their general state of dilapidation, limited access to natural light and lack of an outdoor exercise yard worthy of the name), **the CPT recommends that these two dormitories no longer be used, even in emergencies**.

33. The delegation also visited the "transit room" in the basement at Malta's Luqa International Airport[26]. As the CPT had already pointed out, this should not be used for extended detention (i.e. more than 24 hours). However, the delegation saw from the relevant register that a Chinese national had been held there for 40 consecutive days; situations like this are, quite simply, unacceptable. **The CPT recommends that action be taken to ensure that the transit room is never used to accommodate irregular immigrants for a period of more than 24 hours.**

34. As in January 2004, no organised activities of any kind (apart from outdoor exercise) were provided for the irregular immigrants in the holding centres. Concerted efforts must be made to offer them a range of activities, since many of them spend months, and sometimes more than a year, in these centres, in a state of total idleness. The longer the detention period, the more developed the activities should be. Similar efforts should be devoted to the recruitment of qualified personnel; and this question should not be overlooked when the Detention Service, referred to in paragraph 10 above, is being set up. **The CPT recommends that the Maltese authorities take action to provide irregular immigrants with organised activities, in addition to daily outdoor exercise.**

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23 Cf. CPT/Inf (2005) 15, paragraphs 43 and 47.
24 Cf. CPT/Inf (2005) 15, paragraphs 40 and 47.
25 Cf. CPT/Inf (2005) 15, paragraph 49.
26 Cf. CPT/Inf (2005) 15, paragraph 48.

35. At the end of its January 2004 visit, the CPT had also recommended that the detention of irregular immigrants always be covered by formal detention orders, which should be available in the establishments where those concerned were being held[27]. At the time of the June 2005 visit, this recommendation was yet to be implemented. The CPT would like to point out that this is a basic principle, making it possible for the authority responsible for the holding centre[28], and also the authorities responsible for external supervision of holding centres, to monitor current detentions. Any illegal or improper detention would thus be easily identified. **The CPT reiterates its recommendation on this point.**

In addition to an individual detention order, **every irregular immigrant being held must have an individual detention file, which contains not only the above-mentioned detention order but also all other relevant information as well[29].**

36. The role assigned to the armed forces in managing holding centres for irregular immigrants should also be reviewed. In the CPT's view, these centres should be managed by staff specially recruited and trained for that purpose. This approach also seems consistent with the recommendations made in the Scicluna Report[30]. **The CPT would like to receive the Maltese authorities' comments on this question (cf. also the announced setting up of a Detention Service).**

D. Removal of foreign nationals

37. The delegation also re-examined the situation of irregular immigrants who were due to be removed by air (cf. CPT/Inf (2005) 15, paragraph 22). The police officers on duty met at Luqa International Airport confirmed that there were no specific guidelines on the subject of the use of means of restraint during removal operations of foreign nationals by air. The CPT would like to stress that such guidelines are all the more necessary as removal operations are now being carried out[31]. In this regard, the Committee would like to point out that the Committee of Ministers of the Council of Europe adopted on 4 May 2005 Twenty Guidelines on Forced Return (Guidelines which take into account the principles formulated by the CPT in its 13th General Report)[32].

The CPT recommends that the Maltese authorities prepare such guidelines, in the light of the above-mentioned documents.

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27 Obviously, the detainees themselves must also have copies.

28 Which, for example, in the case of immigrants held in military barracks, is not necessarily the same as the authority which decides the detention measure.

29 An early draft version of such an individual detention file was found at the Ta'Kandja Police Complex. No such files existed at the other police holding centres. The holding centres managed by the armed forces only had an electronic listing of the foreign nationals being held. The police immigration department had no individual files.

30 Prepared at the request of the Minister of Justice and the Interior by Mr Scicluna, as part of the preparation of the national conference on the question of irregular immigration.

