



Public Defender of Rights
OMBUDSMAN

POLICE CELLS



REPORT

ON SYSTEMATIC VISITS CARRIED OUT
BY THE PUBLIC DEFENDER OF RIGHTS 2017

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THE MISSION OF THE DEFENDER

Pursuant to Act No. 349/1999 Coll., on the Public Defender of Rights, as amended, the Public Defender of Rights (Ombudsman) protects persons against the **conduct of authorities and other institutions** if such conduct is contrary to the law, does not correspond to the **principles of democratic rule of law and good governance** or in case the authorities fail to act. If the Defender finds shortcomings in the activities of an authority and if subsequently the authority fails to provide for a remedy, the Defender may inform the superior authority or the public.

Since 2006, the Defender has acted in the capacity of the **national preventive mechanism** pursuant to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The aim of the systematic visits is to strengthen the protection of persons restricted in their freedom against **ill-treatment**. The visits are performed in places where restriction of freedom occurs ex officio as well as in facilities providing care on which the recipients are dependent. The Defender generalises his or her findings and recommendations concerning the conditions in a given type of facility in summary reports on visits and formulates general standards of treatment on their basis. Recommendations of the Defender concerning improvement of the conditions found and elimination of ill-treatment, if applicable, is directed both to the facilities themselves and their operators and the central governmental authorities.

In 2009, the Defender was also given the role of the **national equality body** pursuant to the European Union legislation. The Defender thus contributes to the enforcement of the right to equal treatment of all persons regardless of their race or ethnicity, nationality, gender, sexual orientation, age,

disability, religion, belief or worldview. For that purpose, the Defender provides assistance to victims of discrimination, carries out research, publishes reports and issues recommendations with respect to matters of discrimination, and ensures exchange of available information with the relevant European bodies.

Since 2011, the Defender has also been **monitoring detention of foreign nationals and performance of administrative expulsion**.

The **special powers** of the Defender include the right to file a petition with the Constitutional Court seeking the abolishment of subordinate legal regulations, the right to become an enjoined party in Constitutional Court proceedings on abolishment of an act or its part, the right to lodge action to protect a general interest or application to initiate disciplinary proceedings with the president or vice-president of a court. The Defender may also make recommendations to the Government concerning adoption, amendment or repealing of a law.

The Defender is **independent and impartial**, accountable for the performance of his or her office only to the Chamber of Deputies which elected him or her. The Defender has one **deputy** elected in the same manner, who can be authorised to assume a part of the Defender's competence. The Defender regularly informs the public of his or her findings through the internet, social networks, professional workshops, roundtables and conferences. The most important findings and recommendations are summarised in the **Annual Report on the Activities of the Public Defender of Rights** submitted to the Chamber of Deputies of the Parliament of the Czech Republic.

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FOREWORD

Since 2001, the Public Defender of Rights has been dealing with complaints against the conditions of detention in police cells and the procedure of the Police of the Czech Republic. During the past eleven years, the Defender has also carried out **preventive systematic visits** in the sense of the Optional Protocol to the Convention against Torture. In said period, the Defender issued a number of important reports, especially the Report on Visits to Police Facilities in 2006, Findings from the Systematic Visits to Police Cells in 2010 and The Defender's Recommendations Concerning the Regime and Operation of Police Cells of 2011.¹



Mgr. Anna Šabatová, Ph.D.
Public Defender of Rights

The Defender continued visiting similar facilities in the following years. In 2012, cells in four police district departments were visited, specifically the cells in Brno, Beroun, Kralupy nad Vltavou and Milevsko. Cells in Vyškov, Ostrava, Sokolov and Ostrov were visited in 2013. In 2014, the Defender visited the cells in district departments of Brandýs nad Labem and Břeclav.

In reaction to the Judgment of the European Court of Human Rights in Case Kummer v. the Czech Republic of 25 July 2013, I made an agreement with the Police President in July 2014 to **implement a training programme** for police officers aimed at educating the police about the rights of persons detained in police cells and the prevention of ill-treatment.

Based on the pilot training project for the officers of the South Moravian Regional Police Directorate, which took place in 2014, further training courses were organised in 8 regional directorates over the course of 2015. Another 5 courses were organised for the remaining 5 regional directorates in 2016. Each regional directorate thus had one training course; the Central Bohemian and Pilsen Regional Directorates held two courses each due to the size of the institutions. In total, we organised **16 training courses** for approximately **900 police officers**.

