



CPT/Inf (2012) 7

Response

**of the German 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 Germany**

from 25 November to 2 December 2010

The German Government has requested the publication of this response. The report of the CPT on its November/December 2010 visit to Germany is set out in document CPT/Inf (2012) 6.

Strasbourg, 22 February 2012

Observations
by the Federal Government
on the recommendations, comments and requests for
information submitted by the European Committee for the
Prevention of Torture and Inhuman or Degrading Treatment or
Punishment (CPT)
on the occasion of its visit from
25 November to 7 December 2010

Introduction

The Federal Government hereby submits its observations on the recommendations, comments and requests for information set out in the report drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its visit to Germany from 25 November to 7 December 2010 (CPT (2011) 38).

In the period from 25 November to 7 December 2010, a delegation of the CPT visited the Federal Republic of Germany. This visit formed part of the programme of periodic visits by the Committee in 2010. It was the fifth such periodic visit by the CPT to Germany.

The Federal Republic of Germany wishes to expressly thank the CPT for its excellent collaboration, which was characterised by a spirit of trust. It acknowledges the critical recommendations and comments and will make improvements on their basis.

The report was adopted on 19 July 2011 and forwarded to the Federal Republic of Germany.

The observations made hereinbelow are oriented by the structure of Appendix II of the report, which sets out the recommendations, comments and requests for information made and submitted by the Committee. In each case, said recommendations, comments and requests for information preface the observations made.

Consultations held by the delegation and co-operation

Co-operation

The CPT recommends that the federal and all Länder authorities review the question of access to personal and medical files for the CPT's visiting delegations, in the light of the remarks made in paragraphs 6 to 8 (paragraph 8).

The review requested by the CPT is still ongoing. However, the legal situation in all of the Länder is such that, for reasons of criminal law as well as of data protection strictures, access to personal and medical files cannot be provided without previously obtaining consent from the parties affected. This serves to protect the fundamental right of individuals to determine the use of their data and safeguards their right to themselves determine whether or not they wish to allow others to access or use their personal data.

However, the Federal Government understands that the CPT views this situation in terms of the law as impairing its ability to monitor the situation in Germany. Accordingly, it will use its best efforts to find a practical solution together with the Länder that will be satisfactory for all parties involved.

Development of a National Preventive Mechanism

The CPT would like to receive the German authorities' comments on whether the existing resources of the National Agency for the Prevention of Torture are sufficient to enable the Agency to carry out its work effectively throughout the whole of Germany (paragraph 11).

The budget for the National Preventive Mechanism has been established by the administrative agreement concluded by the Joint Commission of the Länder and the Federal Agency. Once the first joint report has been submitted by the Federal Agency, the Federal Government will review whether or not funding should be increased.

Police establishments

III-treatment

The Committee trusts that the authorities of all Länder will remain vigilant and will continue to remind police officers that no more force than is strictly necessary should be used when effecting an apprehension and that, once apprehended persons have been brought under control, there can be no justification for striking them (paragraph 14).

The very foundation of how the German police understand their mission is that all of their actions must comply with the rule of law. To the extent possible, this is ensured as early as in the process of recruiting suitable officers; more particularly, this principle is also a central aspect of the general vocational training and ongoing professional training provided at the level of the Länder. Both forms of training place special emphasis on conveying insights into people's fundamental rights and human rights. Additionally, all police officers regularly participate in professional education courses on the lawful use of means of coercion. In this context, the resolution of conflicts using non-forcible measures where at all possible is placed at the focus of all preventive action taken by the police. Moreover, the subject of terminating the use of coercive measures wherever the legal pre-requisites for same have ceased to exist is presented in great depth in the handbooks and manuals on recommended conduct. These principles are comprehensively taught in deployment training seminars geared to the practical application of the knowledge conveyed.

The respect for human rights and fundamental rights and their protection is an intrinsic part of the day-to-day work done by the Länder police services. This includes adherence to the principle of proportionality and the alignment of each and every intervention with what is suitable and required in the individual case, as well as with what is reasonable under the circumstances.

The CPT would like to receive the following information, in respect of the period from 1 January 2009 to the present:

- (a) the number of complaints of ill-treatment made against federal police officers and officers of the police services of all Länder and the number of criminal/disciplinary proceedings which have been instituted as a result;

- (b) the outcome of the above-mentioned proceedings and an account of any criminal/ disciplinary sanctions imposed on police officers in these cases (paragraph 15).

For **Baden-Württemberg**, the statistics maintained by the public prosecution offices for the years 2009 and 2010 provide the following data for the subject areas coded as numbers 52 – 54, which have recently been introduced:

Culpable homicide by members of the police services (subject area 52)

	2009	2010
New cases	1	6
Cases dealt with	1	5
Charges filed	-	1
Case transferred to another public prosecution office	1	
Petition filed to institute simplified proceedings under the laws governing juvenile justice		1
Instances in which prosecution was withdrawn pursuant to section 170 (2) of the Code of Criminal Procedure (Strafprozessordnung, StPO)		3

Use of violence and abandonment by members of the police services (subject area 53)

	2009	2010
New cases	171	181
Cases dealt with	135	176
Charges filed	2	1
Petition filed for penal order from the court	3	9
Instances in which prosecution was withdrawn pursuant to section 153 a of the Code of Criminal Procedure	3	1

Instances in which prosecution was withdrawn in light of the trivial nature of the offence	2	6
Instances in which prosecution was withdrawn pursuant to section 154 (1) of the Code of Criminal Procedure	1	-
No public charges filed	-	1
Instances in which prosecution was withdrawn pursuant to section 170 (2) of the Code of Criminal Procedure	120	150
Matter referred for private criminal action	-	1
Case referred to another court pursuant to section 41 (2), first sentence, and section 43 of the Administrative Offenses Act (Ordnungswidrigkeitengesetz, OWiG)	1	-
Case transferred to another public prosecution office	-	5
Case joined to another matter	3	2

Use of force and abuse of authority by members of the police services (subject area 54)

	2009	2010
New cases	100	77
Cases dealt with	86	82
Charges filed	1	1
Petition filed for penal order from the court	2	-
Instances in which prosecution was withdrawn pursuant to section 153 a of the Code of Criminal Procedure	2	2
Instances in which prosecution was withdrawn pursuant to section 45 of the Law on Juvenile Justice (Jugendgerichtsgesetz, JGG)	1	-
Instances in which prosecution was withdrawn pursuant to section 153 (1) of the Code of Criminal Procedure	4	-
Instances in which prosecution was withdrawn pursuant to section 154 (1) of the Code of Criminal Procedure	-	2
Instances in which prosecution was withdrawn pursuant to section 170 (2) of the Code of Criminal Procedure	68	72
Matter referred for private criminal action	-	1
Case transferred to another public prosecution office	5	3
Case joined to another matter	3	1

The crime rate statistics kept by the police of the Land of Baden-Württemberg collect data on the offence of “infliction of bodily harm while performing official duties” (section 340 of the Criminal Code (Strafgesetzbuch, StGB)). However, instances in which bodily harm was inflicted by executory officers are not distinguished from those committed by other officers. In 2009, 61 cases were registered in which an officer was suspected of having inflicted bodily harm while performing official duties, while 54 such cases were registered in 2010. As a matter of principle, disciplinary proceedings will be instituted following any criminal proceedings for infliction of bodily harm in the performance of official duties.

In **Bavaria**, the corresponding figures for the years 2009 and 2010 are as follows:

	2009	2010
Subject area 52	4 proceedings	- 1 proceedings*
Subject area 53	185 proceedings	212 proceedings
Subject area 54	246 proceedings	245 proceedings

* The number is prefixed by a minus sign wherever the figures for a subject area were corrected for the previous year (in this case 2009), while no proceedings arose in the current year (in this case 2010).