31 Removal operations by air were recently carried out (in particular to Egypt).

32 Cf. CPT/Inf (2003) 35, paragraphs 27 to 45.

38. When it visited the cells at the Floriana Police Lock-Up[33], the delegation met an Egyptian national who had been served with a deportation order two days previously. He had been informed of this measure in writing and had also been told, orally, that he was entitled to appeal against the decision within 3 days. However, although he repeatedly asked for the requisite form, the police officer on duty failed to produce it. He was also deprived of all outside contacts - his mobile phone had been confiscated by the police officer in charge of the cells - and had been unable to get in touch with his family and lawyer.

Questioned on this point, the police officer in charge of the case said that she had "forgotten" to give him the form and "did not know" that deportees were entitled to inform a relative or other person of their situation. Similarly, the police officer on duty in the cells said that he had followed the normal rules, which made no distinction between suspected criminals and irregular immigrants.

The CPT recommends that action be taken to ensure that any foreign national who is being deported effectively has the facilities needed to appeal against the decision to deport him/her.

In addition**, the Committee reiterates its recommendation that specific legal regulations be adopted to ensure that all detained foreign nationals - including those who are due to be deported - have the fundamental rights (right to inform relatives or another third party of their situation, access to a lawyer, access to a doctor, information on their rights) referred to in paragraph 29 of the report on the January 2004 visit.**

E. Medical services

39. The medical member of the CPT's delegation once again observed the detrimental impact on the physical and psychological state of health of detained foreign nationals of the various factors already identified in January 2004 (poor - if not very poor - conditions of detention, total lack of activities, no adequate information on their situation, etc.). Unsurprisingly, many of the problems noted were of a psychosomatic nature. In addition, the accumulation of such factors was conducive to the development of reactive disorders.

40. As in January 2004, none of the detention centres inspected had its own medical service. In spite of the Maltese authorities' efforts to implement the CPT's recommendations on this point (cf. CPT/Inf (2005) 15, paragraph 53) - particularly as regards regular visits by doctors and nursing cover - problems had rapidly arisen with the Doctors' Trade Union, which objected to the lack of properly equipped consulting rooms and suggested that women doctors might face safety problems.

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[33] Cf. CPT/Inf (2002) 16, paragraphs 17. There are 40 single cells.

These problems were still unresolved at the time of the visit in June 2005[34]. Consequently, access to medical treatment was still organised by the custodial staff (military or police), who took groups of irregular immigrants to local health centres or hospitals every day. In these circumstances, access to treatment obviously depended on the availability of personnel to escort them (except in emergencies). Moreover, somatic or psychiatric treatment started in health centres or hospitals was not always followed up[35], requests for medical advice and appointments were not properly processed, emergencies were assessed and responses decided by non-medical staff, preventive medicine and health education were lacking, etc. Moreover, medicines (including psychotropic medicines[36]) were still not properly distributed, since supervisory staff were still responsible for this (with the notable exception of medicines for tuberculosis patients). Finally, medical confidentiality was not always guaranteed in the centres visited, since medical examinations were frequently carried out in the presence of guards[37] and medical details were available to non-medical staff.

In view of all this, the delegation submitted an immediate observation to the Maltese authorities under Article 8, paragraph 5 of the Convention, asking them to immediately take measures aimed at staffing each of the establishments visited with trained nurses. It also requested that holding centres be visited regularly by medical doctors. Up-to-date information was expected by the end of August 2005.

41. By letter of 8 November 2005, the Maltese authorities indicated that "despite the severe constraints within the Health Division, this is providing regular visits by two Primary Care Physicians at least three times a week". This obviously constitutes a step in the right direction, **which should be developed further, in the light of the considerable number of irregular immigrants detained in holding centres.**

On the other hand, no information has been provided as regards the measures aimed at staffing each of the holding centres with trained nurses. **The CPT calls upon the Maltese authorities to take immediate measures to ensure the daily presence of trained nurses in the holding centres.**

42. The irregular immigrants' daily diet was mainly based on noodles and rice, to which meat or fish were added on certain days of the week. Dietary fibre, vegetables and fresh fruit were generally in short supply. As a result, numerous detainees had gastro-intestinal problems, frequently associated with constipation and haemorrhoids. This state of affairs was confirmed by the doctors who talked to the delegation and by the medical files. **The CPT recommends that menus in the holding centres be supervised by a qualified dietician, in the light of the above comments.**

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34 The National Health Authorities and the Medical Association had recently inspected and approved the consulting rooms. At Safi Barracks, the safety problems had been addressed by installing an alarm system in the doctor's office.