1 Office of the Public Defender of Rights. Ochrana osob omezených na svobodě – Policejní cely (Protection of Persons Restricted in their Freedom – Police Cells) [online] Brno [retrieved 20176-1]. Available at: <https://www.ochrance.cz/en/protection-of-persons-restricted-in-their-freedom/police-cells/>

The project was led by employees of the Department of Surveillance over the Restriction of Personal Freedom with responsibilities in the area of detention in police cells. The training courses included especially the findings from the preventive systematic visits to police cells related to the prevention of ill-treatment, the **case law of the European Court of Human Rights** and the standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

The present report summarises the findings from the visits carried out by the Office's employees in 2015 and 2016 concerning **14 police departments** which operate police cells.

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SUMMARY

1

The Defender found no cases of ill-treatment during her visits to police cells in 2015 and 2016. Nevertheless, she drew attention to a number of shortcomings that constituted a violation of rights or a disproportionate infringement of the detainees' rights.

2

Accurate information and advice are the best safeguards against ill-treatment. The police must therefore provide the detainees with a standardised advice form and let them keep it.

3

Another important safeguard consists in the right to legal counsel. A detainee has the right to speak with a lawyer of his or her choice alone, without the presence of another person. Police officers must facilitate such a meeting forthwith if the detainee so requests.

4

When carrying out a body search prior to placing a person in the cell, police officers must try to minimise the overall embarrassment.

5

The police must provide the detainees with at least one full daily meal. Meals should be served three times a day at usual intervals which roughly correspond to the standard times at which meals are commonly served.

6

The police must provide the detainees with personal hygiene items without further considerations. The beds must have a washable surface mattress.

I) List of abbreviations

CPT – European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

Office – the Office of the Public Defender of Rights.

Regulation – Regulation of the Ministry of the Interior No. 51 of 31 October 2013, on meals and reimbursement of the costs of catering for detainees by the Police of the Czech Republic.

Police Act – Act No. 273/2008 Coll., on the Police of the Czech Republic, as amended.

Instruction – Binding instruction of the Police President No. 159 of 2 December 2009, on escorts, guarding of persons and on police cells, as amended.

II) Detention in a police cell

The scope of persons **who can be detained in a police cell by police officers** is fairly large. These persons may include: persons detained, held, arrested, being transferred to serve imprisonment or transferred to security detention, protective treatment or protective education, persons taken over by a police officer from remand for procedural reasons, persons serving imprisonment, persons placed in security detention, protective treatment or protective education, or persons being brought before an authority where their resistance prevents successful completion of the relevant official act.²

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It is necessary for the Police to have the power to restrict the liberty of the persons listed above and to place them in a cell with a view to ensuring proper functioning of society. Nevertheless, this power carries a **risk of excessive use of force and coercive means or intimidation**. Indeed, according to the CPT, the period immediately following deprivation of liberty is when the risk of intimidation and physical ill-treatment is greatest.³

The risks of ill-treatment in police cells are manifold, which follows from the **very nature of placement in a cell** where the persons concerned must submit to a number of measures. Prior to being placed in a cell, the person must undergo a body search involving direct physical contact with or observation of the person's naked body, where the police officers are authorised to remove items potentially posing a threat to life or health. The person is deprived of the freedom of movement. The person's right to privacy is restricted as the cell – with the exception of the toilet – is under CCTV surveillance. The cell's equipment must match the requirements listed in the Instruction, but the minimum stipulated equipment is still rather spartan. The person must comply with other regime-related measures related to e.g. personal hygiene, meals or lights being turned on at night.

My responsibility is to highlight measures which can help to reduce the risk of excessive steps taken by the police when guarding a person placed in a cell in terms of the **fundamental rights of detained persons**. A police officer who is depriving a person of liberty and guarding that person in a cell must always keep in mind that, in performing his or her duties, he or she must ensure that the potential restriction of the rights and liberties of the person subjected to a certain official act **does not exceed the degree** necessary to accomplish the objective of said official act.⁴

2 Section 28 of the Police Act.

3 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). CPT Standards. Developments concerning CPT standards in respect of police custody [online]. CPT/Inf(2002)15-part, para. 41 [retrieved on: 3 April 2017]. Available at: <https://rm.coe.int/16806cd1d8>.