Subject area 52 (culpable homicide by members of the police services),

Subject area 53 (use of violence and abandonment by members of the police services),

Subject area 54 (use of force and abuse of authority by members of the police services).

No data are collected on whether these investigations resulted in criminal charges being brought before a court, to which extent this was the case, and what the outcome was of the court proceedings that may have ensued; accordingly, none of this information is available. The criminal prosecution statistics do not provide any information on the circumstances of the offences perpetrated or the background against which they were committed.

In **Berlin**, those cases are registered in statistics in which a complaint is filed for bodily harm having been inflicted by officers while performing their official duties in apprehending individuals. The statistics provide the following information:

	2009	2010	1st half year of 2011
Instances in which disciplinary proceedings were instituted	1	15	3
Instances in which criminal proceedings were instituted	88	95	38
Instances in which criminal proceedings were discontinued	71		
Section 170 (2) of the Code of Criminal Procedure	Data not captured separately	43	24
Section 153 of the Code of Criminal Procedure		0	0
Section 153 a of the Code of Criminal Procedure		0	0
Acquittals in criminal proceedings	0	0	0
Convictions in criminal proceedings	1	2	0

The outcome of individual sanctions meted out under the laws governing disciplinary measures or under criminal law is not captured in statistics.

In the city of **Bremen**, a total of 53 cases were registered in 2009, in which the suspicion was raised that bodily harm had been inflicted by police officers while performing their official duties; these cases also include events that occurred in connection with soccer matches (such as bites by police dogs).

Of the 53 proceedings cited, a total of 43 proceedings were discontinued pursuant to section 170 (2) of the Code of Criminal Procedure. In five cases, the proceedings were discontinued because the perpetrators were not identified, while in one case, no initial suspicion was given that the actions taken were liable to criminal prosecution. Four cases are still pending; their outcome under criminal law is as yet unclear. In one of the cases in which prosecution was withdrawn pursuant to section 170 (2) of the Code of Criminal Procedure, the proceedings against one of the officers taking preventive action were discontinued in light of the trivial nature of the offence pursuant to section 153 (1) of the Code of Criminal Procedure.

In 2009, there was one instance in which disciplinary proceedings were instituted; they were subsequently discontinued as no evidence was provided for the alleged breach of duty.

In 2010, 65 cases were registered by the Internal Investigations Department in which the charge was raised that bodily harm had been inflicted by officers in the performance of their official duties pursuant to section 340 of the Criminal Code. In 34 cases, prosecution was withdrawn pursuant to section 170 (2) of the Code of Criminal Procedure and in one case, the proceedings were discontinued because the perpetrator was not identified. 30 cases are still pending as regards their conclusion under criminal law. No disciplinary proceedings were instituted in 2010.

During the period in question, 21 criminal proceedings were pursued in Bremerhaven for infliction of bodily harm while performing official duties, in which persons who had been apprehended raised the charge that they had suffered abuse. In thirteen of these cases, prosecution was withdrawn pursuant to section 170 (2) of the Code of Criminal Procedure. Eight proceedings continue to be pursued at present. No disciplinary proceedings were instituted.

In **Hamburg**, the following offences were registered in the period from 1 January to 31 June 2011 in the sense of the question posed:

	Organisation	Police services			Federal Police		
		2009	2010	1 st half of 2011	2009	2010	1 st half of 2011
Offense	Section 340 of the Criminal Code	267	219	97	9	5	3
	Section 343 of the Criminal Code	3	2	0	0	0	0

Note: In 2009, there was one instance in which the investigations pursued in connection with the stipulations of sections 340, 343 of the Criminal Code were combined to form a single case.

No information is available regarding the outcome of the proceedings and the sanctions meted out under criminal law.

For **Hessen** in the period under report the figures are as follows:

	2009	2010
Section 340 of the Criminal Code (infliction of bodily harm while performing official duties) Strafanzeigen bzw. von Amts wegen eingeleitete Ermittlungsverfahren	199	177
Instances in which prosecution was withdrawn pursuant to section 170 (2) of the Code of Criminal Procedure	97	87
Instances in which prosecution was withdrawn pursuant to section 152 (2) of the Code of Criminal Procedure	2	1
Instances in which prosecution was withdrawn pursuant to section 153 (2) of the Code of Criminal Procedure	3	5
Instances in which prosecution was withdrawn pursuant to section 154 d of the Code of Criminal Procedure	2	
Convictions in criminal proceedings	1 (not final yet)	3
Disciplinary proceedings	disapproval: 1	disapproval: 2 „Zurückstufung“: 1

In the **Saarland**, a total of 57 charges were filed in the period under report against law enforcement officers for the suspicion of their having inflicted bodily harm in the performance of their official duties. The following should be noted regarding the details of these cases:

Number of proceedings	Outcome of the proceedings in terms of criminal law	Outcome of the proceedings in terms of the laws governing disciplinary sanctions
52	Because there was no initial suspicion of a misdeed, the public prosecution office did not institute any proceedings, or it decided to withdraw prosecution pursuant to section 170 (2) of the Code of Criminal Procedure in light of the fact that no evidence had been submitted.	The investigations regarding compliance with service regulations did not establish any misconduct on the part of the law enforcement officers.
3	The proceedings are still pending; the public prosecution office has yet to take a decision.	Until the criminal proceedings have been terminated, the assessment of compliance with service regulations has been postponed.
2	Prosecution was withdrawn pursuant to section 153 (1) of the Code of Criminal Procedure due to the negligibility of the guilt and because the prosecution of the matter would not have promoted the interests of the public.	The investigations as to compliance with service regulations established that in the case of one law enforcement officer, there had been no misconduct; in the other case, no disciplinary measures were taken either, but the law enforcement officer was verbally made aware of the ramifications of his actions.

As regards the Land of **Saxony**, the attached table (Appendix 1) is included by reference.

For the Land of **Schleswig-Holstein**, the attached table (Appendix 2) is likewise included by reference.

For the Land of **Mecklenburg - Western Pomerania**, the figures are as follows:

1. Number of complaints brought against law enforcement officers of the Land police service for ill-treatment in the period from 1 January 2009 to 31 December 2010, and the number of criminal and disciplinary proceedings instituted as a consequence:

Period	Number of complaints filed against law enforcement officers of the Land police service of Mecklenburg – Western Pomerania for ill-treatment	Number of criminal proceedings instituted as a consequence	Number of disciplinary proceedings instituted as a consequence
2009	1	1	0
2010	0	0	0

2. Outcome of the proceedings listed hereinabove at 1. and sanctions meted out in these cases against the law enforcement officers concerned, either under criminal law or as disciplinary measures:

	Criminal proceedings		Disciplinary proceedings	
	Number of instances in which prosecution was withdrawn	Number of convictions	Number of instances in which the proceedings were discontinued	Number of disciplinary measures implemented
2009	1	0	0	0
2010	0	0	0	0

For **Thuringia**, the following information is available for the years 2009 and 2010.