35 Examples: digestive surgery on one patient was postponed for three months, because he had not been properly prepared for the operation. Another patient with an acute urinary infection did not receive the prescribed treatment, X-rays taken were not recorded in patients' files, etc.

36 For example, 50% of the foreign nationals held at the police headquarters in Floriana were being treated with medicines (mainly psychotropic medicines designed to reduce stress).

37 Except at Lyster Barracks, where medical examinations were carried out in private.

43. The delegation visited the new secure unit for irregular immigrants, opened in the summer of 2004, at Mount Carmel Psychiatric Hospital. This unit, which takes men (adults and minors) and has 8 beds, was accommodating 5 patients (including 2 minors) at the time of the visit. When necessary, women patients were placed in the women's admissions unit.

Conditions for patients were generally good. The premises and rooms were well ventilated and clean, and the equipment well maintained. That said, **the atmosphere in the unit was fairly bleak, due to the lack of decoration. Further, patients should have lockable cupboards or lockers for their personal belongings**.

The fact that patients were not given access to the nearby exercise yard, although this was fully enclosed, was harmful for the patients. It appears that the police officers who supervised the unit were unwilling to grant patients this "favour", contrary to the assurances given on this point by the Maltese authorities in their reply to the report on the January 2004 visit (cf. CPT/Inf (2005) 16, p. 19). **The CPT reiterates its recommendation[38] that all patients be allowed one hour of outdoor exercise every day (their state of health permitting)**.

44. The unit had enough suitably trained staff (two qualified male nurses and an orderly), present round-the-clock, to look after the number of patients accommodated. A doctor visited daily and a psychiatrist twice weekly.

Patients were given appropriate treatment and medical records were well kept. As in the case of somatic treatment, however, continuity invariably became a serious problem when they returned to their holding centres. Apart from its harmful effects on the patients' mental health, this state of affairs tended to result in an excessive burden being placed on the psychiatric services.

In this connection, **the CPT refers once again to the importance of appointing nurses to serve in holding centres (cf. paragraph 41).**

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38 Cf. CPT/Inf (2005) 15, paragraph 59.

APPENDIX

Strasbourg, 3 February 2005

Dear Sirs,

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has received information from various sources concerning an incident which allegedly occurred in the immigrant holding facility at Safi Barracks on 13 January 2005, involving in particular the quelling by armed forces of a demonstration held by detainees on the adjacent football pitch. Another incident allegedly took place at Safi Barracks later the same day.

The Bureau of the CPT requests the Government of Malta to provide the Committee with the following information by 17 February 2005:

- a full account of the above-mentioned incident(s);

- a list of the detainees who received medical or paramedical treatment on the spot and of those who were treated at hospital;

- a copy of any order or instructions given by commanding officers or any other authority regarding the operation, including as regards the use of force;

- a copy of any order or instructions given regarding any subsequent limitations to be imposed on the rights of the detainees concerned, such as restrictions imposed either at Safi Barracks or at St-Luke's Hospital on their access to a lawyer or their right to receive visitors, and information on any disciplinary measures imposed on them on their return to the detention facility;

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Ministry of Foreign Affairs
Council of Europe Desk
Palazzo Parisio
Merchants Street
VALLETTA
Malta

- a copy of the legislation, regulations and/or instructions regulating the use of force by the armed forces in peacetime, and particularly in crowd control situations;

- an account of the scope and details of any administrative or judicial inquiries into the incident(s) and, in due course, of the results of those inquiries and of action taken;

- whether the report on the CPT's visit to Malta in January 2004 has been made available to administrative and/or judicial authorities involved in any inquiry into the above incident(s).

I am at your entire disposal should you require any clarification concerning this request.

Yours faithfully,

Silvia CASALE

Copy: Mr Charles DEGUARA, Liaison Officer, Permanent Secretary,
Ministry of Justice and Home Affairs, Malta