4 Section 11 of the Police Act.

1) Course of the systematic visits to police cells

The visits were carried out by authorised employees of the Office. The visits included a general inspection of the cells, the rooms used for body searches prior to placing persons in cells, inspection of the minimum equipment, interview with the duty officers or police officers responsible for guarding the cells and the persons placed in the cells, inspection of the cell's regime and the way it is organised, service aids and the criminal proceedings records.

The reports on the visits reflecting my findings and recommendations for better practice were sent to the heads of the individual district departments and, for attention, to regional directors.

The Office's employees visited a total of 14 district departments operating police cells. The visits concerned exclusively the so-called multi-hour cells, i.e. cells for placement of persons detained for longer than 6 hours.

The visits were always carried out without prior notice. On site, the visits were carried out with the knowledge of the head of the relevant district department.

2) The information on the police cells visited and their numbers and capacities

District department	Regional Police Directorate of	Number of "multi-hour" cells	Capacity
Benešov	Central Bohemian Region	1	1
Frýdek Místek	Moravian-Silesian Region	3	3
Kladno	Central Bohemian Region	4	8
Litoměřice	Ústí Region	6	6
Mariánské Lázně	Karlovy Vary Region	2	2
Mělník	Central Bohemian Region	7	7
Mladá Boleslav I.	Central Bohemian Region	3	3
Nové Město na Moravě	Vysočina Region	2	2
Olomouc 1	Olomouc Region	1	1
Olomouc 3	Olomouc Region	2	2
Plzeň ⁵	Plzeň Region	7	14
Třebíč	Vysočina Region	2	2
Vsetín	Zlín Region	4	5
Zlín	Zlín Region	3	6

3) Legal regulation of detention in police cells

The basic regulation of the rights and obligations of persons placed in police cells and the equipment and technical infrastructure of the cells is contained in the Police Act and, on the level of secondary legislation, in the binding Instruction of the Police President and the Regulation of the Ministry of the Interior. I also take into account the CPT Standards relating to the police in assessing the conditions in the police cells and the treatment of the detainees. These include two standards, i.e. "Police Custody"⁶ and "Developments concerning CPT standards in respect of police custody".⁷ I further take into consideration the case law of the European Court of Human Rights and the Czech Constitutional Court.



6 EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT). CPT Standards. Police custody [online]. CPT/Inf(92)3-part1, [retrieved on. 1 April 2017]. Available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806cea1a>

7 EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT). CPT Standards. Developments concerning CPT standards in respect of police custody [online]. CPT/Inf(2002)15-part, [retrieved on: 1 April 2017]. Available at: <https://rm.coe.int/16806cd1d8>.

III) Advising a person placed in a cell

1) Issuing and keeping the advice form available to persons placed in a cell

Good practice

Persons placed in a cell must demonstrably be informed of their rights and obligations.⁸ The duty officers shall advise persons deprived of liberty about the legal basis for the official act that is being carried out and their rights and obligations.⁹ Police officers shall provide to the detained persons an advice form containing the **rights and obligations of persons placed in a cell (hereinafter the “advice form”)**.¹⁰ The detainee has the right to keep the advice form during the entire time spent in detention.¹¹

Findings from the visits

In some departments, police officers do not issue the advice form or do not let the detainees keep it. The stated reason is that the paper is an item that can potentially pose a danger to life or health. Alternately, they claim that the detainees were acquainted with their rights prior to their placement in the cell, therefore they “must know” their rights and obligations. In some police departments, police officers only issue the advice form on express request of the detainee.

I note that the advice form is an information carrier that is necessary for detainees to exercise their right to be advised of their rights and obligations. The form in and by itself is not an item that can potentially pose a danger to life or health. If the police officer determines, based on the behaviour and conduct of a specific person, that the form could be misused to endanger life or health and the police officer refuses to provide the form to the detainee or removes it from the cell later, it is necessary for this fact to be recorded in the service aids, including proper justification.¹²

The argument of the police that the detainees should remember all their rights and obligations is not, in my opinion, reasonable. In my opinion, it is not proper either if the form is provided only on the detainee’s express request, as I can see no reason to increase the dependence of the detainee on the police.

8 Section 33 (5) of the Police Act.

9 Article 13 (5) of the Instruction.

10 Form No. 216 in the information system of the criminal proceedings records.

11 Article 15 (1) of the Instruction.

12 Article 20 (1) of the Instruction.

Recommendations

- The police must issue an advice form to the detainees and let them keep it.