Instances of culpable homicide by members of the police services (pursuant to sections 211 to 213 of the Criminal Code)

- 2009 - institution of new investigation proceedings in 1 instance, with prosecution being withdrawn pursuant to section 170 (2) of the Code of Criminal Procedure
- 2010 - no proceedings

Use of violence and abandonment by members of the police services (pursuant to sections 221 and 340 of the Criminal Code)

- 2009 - institution of 23 new investigation proceedings, of which 18 have been conclusively processed with the following results: In 1 instance, prosecution was withdrawn subject to the imposition of certain conditions pursuant to section 153 a of the Code of Criminal Procedure and in 17 cases, prosecution was withdrawn pursuant to section 170 (2) of the Code of Criminal Procedure.
- 2010 - institution of 25 new investigation proceedings, all 25 of which have been conclusively processed with the following results: 2 petitions were filed for a penal order to be issued by a court, in 22 cases, prosecution was withdrawn pursuant to section 170 (2) of the Code of Criminal Procedure and in 1 case, prosecution was withdrawn in light of the trivial nature of the offence pursuant to section 153 (1) of the Code of Criminal Procedure.

Use of force and abuse of authority by members of the police services (pursuant to sections 239, 240, 241 and 343 of the Criminal Code and pursuant to sections 258a, 344, 345 and 357 as well as pursuant to section 222 of the Criminal Code)

- 2009 - institution of 25 new investigation proceedings, of which 19 have been conclusively processed with the following results: in 1 case, charges were filed, in 15 cases, prosecution was withdrawn pursuant to section 170 (2) of the Code of Criminal Procedure, in 2 cases, prosecution was withdrawn in light of the trivial nature of the offence pursuant to section 153 (1) of the Code of Criminal Procedure, in 1 case the matter was transferred to another public prosecution office.
- 2010 - institution of 44 new investigation proceedings, 46 cases have been conclusively processed with the following results: in 2 cases, charges were filed, in 34 cases, prosecution was withdrawn pursuant to section 170 (2) of the Code of Criminal Procedure, in 1 case prosecution was withdrawn in light of the trivial nature of the offence pursuant to section 153 (1) of the Code of Criminal Procedure, and in 1 case the matter was transferred to another public prosecution office, while 8 cases are joined to another matter.

No information is available on the outcome of the proceedings.

In **Brandenburg**, no complaints were filed in the period under report, nor were any criminal or disciplinary proceedings instituted.

The Länder **Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate and Saxony-Anhalt** as yet do not compile the corresponding statistics. It is intended to capture the above-referenced data in statistics when the “Central Complaint Management System for the Police of North Rhine-Westphalia” is introduced.

As far as the **Federal Police** are concerned, the following information can be provided as requested:

In 2009, the prosecution regarding two complaints was subsequently withdrawn. As regards two other complaints, the public prosecution office responsible has not instituted any criminal proceedings.

In 2010, three complaints were registered as having been filed, for one of which no criminal proceedings were instituted, for another of which prosecution was withdrawn, and for the third of which the proceedings were transferred to the competent authorities at the Land level. Thus far, four complaints have been registered in 2011, regarding one of which the public prosecution office has withdrawn prosecution, while it did not institute proceedings regarding another. In the other two cases, the proceedings are ongoing and the decisions are as yet outstanding. The Federal Police have not meted out any disciplinary sanctions in the cases in which criminal prosecution was withdrawn.

The Committee would like to receive detailed information on the mechanisms for carrying out investigations into allegations of police ill-treatment in each of the Länder (paragraph 16).

The principle applies that the public prosecution offices have the authority to control any investigation proceedings under criminal law *ratione materiae* where there is the suspicion of an offence. In nearly all of the Länder, it is assured that the necessary concrete investigations are assigned to a different police precinct than the one whose members were implicated in the complaint. Moreover, there is a central investigations department in each of the Länder Brandenburg, Bremen, Hamburg, Hessen and Thuringia; as a general rule, this department is affiliated with the respective Ministry of the Interior of these Länder and conducts the investigations on complaints filed against police officers. In Schleswig-Holstein, disciplinary investigations are pursued centrally in the Ministry of the Interior by special disciplinary investigators; the supreme disciplinary authority is part of a non-police department.

The Committee encourages all the Länder to follow the example of the Land of Berlin, where all police officers are obliged to wear identification badges (paragraph 17).

In addition to Berlin, the Länder Brandenburg, Rhineland-Palatinate and Thuringia have likewise introduced the fundamental obligation to wear name tags or identification numbers. While exemptions are in place wherever wearing such badges would place the purpose of the deployment at risk, and for formed units, the latter wear tactical markers on their equipment to ensure the identification of the unit.

At present, Saxony-Anhalt is working on introducing an obligation for police officers to wear name tags; this is to be implemented by modifying the existing regulations on the police uniforms worn in the Land. According to these new regulations, name tags are to be worn on the uniform unless special deployment units (formed units) are taking action, or unless wearing name tags can be expected to increase the risk entailed by the deployment. Likewise, the tactical markings worn by deployment units of the Länder police services are currently being revised as separate processes. Thus far, the other Länder have refused to introduce an obligation in this regard, citing as their reasons the protection of the police officers' general personal rights as well as the legitimate interest they have in protecting themselves and their families. All police officers are free to wear name tags or identification number badges voluntarily. It should be noted at this juncture that as a matter of principle, all police officers must identify themselves upon request.

Safeguards

The Committee recommends that the federal and all Länder authorities take the necessary measures to ensure that relevant information on the implementation of the fundamental safeguards against ill-treatment (i.e. when the person was informed of his/her rights; when he/she had contacts with and/or visits from close relatives, a lawyer, a doctor or a representative of a consular service) is kept in respect of every police establishment in such a way that it can be retrieved retrospectively (on paper or in electronic form) (paragraph 19).

The CPT trusts that the federal and all Länder authorities will take steps to ensure that the information sheets setting out the rights of persons in police custody are systematically given to such persons immediately upon their arrival at a police establishment (paragraph 19).

It is usual practice in all Länder that all persons who are taken into custody are immediately informed on the reasons why this has been done, and are instructed as to their rights and obligations. Generally, information sheets are handed out, which are available in up to 34 languages in the detention facilities. As a matter of principle, any contact the detainees have with close relatives, lawyers, doctors or the representatives of a consular service, and/or visits from such persons, are documented and thus can be verified later. As a general rule, the detainees are offered the possibility of availing themselves of legal aid, and where required, it is ensured that they can consult their attorney in an undisturbed setting.

The Committee reiterates its recommendation that the relevant legal provisions be amended so as to ensure that they reflect the precepts set out in paragraph 20 as regards the possibility to delay the exercise of the right of notification of custody; the practice in all police establishments should be revised accordingly (paragraph 20).

In the view taken by the Federal Government, it does not seem necessary to amend the relevant legal provisions. Pursuant to section 114 b (2), first sentence, no. 6 of the Code of Criminal Procedure (Strafprozessordnung, StPO), anyone who has been apprehended must be informed that he or she may notify a close relative or a person of his or her confidence, provided that this does not place the purpose of the investigation at risk. The wording of the regulation clearly states that the instruction is the rule, and that the notification may be refrained from, or postponed, only in exceptional cases in which there is cause for the concern that such notification would jeopardize the investigations. The wording "provided the purpose of the investigation is not endangered thereby" is used in several instances in the Code of Criminal Procedure. An understanding of how this constituent element of the provision should be interpreted has evolved that is accorded universal validity; it serves police officers in actual practice without creating any interpretation issues for them. Concurrently, this wording allows the officers to take a decision in each individual case based on the circumstances given. The Federal Government believes that this standard is sufficiently clear and definite both in terms of protecting the person taken into custody and of ensuring that the police can properly perform their tasks. The only conceivable alternative would be to introduce provisions governing individual cases, which, in light of the variety of situations that can arise in life, would be subject to the risk of omissions.

The CPT calls upon the federal and all Länder authorities to take the necessary measures to ensure that all persons detained by the police can effectively benefit, if they so wish, from access to a lawyer throughout their police custody, including during any police questioning. Save for highly exceptional circumstances when the matter is urgent, whenever a detained person has made a request to have a lawyer present, police officers should delay the questioning of the person concerned for a reasonable time pending the arrival of the lawyer (paragraph 21).

Here as well, the Federal Government does not believe there is any need to make changes to the status quo. As the report has itself shown, and correctly so, suspects are under no obligation to make any statement when questioned by the police services, or in any other circumstances, and moreover have the right to involve counsel for their defense at any time. The suspects are to be instructed accordingly. This allows suspects to understand that they need not subject themselves to any questioning by the police without a defense attorney being present if they have requested

that counsel be involved. This suffices to prevent any ill-treatment or psychological pressure during questioning. The fact that only a small number of suspects were accompanied by counsel while being questioned by the police may also be the consequence of the fact that they did not feel they needed this assistance.

The CPT recommends that the federal and all Länder police authorities take steps to ensure that all persons deprived of their liberty by the police are informed in writing of the possibilities to benefit from lawyers' emergency counselling services (paragraph 22).

It is currently being reviewed whether the information sheets in use throughout the Federal Republic of Germany should be amended to include a note that detainees can contact the emergency counselling services provided by attorneys. As a matter of principle, the corresponding telephone numbers are available at the detention facilities; they are provided to the persons affected upon their request.

The CPT calls upon the federal and all Länder police authorities to take steps without delay to ensure that detained juveniles are not subjected to police questioning or required to sign any statement related to the offence of which they are suspected without the benefit of a trusted person and/or a lawyer being present. The relevant legal provisions should be amended accordingly (paragraph 24).

Here as well, modifying or amending the statutory provisions would seem to not be required. The provisions of the Code of Criminal Procedure and of the Law on Juvenile Justice (Jugendgerichtsgesetz, JGG) currently in force suffice to protect the rights of the juveniles affected. Creating an obligation for any persons having parental authority, legal representatives, attorneys or any other trusted persons to be present – which might have to be enforced using coercive means – would result in what is tantamount to a legal incapacitation of the juveniles affected in the criminal proceedings under the laws governing juvenile justice.

On the other hand, the course of the proceedings would be made dependent on whether or not, and if so, when, the parties authorised or obligated to be present actually exercise this right or obligation. By contrast, the laws currently applicable offer a more balanced solution. Youth criminal proceedings fundamentally are oriented by the rules in place for proceedings brought against adults. As regards the parties involved in the proceedings and the course of the proceedings, the following special aspects apply:

a. Questioning:

As a matter of principle, a juvenile suspect is entitled to all of the rights, in criminal proceedings, to which an adult is entitled. Sections 136 and 163 a (4) of the Code of Criminal Procedure (Strafprozessordnung, StPO) stipulate that at the first examination of suspects, the offense with which they are being charged must be made known to them. They are to be instructed that by law, they are free to either make a statement regarding the charge or to refrain from making any statements regarding the matter, and that they may at any time consult with an attorney of their choosing, and may do so also prior to the questioning. Moreover, suspects are to be informed that they may request evidence to be taken in their defense.

This means that juveniles involved in such proceedings have the right to consult with a defense lawyer of their choice, and may do so also prior to being questioned by the police. Pursuant to section 67 of the Law on Juvenile Justice, the persons having parental authority and legal representatives are entitled to the same rights. Additionally, persons having parental authority and/or legal representatives have the right to be present in the course of investigative actions. They may be present during questioning (by the police), during reviews of remand in custody, the taking of evidence on commission, at the main hearing at trial and when decisions are taken in enforcement proceedings. The obligation to accordingly notify these persons has been instituted in order to ensure that they can avail themselves of this right. Moreover, wherever the law stipulates that the suspect must be informed, the corresponding notice is to be sent to the persons having parental authority and to the legal representative of the juvenile charged with a crime, as stipulated by section 67 (2) of the Law on Juvenile Justice. When a juvenile suspect is personally questioned by a public prosecutor (with special responsibilities for cases involving juveniles) or by the presiding judge of the juvenile court pursuant to section 44 of the Law on Juvenile Justice (in the event it can be expected that a sentence of youth custody will be delivered), the rule must be complied with that, where the proceedings involve persons younger than sixteen years of age, a trusted person must be present while they are being questioned.

The principle applies that specially trained police officers (case specialists for matters involving juveniles) are to be tasked with processing cases involving juveniles. Should no such expert officers be available, other, suitable police officers are to be deployed. Should a police officer who is not a case specialist for matters involving juveniles pursue the first investigations, he or she shall question minors only where the corresponding findings are extremely urgent and highly relevant to searches for wanted persons or to the investigation as a whole. In this context, the officer is to record the statements made spontaneously by the minor along with his or her own observations. The case specialist for matters involving juveniles is to perform the subsequent investigations, and in particular is to question the juvenile.

b. Remand detention

In criminal proceedings under the laws governing juvenile justice, ordering and enforcing the remand detention of a juvenile is the last resort; this may be done only if the general reasons for detention as provided for by sections 112 and 112 a of the Code of Criminal Procedure (Strafprozessordnung, StPO) are given, and only if the purpose pursued by such remand detention cannot be achieved by a preliminary order regarding the education of the juvenile pursuant to section 71 (1) and (2) of the Law on Juvenile Justice (Jugendgerichtsgesetz, JGG) or by other measures, such as an appropriate oral undertaking by the juvenile before the judge to comply with certain registration requirements, to regularly meet with a person enjoying the trust of both the juvenile and the court, or with representatives of the youth welfare office or of the pedagogical assistance service for juvenile courts (Jugendgerichtshilfe). In this context the option of taking other measures must always be reviewed first and foremost; the court must in particular always first consider whether remand detention might be avoided by temporarily placing the juvenile in a home operated by the youth services and social services for the young (Jugendhilfe) (section 71 (2) of the Law on Juvenile Justice).

According to the stipulation of section 140 (4) of the Code of Criminal Procedure, which is a general rule for criminal proceedings, a case will require a defense attorney to be involved where an order of remand detention is enforced against a suspect pursuant to sections 112 and 112 a of the Code of Criminal Procedure, or where the temporary placement in an institution pursuant to section 126 a or section 275 a (6) of the Code of Criminal Procedure is enforced. The defense attorney is appointed immediately upon the enforcement having begun, as stipulated by section 141 (2), fourth sentence, of the Code of Criminal Procedure. Where the suspect has failed to appoint a defense attorney (section 142 (1) of the Code of Criminal Procedure) within a certain period – as a general rule, one week is assumed to be sufficient – then the presiding judge of the court responsible for the main hearing, or of the court with which the proceedings are pending, will appoint such counsel; should no charges have been filed, the investigating judge will be appointing counsel for the juvenile.

Section 68 of the Law on Juvenile Justice stipulates that as a matter of principle, a defense attorney is to be appointed for a juvenile suspect if such counsel were likewise to be appointed for an adult.

Moreover, section 68 (1) no. 4 of the Law on Juvenile Justice provides, in addition to the general rules set out in the law, that a defense attorney must be appointed immediately upon an order for remand detention or temporary placement pursuant to section 126 a of the Code of Criminal Procedure being enforced, in other words also in those cases in which the juvenile is already in remand detention or has already been placed in an institution in the context of other criminal proceedings.

The CPT would like to receive further clarification on whether and under which circumstances an ex officio lawyer may be formally appointed (beigeordnet) for indigent persons during the period of police custody (paragraph 23).