2) Providing advice to a person placed in the cell by duty officers

Good practice

Advice on the rights and obligations of a person placed in a police cell is provided by the duty officers or other police officers responsible for guarding the cell.¹³ The police officer must serve in the police department that operates the cells.

Findings from the visits

In some departments, it is common practice that detainees are informed of their rights and obligations by the police officer who requested the detention or is transferring the person for detention; these police officers are often not from the same department where the cells are operated. Police officers serving with this department are obliged to know the manner in which the cells regime is organised. Conversely, police officers from other departments may not know the regime.

Recommendations

- A person being placed in a cell must be informed of his or her rights by the duty officer or another department's officer who is responsible for guarding the department's cells.

3) Contents of the advice form

Good practice

The advice form must include all the rights and obligations associated with detention in a police cell.

13 Article 13 (5) of the Instruction.

Findings from the visits

I encountered the use of a separate form entitled “Advice on the rights and obligations”, which referred to the already repealed Act No. 283/1991 Coll., on the Police of the Czech Republic, as amended. The form does not contain information on the right of the detainee to medical examination performed by a physician of the detainee’s choice, the right to contact a lawyer and the right to legal advice, the right to inform close persons of the situation, the right to be informed on the further anticipated official procedure, the right to receive a blanket and a bed sheet, the right to basic personal hygiene including oral hygiene and access to water and a toilet, and the right to receive the necessary medical aids. The fact that persons placed in police cells are not demonstrably informed of their rights and obligations, including fundamental rights such as the right to legal advice, is a serious problem.

Recommendations

- The police should use the standardised advice form, i.e. the annex to form No. 216 available in the information system of the criminal proceedings records.

4) Information concerning the storage of CCTV footage from the police cell in the advice form

Good practice

The advice form should inform a person placed in a cell of the 30-day storage period applicable to CCTV footage from the cells and other areas where persons are held.

Findings from the visits

Monitoring, checking and guarding persons in a cell or other areas where persons are held through a CCTV system capable of storing video and audio footage (or both) constitutes processing of personal data. The purpose is to document the events transpiring in the cells or another areas under surveillance in relation to the detained person. The footage may be used in complaints proceedings, inspections or as part of infraction and criminal proceedings.¹⁴ The footage is stored for a period of 30 days from its creation.¹⁵ The footage is destroyed upon the lapse of this period. However, the detained persons are usually not informed of this fact. I consider it appropriate for the police to inform the detainees of the storage period so that they can use the footage in case of investigation of potential complaints.

Recommendations

- The police should supplement the advice form to inform the person placed in a cell of the 30-day storage period applicable to CCTV footage from the cells and other areas where persons are held.

14 Article 20a of the Instruction.

15 Article 20h (2) of the Instruction.

5) Record of the refusal to sign the advice form

Good practice

If a person placed in the cell refuses to sign the advice form, this fact must be documented in the file.¹⁶

Findings from the visits

In isolated cases, the detained persons' files do not include the signed advice form. The police claim that the detainees refused to sign the form. This, however, is not sufficient. Police officers must make a record in the form or the service aids that the person in question refused to sign the form. Such a record demonstrates that the police complied with their statutory duty to provide the advice form.

Recommendations

- If the detained person refuses to sign the advice form, the police should make a record of this fact.

6) Filing the advice form

Good practice

The advice form signed by the detainee is filed in the police records of the department that operates the cell.¹⁷

Findings from the visits

Some police departments only file advice forms signed by those detainees who are placed in a cell by the district department which operates the cells. They do not file the advice forms pertaining to persons which were detained by the criminal investigation police or other district departments. I believe this practice is incorrect.

Recommendations

- The departments operating the cells must file advice forms signed by all persons placed in their cells.

¹⁶ Article 15 (1) of the Instruction.

¹⁷ Article 15 (1) of the Instruction.

IV) Legal advice

1) Right to legal advice and prompt assistance

Good practice

A person deprived of liberty has the right to arrange legal advice at his or her own expense; the person has the right to speak with a lawyer of his or her choice alone, without the presence of another person. Police officers must facilitate such a meeting immediately if the detainee so requests.¹⁸

Findings from the visits

In many departments, if the detainee asks the police for assistance in arranging legal advice, police officers often use Internet search engines to find suitable lawyers and their contact details. This can lead to undesirable delays. Police Intranet should be used to comply with the detainee's request without delay; the Police Intranet contains a list of attorneys. The police must provide the part of the list containing the locally available lawyers to the detainee for him or her to choose an attorney. The police will subsequently contact the selected attorney.