Pursuant to section 140 (1) no. 4 in conjunction with section 141 (3), third sentence, of the Code of Criminal Procedure (Strafprozessordnung, StPO), there is an obligation to immediately appoint defense counsel ex officio from the point in time at which a warrant of arrest that has been announced or issued by the court is enforced, such appointment being made subsequent to the suspect having been brought before the competent judge. Prior to this time, in other words when the suspect is detained on a temporary basis and taken into police custody, a judge may appoint a lawyer ex officio by order, should the public prosecution office file a corresponding petition, provided that the assistance of court-appointed defence counsel pursuant to section 140 (1) or (2) of the Code of Criminal Procedure will become a necessity in the later court proceedings. The appointment of such ex officio defence counsel by the court is independent of the financial situation of the suspect. The court-appointed defence counsel is entitled to a claim vis-à-vis the government treasury for payment of his or her fees. Where it can be expected that ex officio defence counsel will be appointed in the very near future, the adjudication by the supreme courts of Germany (ruling delivered by the Federal Court of Justice, in Neue Zeitschrift für Strafrecht (NSZ, New Journal for Penal Law), Rechtsprechungs-Report (Adjudication Report) 2006, p. 181) has stipulated that the police services are to notify any suspects already in their custody that – even if they lack the financial resources required to retain an attorney – they can be given the opportunity to call an attorney of their confidence, or to call the lawyers' emergency counselling services.

Conditions on detention

The CPT once again calls upon the police authorities of Baden-Württemberg and North Rhine-Westphalia, and, where appropriate, of other Länder, to take immediate steps to implement the CPT's long-standing recommendation that all persons held overnight in police custody be provided with a clean mattress (paragraph 27).

The Ministry of the Interior of the Land of Baden-Württemberg has taken the criticism of the CPT as its occasion to once again review the regulations in place regarding the furnishings of detention spaces, and to promptly remedy any deficiencies that may be ascertained. However, experience shows that mattresses and blankets will often be put to other purposes than those for which they are intended by the detainees, and thus can represent a safety risk (flammability, ability to withstand tearing). Accordingly, it may be appropriate to first review the risks that the conduct of a detained person indicates before that person is provided with the corresponding objects.

The CPT invites the German authorities to take steps at Düsseldorf International Airport and, where appropriate, at other international airports to ensure that persons who have been refused entry into German territory are provided with adequate sleeping facilities if they have to spend the night in the transit zone (paragraph 28).

The persons who have been refused entry into German territory are placed in the airport transit zone, which practice is governed by section 15 (6) of the Residence Act (Aufenthaltsgesetz, AufenthG). This provision states that it is permissible to place foreign nationals who have travelled to Germany by air, and who are refused entry into German territory, in an airport transit zone for a period of up to 30 days. This stipulation of the law allows Federal Police to refrain from measures depriving these travellers of their liberty, and to forgo placing them in detention facilities. Due to the frequent flight connections from German airports it is usually possible to depart within a short time. The airport operating companies are responsible for providing appropriate accommodation for the normally short period of stay in the transit zones. The competent authorities monitor the compliance of the airport operating companies with their legal obligations.

Other issues

The CPT recommends that the police authorities of all Länder follow the same approach as the Federal Police and the police service of Saxony and put an end to the resort to Fixierung in police establishments. In the event of a person in custody acting in a highly agitated or violent manner, the use of handcuffs may be justified. However, the person concerned should not be shackled to fixed objects but instead be kept under close supervision in a secure setting and, if necessary, police officers should seek medical assistance and act in accordance with the doctor's instructions (paragraph 29).

In many of the Länder, the practice of "Fixierung", in other words using restraints to completely deprive detainees of the ability to move such that they cannot change the position in which they are sitting or lying down without help, has been completely abolished in a police context. Insofar as this practice continues in existence, its application is tied to stringent pre-requisites and is used only in rare, exceptional cases, with the principle of proportionality being strictly adhered to. Such means of restraint are used only in situations in which the parties affected pose a hazard to themselves or others.

By contrast, it is a fundamentally permissible practice in all of the Länder to shackle detainees. However, it is applied only in limited, exceptional situations, in keeping with the principle of proportionality.

Detention of foreign nationals under aliens legislation

The CPT calls upon the German authorities to take immediate steps to ensure that, in all German Länder (including Baden-Württemberg, Bavaria and Saxony), detention pending deportation is governed by specific rules reflecting the particular status of immigration detainees (paragraph 33).

The Committee reiterates its recommendation that the authorities of Baden-Württemberg, Bavaria and Saxony take the necessary measures to ensure that immigration detainees are accommodated in centres specifically designed for that purpose, meeting the criteria set out by the Committee in its 7th and 19th General Reports¹. Such measures should also be taken by the authorities of all other Länder which have not yet set up detention centres for foreigners (paragraph 33).

Insofar as the CPT is asking the Federal Government to provide for the enforcement of detention pending deportation by special regulations “reflecting the particular status of immigration detainees”, this has already been done by the transposition into national law of the residence directives of the European Union. Accordingly, the regulations thus far in place regarding the enforcement of terms of imprisonment, which were applied pursuant to the stipulations of two laws applicable throughout Germany (section 422 (4) of the Code of Procedure in Family Law Cases (Familienverfahrgesetz) in conjunction with section 171 of the Prison Act (Strafvollzugsgesetz, StVollzG)) wherever this was not contravened by the nature and purpose of the detention pending deportation, will continue to be applied in future only insofar as no other provisions have been made in section 62 a of the Residence Act (Aufenthaltsgesetz, AufenthG) as concerns detention pending deportation. Section 62 a of the Residence Act implements Articles 16 and 17 of the EU Return Directive. In this way, minimum standards have been entrenched in German law that also govern the enforcement of detention pending deportation, such as the mandatory separation of such immigration detainees from sentenced prisoners; the right to contact legal representatives, family members and the competent consular authorities; the obligation of the institutions to notify the persons affected of their rights and obligations as well as of the rules applying in the respective institutions, as well as the participation of detained minors in education programmes and recreation opportunities.

It has been ensured in nearly all of the Länder that immigration detainees are kept separate, both in terms of the spaces to which they are allocated and of the organisational structures, from other prisoners. In some of the Länder, such as Brandenburg, Bremen, the Rhineland-Palatinate, North

¹ See CPT/Inf (97) 10, paragraph 29, and CPT/Inf (2009) 27, paragraph 79.

Rhine-Westphalia and Lower Saxony, detention pending deportation is enforced in entirely separate detention facilities. The Länder of Saxony-Anhalt and Saxony intend to likewise relocate their facility serving detention pending deportation into a separate building, provided the available budget funds allow. It should be noted that the Federal Government takes the view that in individual cases, connecting such a facility to institutions in which court sentences are executed may be sensible in individual cases, as this allows the infrastructure and security management services of the latter to be shared. Moreover, the number of people actually in detention pending deportation is quite low, so that the Federal Government believes the current detention situation can be termed appropriate. In the prisons, the parties affected have access to various care services such as physicians, psychologists, social welfare staff and ministers. They have the opportunity to use recreational facilities such as sports facilities and libraries. More particularly, juvenile immigration detainees have the possibility of participating in education programmes provided by the facilities' pedagogical staff. Finally, where detention pending deportation is enforced in prisons, the immigration detainees generally can be placed in relative proximity to their previous place of abode, meaning that visits by relatives who have not been detained are significantly easier.

In the CPT's view, the same approach should be followed to ensure that all minors (including those between the age of 16 and 18) are, as a rule, not held in detention pending deportation (paragraph 34).

As a general rule, minors are not detained pending deportation. This is the case only in severely limited exceptional cases, and the principle of proportionality is strictly adhered to. As a rule, minors are placed in the custody of the youth welfare office.

Conditions of detention

The CPT recommends that material conditions in the unit for male immigration detainees at Munich-Stadelheim Prison be improved, in the light of the remarks made in paragraph 36 (paragraph 36).

The director of the Munich Prison has taken the CPT's criticism concerning the material conditions in the unit for adult male immigration detainees as his occasion for performing renovation work therein and for generally improving the furnishings. Since the end of 2010, all of the walls and ceilings in the ward for detainees pending deportation have been painted. Moreover, the floors of the cells were repaired. In the communal room, five murals were applied to the walls, contributing to a more pleasant atmosphere. Finally, the corridor of the ward was decorated with a number of pictures.

Unfortunately, some of the inmates have frustrated the above efforts of the facility management to make the ward more comfortable. Again and again, graffiti is smeared on the walls of the cells or the furniture newly installed in the communal room or the cells, and this in spite of the fact that daily visual inspections have been introduced in order to prevent such vandalism.

The facility director has instructed the ward's director of services to inspect the ward once a week, to document the deficiencies ascertained, and to initiate their remediation.

In order to improve hygienic standards further, the facility management has made changes insofar as the immigration detainees are now allowed to shower three times a week, from twice a week previously; the rule that showers may always be taken after sports has not been changed.

The CPT recommends that steps be taken at Leipzig, Munich-Stadelheim and Schwäbisch Gmünd Prisons and, where appropriate, in other establishments in other Länder in Germany to ensure that an open-door regime is implemented for all immigration detainees throughout the day (paragraph 40).

The Committee recommends that steps be taken at Munich-Stadelheim Prison to ensure that male immigration detainees are provided with board games and made aware of the possibilities of having access to reading material (in various languages) and that more recreational activities are organised for them (paragraph 40).

As regards Munich-Stadelheim Prison specifically, it should be stated that the director has once again confirmed that in the ward for detainees pending deportation, the doors of the cells are kept open, as a general rule, for between 5 ½ to 8 ¾ hours per day on weekdays, and 3 hours per day on weekends. The facility management is utterly at a loss and cannot understand how the immigration detainees interviewed by the Committee could have alleged that cell doors are kept open for periods shorter than those set out above.

For reasons of ensuring safety and order in the facility, it would be irresponsible to introduce an open-door regime for all immigration detainees, in other words to keep cell doors open for the entire day without a member of the prison services being present. The special situation of immigration detainees is already taken into account in that the hours for which the cell doors in the ward for detainees pending deportation are kept open are significantly longer than those applying in the wards for sentenced prisoners and remand prisoners.

Based on the criticism voiced by the CPT, the recreational offerings available to immigration detainees at Munich prison were enhanced. The structured recreational program provided in addition to the regular hours in which cell doors are kept open is now as follows for the inmates of the ward for immigration detainees: on Mondays, an additional hour of sports is offered in the yard, in addition to the regular yard exercise, when they can play volleyball or go jogging around the yard. Also, they have the opportunity to participate in the course "Creative Drawing" on Monday afternoon, when the cell doors are opened; this course is taught by an art therapist. On Wednesdays, immigration detainees can play football for one hour. On Thursdays, it is possible to take one hour of fitness training. The facility intends to offer a further hour of sports in the yard on weekends, which thus far was prevented due to the frequent staffing bottlenecks on weekends.

It should also be mentioned that on Mondays and Wednesdays, a friar of the Jesuit Refugee Service comes to see the immigration detainees. On Thursdays, an Amnesty International employee is available in the institution to provide consultancy services to immigration detainees.

As described above, the facility management picked up on the CPT's criticism regarding the state of the communal room of the ward for immigration detainees pending deportation and has had five murals painted on the walls in order to give the space a more pleasant atmosphere. In the meantime, a bookshelf has been placed in the communal room with around 100 books, most of them in English. Moreover, a book trolley with an additional 130 books in various languages has also been instituted. The immigration detainees were notified of this new offering; a list of the books available to be borrowed has been made available in the ward. As before, inmates are also able to order foreign-language books from the facility library catalogue, which houses around 20,000 volumes. As a matter of course, this offering will continue in addition to the reading material introduced specifically for the ward (bookshelf and book trolley). A notice prominently displayed in the ward serves to inform the inmates.

Insofar as the Committee objects to the fact that no board games are available in the communal room of the ward for immigration detainees, the Federal Government would observe that while board games are indeed not available for the detainees to take whenever they wish to play a game, the inmates do have the opportunity to borrow such games, such as chess or backgammon, from the welfare services staff member responsible for the ward. Keeping the board games readily accessible in the communal room has not been practicable as they would often be taken into the cells, where pieces or figures would be lost or the board games would otherwise become unusable. However, the detainees are sufficiently aware of the fact that they can borrow board games from the welfare services staff member.

Based on the criticism brought forward by the CPT regarding the costs of using a rental television, institution management has made available 15 television sets to the ward for immigration detainees in the meantime; those immigration detainees, who have less than 25 euros of own money, are allowed to use a television set free of charge. No connection or power fees are charged.

In the other Länder, immigration detainees generally are able to freely move about within the ward, at any rate during the daytime. However, introducing an open-door regime for the entire day would require increased organisational effort and staffing resources which cannot be realised at present.

Contacts with the outside world

The CPT recommends that the authorities of Bavaria and, if necessary, of other Länder take immediate steps to ensure that immigration detainees are granted regular and frequent access to the telephone (at the detainee's own expense) (paragraph 41).

The Committee recommends that the authorities of Baden-Württemberg and Saxony and, if necessary, of other Länder take steps to ensure that all immigration detainees are allowed to receive at least one visit of one hour per week (paragraph 41).

In nearly all of the Länder, immigration detainees have the possibility of freely accessing the telephone to make calls at their own expense during the hours in which cell doors are kept open.

Likewise, comprehensive provisions are in place regarding visits. In nearly all of the Länder, and in particular in Saxony, the minimum requirement is met, according to which detainees are allowed to receive at least one visit of one hour per week. Moreover, immigration detainees in Brandenburg, North Rhine-Westphalia, Berlin and Lower Saxony are allowed to receive visits on a daily basis.

The situation in Munich-Stadelheim Prison has been improved as a result of the criticism voiced by the Committee, with the standard visit entitlement having been increased from one hour to four hours per month; moreover, the institution's management has ordered that in addition to the minimum entitlement to one telephone call per month at the expense of the detainee, a phone call is allowed promptly upon admission to the establishment (as a so-called "first call") and prior to deportation; these telephone calls will be charged to the state. Moreover, the institution will continue its existing practice of allowing immigration detainees to make additional telephone calls at the expense of the state in the event of specific needs arising, for example in order to contact the Aliens Registration Office (Ausländerbehörde) in order to deal with passport issues.

Health care

The CPT recommends that the authorities of Bavaria and all other Länder create secure rooms in major hospitals, with a view to avoiding the shackling of inmates to hospital beds (paragraph 43).

The Committee recommends that steps be taken by the authorities of all Länder to ensure that all medical examinations / consultations of hospitalised inmates are conducted out of the hearing and – unless the doctor concerned requests otherwise in a particular case – out of the sight of prison officers (paragraph 43).