Recommendations

- The police should use the Police Intranet to find an attorney.

2) Selecting a lawyer

Good practice

Detainees have the right to select their attorney.

Findings from the visits

In rare cases, the police selected a specific attorney for the detainees. Such a procedure is improper and infringes on the right of the detained persons to choose their attorneys.

Recommendations

- Detainees must be able to select their attorneys themselves.

18 Article 24 (4) of the Instruction.

V) Complaint

1) Right to complaint

Good practice

A person placed in a cell has the right to write down suggestions, instigations and complaints themselves, supervised by a police officer; this should take place in an interrogation room or other police premises.¹⁹

Findings from the visits

It is a common practice in some departments for the guarding police officers to write down the detainees' suggestions, instigations and complaints. Such a practice is at variance with the Instruction.

Recommendations

- The police should make it possible for detained persons to write down their suggestion, instigation or complaint by themselves.

19 Article 15 (4) of the Instruction.

VI) Privacy and dignity

1) Privacy during body search

Good practice

Personal privacy should be maintained during body search prior to placement in a cell.

Findings from the visits

Body searches should take place in a strip-search room. If the department does not have such a room available, police officers perform the body search in the corridor or other suitable room. In one department, all body searches take place in the corridor. The possibility cannot be excluded that the CCTV records the body search, i.e. that other persons may be observing it. In another department, body searches are performed in the interrogation room. As the room is equipped with a one-way mirror, someone can potentially observe what is happening in the room from the neighbouring office, which has direct access to the mirror. Any infringement on the privacy of persons undergoing a body search is undesirable. According to the European Court of Human Rights, it holds true that “[a] person’s perception that he was exposed undressed to the view of others can, in the Court’s opinion, create in him a strong sensation that his privacy has been disrespected, regardless of whether someone in fact saw him”.²⁰

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Recommendations

- **The police should ensure privacy of persons undergoing a body search. The police should prevent the body search from being observed through a one-way mirror or a window, open door, an open corridor, etc. The body search must take place in an area not under CCTV surveillance.**

²⁰ Judgement of the European Court of Human Rights in case Jaeger v. Estonia of 31 July 2014, No. 1574/13. The Court found violation of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms and the right to private life.

2) Person carrying out the body search

Good practice

The body search must always be carried out by an officer of the same sex as the detainee.²¹

Findings from the visits

In one case, a body search of a woman prior to her placement in the cell was carried out by a male police officer. This procedure cannot be excused even if it was an exception from the rule necessitated by the lack of personnel or the fact that a full body search (strip search) was not performed. Any kind of a body search involving direct physical contact or observation of a naked body must be carried out by a person of the same sex as the person being searched.

Recommendations

- The body search must be carried out by an officer of the same sex as the person being searched.

3) Body search procedure

Good practice

In carrying out a body search prior to placement in a cell involving direct observation of a person's naked body, the person must be allowed to strip down in stages so as to ensure the person is not completely naked at any given time.

Findings from the visits

In many police departments, persons are required to undergo full strip search before being placed in the cell. I object to this procedure and propose a less invasive body search procedure. "Every reasonable effort should be made to minimise embarrassment; detained persons who are searched should not normally be required to remove all their clothes at the same time, e.g. a person should be allowed to remove clothing above the waist and get dressed before removing further clothing."²²

In response to the above, some departments argued that the procedure I proposed could only be used in some cases, depending on the specific circumstances. I note that the proposed procedure is

21 Section 111 (b) of the Police Act.

22 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to the Czech Republic from 1 to 10 April 2014, para. 22 [retrieved on: 18 April 2017]. Available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168069568d>.