As a matter of principle, it is standard practice in nearly all of the Länder for inmates to be transferred to the respective prison hospitals should they require inpatient treatment. Where an inmate must be treated in a hospital outside of the prison system in an individual case, these emergencies generally will be caused by a variety of reasons and cannot be foreseen in terms of when they will arise. For this reason, it is impossible to predict to which hospitals the inmates will be taken, all the more so as their condition often requires them to be treated in specialised clinics. In light of the budget funds available, instituting specially secured rooms in all of the various hospitals does not seem appropriate. Wherever inmates are transported to external hospitals, a specific review of the individual case is performed in each case in order to assess the extent to which the detainee must be kept under surveillance by the escorting member of the prison services and whether or not it will be necessary to additionally shackle the inmate in light of the increased danger that he or she might abscond, or the risk of him or her exerting violence against persons or objects.

The Federal Government is fully aware that the issue of members of prison services being present at medical examinations / consultations is highly sensitive. Taking account of the special circumstances governing the execution of a prison sentence, efforts are made in all cases to safeguard the fundamental right of inmates to determine the use of their data, while also taking consideration of the special relationship of trust existing between a physician and his or her patient – provided, however, that this does not contravene the statutory task of protecting the general public against further crimes. As a general rule, providing medical treatment to prisoners outside of prisons, and outside of the hearing or sight of guard staff, cannot be done. Where an increased risk exists that an inmate might abscond, the prison must ensure that the prisoner does not so escape. Moreover, the facility must safeguard that the prisoner is prevented from committing any further crimes. Accordingly, following a review of the individual case, instructions may be issued as to the prisoner being constantly and directly kept under surveillance by the escorting member of the prison services, meaning the escort officer is within hearing and within sight while the inmate is

speaking with the physician. However, care is taken in this context that medical examinations are performed such that while the member of the prison services sees the inmate, he or she cannot observe the measures taken in the medical examination or as part of the treatment.

Furthermore, care is taken in nearly all of the Länder, where the staffing situation permits, to ensure that where at all possible, the persons accompanying prisoners to the hospital or to consultations with physicians are members of the prison medical services. All members of prison staff are under confidentiality obligations. It should be noted at this juncture that in many instances, the medical practitioners themselves insist that a member of the prison services be present in the interest of ensuring their personal safety.

Staff

The CPT encourages the authorities of all Länder to provide specialised training to staff working in direct contact with immigration detainees. It would also be desirable for designated members of staff to receive language training in the most frequently spoken foreign languages (paragraph 44).

As a matter of principle, prison officers learn communication skills already in their vocational training, along with psychological and sociological competences. These skills are intensified and improved in regular professional training seminars. Additionally, professional training courses are offered in which members of prison staff are able to enhance their competences in inter-cultural interaction, while obtaining information on other states and the cultural background of these nations.

Nearly all facilities employ staff able to speak foreign languages, so that it is possible to communicate with immigration detainees in the most commonly used languages.

Information and assistance to foreign nationals

The CPT recommends that at Leipzig and Schwäbisch Gmünd Prisons, written information on the house rules as well as on the legal status of, and procedure applicable to, immigration detainees be provided to all foreign nationals, upon their admission to these establishments. Such information should be available in the most commonly used languages (paragraph 45).

With a view to Leipzig Prison, it should be noted that this facility is no longer in use for detaining foreign nationals pending their deportation. As a direct effect of the EU Return Directive, detainees in Saxony are held pending deportation only at Dresden Prison (male immigration detainees) and

in the prison of Chemnitz (female immigration detainees). It is intended to prepare an information sheet explaining the house rules in force at the respective facility to immigration detainees. This information sheet is to be translated into various languages.

The recommendations by the CPT for Schwäbisch Gmünd Prison are being picked up by the prisons and detention facilities of Baden-Württemberg. For the most part, the recommendation is in line with the provision made in the new section 62 a of the Residence Act (Aufenthaltsgesetz, AufenthG). Paragraph (5) of that section stipulates that immigration detainees are to be informed of their rights and obligations and as regards the rules applicable in the facility in which they are being detained. The Ministry of the Interior will cooperate in implementing this stipulation promptly after the act signing that provision into law has entered into force.

The Committee would like to receive detailed information on the arrangements made in all German Länder to provide legal counselling to immigration detainees (paragraph 46).

In **Baden-Württemberg**, staff members of the offices of the Regional Commissioner regularly visit the detention facilities for male immigration detainees awaiting deportation in order to ensure that they can obtain legal advice regarding matters governed by the laws governing foreign nationals. At Schwäbisch Gmünd prison, the responsible district office provides advice during special consultancy hours on an as-needed basis.

Moreover, all immigration detainees have the possibility of turning to the social services staff for advice on general issues, as well as the ministers and the prison's psychological services. Moreover, members of non-governmental organisations and church representatives regularly have access to the immigration detainees. The immigration detainees may consult a list of attorneys at any time. In addition to attorneys being allowed to visit the immigration detainees during the general opening hours of the visits administration service (Besuchsabteilung), they may also come to see them after having arranged a meeting. Where necessary, the Aliens Registration Office also involves interpreters.

In **Bavaria**, the immigration detainees in all three facilities in which such detainees are placed pending deportation have access to the social services staff of the respective institution wherever they require advice on legal matters. Additionally, employees of the relevant aid organisations provide advice to immigration detainees in all three institutions, such advice also addressing legal issues.

In **Berlin**, the Republican Association of Attorneys (Republikanischer Anwältsinnen und Anwälteverein e.V.) offers legal advice free of charge, informing the immigration detainees of the house rules in place at the detention facility, which are available in various languages.

In **Brandenburg**, detainees are given an information sheet upon admission to the detention facility for foreign nationals, which provides answers to what are assumed to be their first questions. Moreover, they are given a copy of the house rules and written instructions regarding their consular rights. They are also instructed that they have the opportunity to obtain advice from a government agency and, in one instance, from an attorney. The latter consultancy is organised by the Lawyers' Association (Anwaltsverein) of Frankfurt (Oder). In this context, the institution does not exert any influence on the selection of the attorneys who provide such advice. The Land covers the costs of the attorney, and likewise the costs of any interpreters that may need to be involved. The entirety of all documents and notices are provided to the detainees in a language that they are able to understand, unless the translation of such documents is mandated by law.

In **Bremen**, the private Association for Legal Aid (Verein für Rechtshilfe) provides legal advice on a volunteer basis and at no charge. For this purpose, members of the association have the opportunity to come to the premises of the police detention once a week to provide legal advice during special consultancy hours.

In **Hamburg**, immigration detainees have access to legal advice free of charge via the Public Legal Information and Dispute Resolution Agency (Öffentliche Rechtsauskunfts- und Vergleichsstelle). The immigration detainees are informed of this fact upon admission to the prison.

In **Hessen**, immigration detainees have access to social services and to the External Consultancy Services for Foreign Nationals (Externe Ausländerberatung) in order to obtain specific advice on issues subject to the laws governing foreign nationals. At these consultations, questions regarding the statutory foundations and provisions of German residence laws will be addressed, while information is likewise imparted regarding the legal system, the structure of government agencies and the way in which they work.

In **Mecklenburg - Western Pomerania**, the staff members of the facility support any contact the detainees wish to establish with specific attorneys, representatives of government agencies or persons involved in their care, and will grant all of these persons the opportunity to visit the detainees as required.

In **Lower Saxony**, the members of the prison staff will provide support to the immigration detainees in contacting the attorneys named by the detainees. As a result of the Act on the Assistance with Legal Advice (Beratungshilfegesetz) and the opportunity to obtain legal aid for court costs, it is assured that all detainees can obtain appropriate consultancy services and be represented by counsel.

In those cases in which it is not possible to communicate with the immigration detainee, also not with the support of persons familiar with the detainee (such as close relatives), the members of the prison staff will co-operate with the Land Refugee and Immigrant Agency (Landesaufnahmebehörde) of Lower Saxony in providing interpretation services.