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based on the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). I also refer to the way the Constitutional Court of the Czech Republic treats the CPT recommendations. “When assessing a potential violation of the prohibition of ill-treatment, the Constitutional Court is bound to take the CPT’s opinion into consideration. CPT is an expert body that, given its extensive experience accumulated during visits to places of detention, provides a context-dependent interpretation of the terms “torture” and “inhuman and degrading treatment”. Although this interpretation is not binding, it is authoritative and provided by a body established by States to strengthen the protection of persons deprived of liberty from torture and inhuman or degrading treatment or punishment (Article 1 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, No. 9/1996 Coll.). The high relevance of the CPT’s interpretations is also documented by the fact that they are often adopted by the ECtHR (see e.g. the Judgement in case Kummer v. the Czech Republic of 25 July 2013, No. 32133/11, para. 67). As stated above, the Constitutional Court as well as other official bodies of the Czech Republic must take into consideration this legally non-binding, but authoritative interpretation of the legally binding prohibition of ill-treatment. While it is possible, owing to its non-binding nature, to deviate from the CPT’s interpretation, such a deviation must be very thoroughly and convincingly reasoned.²³

The CPT’s opinion that a certain manner of conducting body searches may constitute a degrading measure or ill-treatment (due to the embarrassment felt) must therefore be noted. While carrying out body searches involving direct observation of a naked body, it is therefore necessary to proceed as specified above; the police may deviate from the recommended procedure only in extraordinary and justified cases. If this happens, such a procedure must be properly justified and recorded in the service aids.

Recommendations

- The police should carry out body searches in a manner enabling the person to remove clothing above the waist and get dressed before removing further clothing below the waist.

23 Judgement of the Constitutional Court of 27 October 2015, File No. I. ÚS 860/15, available at: <http://nalus.usoud.cz>, para. 59.

4) Squatting during searches

Good practice

While carrying out the initial body search of a person prior to the placement in a police cell, the police may not proceed indiscriminately by forcing each person to strip naked and to squat.

Findings from the visits

A search in this context means a body search involving direct physical contact or direct observation of the person's naked body, including search of the person's clothes and items carried by the person at the time of the search.²⁴ In some police departments, each person is subjected to a full strip search and asked to perform one or several squats before placement in a cell. There is no legal regulation stipulating that a person must perform squats during a strip search before being placed in a police cell.²⁵ A thorough strip search where persons are asked to squat is, according to the CPT, a very invasive and potentially degrading measure. The indiscriminate application of strip searches with squats is, in the CPT's view, excessive and unnecessary. "However, a strip search should be carried out only when there are reasonable grounds to suspect that a detained person may have hidden on him/her items that may be used to harm him-/herself or others or that may be evidence of a crime and such a search is necessary in order to detect these, an ordinary search being unlikely to result in their discovery."²⁶ On account of the Government's statement²⁷ that the methodological guidelines issued to police officers will aim to ensure that body searches are not carried out automatically and routinely, I should note that I think it suitable to issue a written instruction clearly defining the conditions under which a thorough strip search with squats may be used.

Recommendations

- The police should abandon the practice of indiscriminate use of squats.
- Written regulations should be issued in respect of the procedures to clearly define the conditions under which a strip search with squats may be used.
- If the police insists on performing squats in individual cases, the reasons for this measure must be indicated in the service aids.

24 Section 111 (b) of the Police Act.

25 The situation is different with regard to the Prison Service. Sections 89 and 89a of the Regulation of the Director General of the Prison Service of the Czech Republic No. 23/2014, on prison and judicial guard, provides a definition of a thorough body search involving potential full strip search with squats, and stipulates the situations and conditions in which such a search may be performed.

26 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to the Czech Republic from 1 to 10 April 2014, para. 22 [retrieved on: 1 April 2017]. Available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168069568d>

27 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Response of the Czech Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to the Czech Republic from 1 to 10 April 2014, CPT/Inf (2015) 29, para. 22 [retrieved on: 1 April 2017]. Available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168069568f>

VII) Health care

1) Medication

Good practice

The police must ask a physician for information concerning the use of medication, including dosage.

Findings from the visits

The documentation of a certain detainee contained a physician's decision according to which the detainee was to "continue using the medication he has been taking regularly." I note that police officers must not accept such non-specific information. They could potentially provide the medication at a wrong time, wrong dosage, or even provide medicine the detainee is not supposed to take, thus potentially endangering his or her life or health. The physician's information must include a clear specification of which medicine, when and in what dosage should the detainee take. Indeed, if the person who is to be placed in a cell indicates that they regularly use a certain medicine which they have or have not at their disposal, the relevant department or organisational unit which is conducting proceedings against the person or which has decided to place the person in a cell shall obtain information on the usage of the medicine from the physician. If the person does not have the medicine at their disposal, the police shall obtain the necessary prescription to collect the medicine.²⁸ For this reason, it is desirable to insist on a sufficiently specific physician's prescription of the medicine and its dosage.



Recommendations

- The police should ensure the physician's prescription of the medication is sufficiently specific, i.e. specify which medicine, when and in what dosage should be dispensed to the detainee by the police. Good practice

2) Dispensing medication

Good practice

The police officer who is responsible for guarding the cell is obliged to dispense medication to the detainee based on the physician's prescription and to record this fact in the information system or the service aids.²⁹

²⁸ Article 12 (8) of the Instruction.

²⁹ Article 12 (8) of the Instruction.

Findings from the visits

A practice recurs where the physician decides on the use of medication including dosage prior to the placement of the person in a cell. Police service aids do not indicate that the police dispensed the medication to the detainee and that the detainee used the medication in the police officer's presence.

Recommendations

- The police should record in the information system or the service aids that the medication was dispensed and used.

3) Removal of eyeglasses

Good practice

Eyeglasses are a medical device; they may be taken away only based on an individual and special reason. Eyeglasses may not be removed from the detainees as a matter of routine.

Findings from the visits

In most police departments, police officers consider eyeglasses to constitute an item capable of posing a danger to life or health and they remove them from the detainees. Alternately, they only allow the detainees to keep the eyeglasses for a necessary period of time, for example when they are reading the advice form. Then they take away the eyeglasses. I note that the detainees must, as a rule, be allowed to keep their eyeglasses and other medical devices. The law only allows to remove eyeglasses or other medical devices and aids in individual cases if a "special" reason for their removal was established (this reason has to differ from it being an item capable of posing a danger to life or health).³⁰ This "special" reason must be indicated in the service aids.³¹



Recommendations

- The police should let the detainees keep their glasses while in a cell. Glasses may only be removed based on individually determined "special" reasons. These reasons must be recorded in the information system.

30 Section 29 (1) of the Police Act.

31 Article 20 (1) of the Instruction.

VIII) Dining

1) Catering

Good practice

A person placed in a cell has the right to three meals a day served in their usual times.

Findings from the visits

In many police departments, the common practice is to provide meals to the detainees shortly before the expiry of the 6-hour period from the deprivation of liberty. Theoretically, a person detained at 11 a.m. could thus get a meal as late as almost 5 p.m. This, however, is not allowed under the applicable legislation. The 6-hour period bears no relevance to serving meals. Meals are to be served to the detainees at the usual time, i.e. at the time when daily meals are commonly served.

Recommendations

- The police should serve meals at times which roughly correspond to the times when breakfast, lunch and dinner are usually served.

2) Hot meals

Good practice

The police should provide the detainees with at least one full meal (i.e. something more substantial than a sandwich) every day.³²

Findings from the visits

In many police departments, the police only serve cold meals for lunch and dinner if the meals are paid for by the department. The documentation shows that cold meals usually consist of salami, sausages or pâté with bread rolls. Many police officers claim that the funds allocated for food are not sufficient to cover hot meals. I believe this fact constitutes a shortcoming. Pursuant to Section 4 (1) of the Regulation of the Ministry of the Interior, the funding allocated for catering for persons deprived of liberty equals CZK 85 per person per day, incl. VAT. For separate meals, the daily limit per person is up to CZK 20 for breakfast, up to CZK 35 for lunch and up to CZK 30 for dinner. Pursuant to paragraph 2, if one hot meal is purchased from a public catering establishment, the amount allocated for lunch

32 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). CPT Standards. Police custody [online]. CPT/Inf(92)3-part1, para. 42 [cit. 1 April 2017]. Available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806cea1a>

or dinner is increased by 100%. The police thus may purchase a hot lunch for CZK 70 or a hot dinner for CZK 60. In accordance with the above-mentioned CPT standard, I insist that the police provide detainees with either a hot lunch or a hot dinner.

Recommendations

- The police should provide the detainees with at least one hot meal a day.

3) Reimbursement for catering costs

Good practice

Catering costs are reimbursed from the operational reserves of the unit that operates the cells.³³

Findings from the visits

In rare cases, the employees of the Office found that if the detainees had money at their disposal, police officers were automatically using the money to purchase food for the detainees. Instruction to do so was even placed on the bulletin board in the guardroom. Upon the body search of the detained person, the police would indicate the amount of cash the person had in the list of removed items. The cost of the detainee's food would then be paid using this money. Upon release from the cell, the police would provide the detained person with receipts for the purchased and served foods. I have to note that this rare practice is not based on any legal regulation. A person placed in a cell may, having regard of local conditions, be provided with meals corresponding to the person's wishes if the person has enough money to cover the expense and there is no cause to suspect the money was obtained from criminal acts.³⁴ Persons deprived of liberty may purchase food at their own expense. This is their right, not an obligation. If they do not exercise the right, the costs of catering are covered from the operational reserve of the department or unit operating the cell.³⁵

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catering costs
are paid by the
police

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Recommendations

- The police should use police funding to pay for the catering costs if the detainee does not request to pay for his or her food.

33 Article 19 (5) of the Instruction.

34 Article 19 (2) of the Instruction.

35 Article 19 (5) of the Instruction.

4) Records of refused meals

Good practice

If a person detained in a police cell refuses a meal after being informed that he or she would receive it, the police shall obtain the person's signature on the relevant official record of the deprivation of liberty. If the person refuses to sign the record, meals shall be provided regardless.³⁶

Findings from the visits

The files of several detainees indicated that when the detainee refused food, the police officer recorded the fact in the file and did not serve meals to this person. However, the signature of the person was not included in the file. I note that if the person does not sign the record confirming he or she refused the food, the police must provide it.

Recommendations

- The police must serve food even to persons who refuse food but failed to sign the relevant record indicating that fact.



36 Article 19 (1) of the Instruction.

IX) Facilities of a cell

1) Issuing toothbrushes

Good practice

A person placed in a police cell has the right to personal hygiene.³⁷ For this reason, such a person must be provided with basic personal hygiene items, including a toothbrush.

Findings from the visits

There is a common practice to only issue a toothbrush to the detainees based on their express request. I believe this practice is incorrect. The necessity to ask for a toothbrush puts the detainee in an undesirable situation of increased dependence on the guards. If, in individual cases, the police do not provide a toothbrush on account of it being an item capable of posing a danger to life or health, this fact and the related circumstances, including a specific reasoning, must be recorded in service aids.

Recommendations

- The police should provide a toothbrush to all detained persons, without other considerations. If the toothbrush is not provided in individual cases, this fact and the related circumstances and reasons must be recorded in the file.

2) Providing toilet paper

Good practice

Toilet paper must be provided to a person placed in a cell without further considerations.

Findings from the visits

In isolated cases, persons placed in police cells do not have toilet paper available. They must expressly ask the guards to bring some. I believe this practice is inappropriate.

Recommendations

- The police should provide detainees with toilet paper without other considerations.

37 Section 33 (4) of the Police Act.

3) Mattresses

Good practice

A bed in a multi-hour cell must be equipped with a washable cover or a mattress with a washable surface.³⁸

Findings from the visits

During visits to police cells, I found that beds in some cells do not have mattresses. The detainees are thus forced to sleep on wooden boards. Apparently, they can ask for a second blanket to lie on. I cannot agree with the arguments of the head of the department that the cell bed does not necessarily have to have a mattress because “a cell will never be as comfortable as a hotel room” or because “a mattress is a security risk” since it is an object that can be abused to endanger life or health of police officers or other persons and, therefore, must not be present in the cell. I note that the “mattress significantly affects the quality of the detainee’s sleep and, if absent, can disrupt peaceful sleep, which can have detrimental effect on the psychological condition of the detained person. It is important to mention in this connection that sleep deprivation is one of the prominent signs of torture or cruel, inhuman and degrading treatment.”³⁹ I further note that a blanket cannot be considered an adequate substitute for a mattress.

Recommendations

- The police should ensure the beds are equipped with mattresses with a washable surface.

4) Information on surveillance

Good practice

There must be an information sign in the cell informing the persons held there that the cell is under constant CCTV surveillance.⁴⁰

Findings from the visits

There are cells without an information sign notifying the cell is under constant CCTV surveillance.

38 Article 3 (a) of Annex No. 1 to the Instruction.

39 Office of the Public Defender of Rights. Ochrana osob omezených na svobodě – Policejní cely (Protection of Persons Deprived of Liberty – Police Cells) [online] Brno [retrieved on: 2017 6-1]. Available at: <https://www.ochrance.cz/ochrana-osob-omezenych-na-svobode/policejni-cely/>.

40 Article 2 (o) of Annex No. 1 to the Instruction.

Recommendations

- The police should place signs informing that the cells are under constant CCTV surveillance.



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