In **North Rhine-Westphalia**, legal advice is provided free of charge. Special consultancy departments have been established for this purpose. They are run by attorneys' associations, and are allowed to use premises made available by the Land Ministry of Justice. The Ministry of Justice also organises interpretation services on an as-needed basis. The attorneys' services are settled directly with the detention facility.

In the **Rhineland-Palatinate**, an advance payment is made on behalf of immigration detainees lacking the financial means to retain an attorney in order to ensure that the corresponding applications can be filed for legal aid regarding court costs or regarding legal consultancy fees. Since February of 2007, the Land budget has provided for such advance payments to be approved and granted (in the amount of EUR 30, in keeping with the fees pursuant to the Law on the Remuneration of Attorneys (Rechtsanwaltsvergütungsgesetz, RVG), and for a contribution towards the travel costs of the consulting attorney (EUR 20 for the travel costs, plus value added tax) to be paid. Additionally, the Diaconal Service of the German Protestant Church (Diakonisches Werk) in Hessen and Nassau and the Charitable Association (Caritasverband) of the Mainz Diocese of the Catholic Church provide independent legal consultancy services by attorneys (two hours per week). They have instituted a legal aid fund from which contributions are made towards covering the costs of legal proceedings. Finally, the Land subsidises a project initiated by the Charitable Association of the Mainz Diocese of the Catholic Church involving volunteer translators and interpreters providing their services free of charge; they can also be involved as part of the legal consultancy services provided.

On the basis of an administrative agreement concluded by the Rhineland-Palatinate and the **Saarland**, the detention of immigration detainees pending deportation, for whom the Aliens Registration Office of the Saarland is responsible, is enforced for that federal Land by the detention facility in Ingelheim, located in the Rhineland-Palatinate. The inmates there are cared for by the two churches, the Workers' Samaritan Federation and the Charitable Association and Diaconal Service. In particular the latter two organisations provide legal advice free of charge.

In **Saxony**, the Contact Group for Immigration Detainees (Kontaktgruppe Abschiebungshaft) visits Dresden Prison once a week and provides individual consultancy to immigration detainees, also as regards legal issues. To cite but one example, they have developed information flyers setting out the judicial remedies available to immigration detainees, which have been translated into various languages. In Chemnitz Prison, the Working Group for Foreign Nationals and Germans (AG In- and Ausländer e. V. Chemnitz) assists the immigration detainees and provides advice. Moreover, immigration detainees may turn to the responsible authorities at any time by postal mail or telephone. In this, they are provided support by the prison's social services.

In **Saxony-Anhalt**, all prisoners have competent contact persons within government agencies who will assist them, at no charge, in dealing with their issues and who will put them in touch with external legal consultancy providers if required.

In **Schleswig-Holstein**, immigration detainees are informed of the judicial remedies available to them in the context of the existing consultancy services available. In the Rendsburg detention facility for immigration detainees, the consultancy services provided regarding the proceedings by the Land Authority for Foreign Nationals Matters (Landesamt für Ausländerangelegenheiten) are augmented by the social advice and consultancy on proceedings provided independently of the judiciary by the Diaconal Association for Migration (Diakonieverein Migration). The consultancy services provided by the latter are funded by the European Return Fund, together with the Land Ministry of Justice, Equal Employment Opportunities and Integration.

In **Thuringia**, an employee of the Thuringian Ministry of the Interior regularly provides consultancy to questions that may arise. Moreover, regular contact to the respective Aliens Registration Offices is enabled wherever needed.

Prisons

Ill-treatment

The CPT trusts that the authorities of North Rhine-Westphalia, Saxony and all other Länder will remain vigilant and continue their efforts to prevent inter-prisoner violence, with particular attention being paid to units for juveniles (in which bullying tends to occur more frequently) (paragraph 52).

The authorities of all Länder will continue their efforts to prevent inter-prisoner violence, in particular in the units for juveniles.

The prevention of violence is given top priority. This is evidenced on the one hand by the fact that in many prisons, courses are offered to the inmates on non-violent conflict resolution (social training, anti-aggression training, sociotherapy). On the other hand, care is taken to ensure that during the mandatory quiet times, the inmates are kept in individual cells. Moreover, the programme of activities for the inmates was enhanced by providing further opportunities for work, recreation and sports. Additionally, staff at the establishments is given targeted training to enable them to recognise the first signs of violence and ill-treatment. Significant progress has been made in the past few years, in particular in units for juveniles. To cite but one example, Bavaria has increased the staffing levels at its units for juveniles, while consistently enhancing the sports activities available to juveniles. There, young inmates who are assessed as being fit to participate in such projects take part each year in sports pedagogical activities (such as hiking in the mountains or cross-country skiing) outside of the institutions under the supervision of prison staff; in the context of these activities, the inmates learn or improve on important virtues such as team spirit, sense of responsibility and perseverance, while developing or enhancing their ability to recognise and overcome their own weaknesses, and to deal reasonably with feelings of aggression.

Conditions of detention of juveniles in the prisons visited

The CPT recommends that the sanitary facilities in the cells of the juvenile unit at Cologne Prison be fully partitioned (paragraph 54).

It is a standard feature in newly built institutions that the sanitary facilities are partitioned off from the cell space. In old institutions (and Cologne Prison is one such institution), the cells housing several inmates as well as the single-occupancy cells that must be used for two inmates (for example in order to prevent suicides) have been retroactively equipped with partitioning. While thus far, correspondingly equipping the single-occupancy cells had not been considered, this is currently under review. Insofar as the demand for partitioned sanitary facilities in Cologne Prison is limited to the juveniles detained there, it should be noted that in the foreseeable future, the male juvenile inmates will be relocated to the new or expanded juvenile units in Wuppertal-Ronsdorf and Heinsberg.

The CPT recommends that the authorities of Saxony develop the regime for juveniles at Leipzig Prison so as to ensure that such prisoners enjoy out-of-cell activities throughout the day during the week, until the early evening (paragraph 58).

The CPT recommends that immediate steps be taken at Cologne, Herford and Leipzig Prisons to provide juvenile prisoners with increased out-of-cell time during weekends (paragraph 59).

It is intended to assign additional staff to the Leipzig Prison and Prison Hospital; this will prospectively be done by the end of the year. Once that has been achieved, the juvenile inmates will be granted more time outside their cells. In this context, it is conceivable to introduce additional times in which cell doors are kept open, a second time per day for activities in the yard and additional recreational activities such as a table tennis group or a cookery group.

The Herford and Cologne Prisons offer various group activities, projects and other opportunities for keeping busy to their male and female juvenile inmates. In Herford Prison, sports, chess and table soccer tournaments are organised on weekends, as are theatre projects, reading groups and game groups, climbing projects as well as non-denominational faith discussions and seminars teaching job application techniques. In Cologne Prison, the following activities are available to female juvenile inmates, among others: theatre group, bakery group, dance project, pottery courses. During lunch hours, the doors of the cells are kept open for around 1.5 hours to allow the juvenile inmates to take their meal together and to communicate with each other. On summer weekends, inmates have an additional hour of free time outdoors. Additionally, social training is provided as a block seminar on several weekends a year. Finally, considerations are under way to expand the recreational and sports opportunities available at Cologne Prison, with the focus being placed on recreational pedagogy.

The CPT recommends that steps be taken at Herford Juvenile Prison to ensure that placement under the regime in Level 1 really is for the shortest possible time. Further, inmates placed in the treatment unit should be heard in person before the measure is applied, receive a copy of the decision and be informed in writing of the modalities for appealing against that decision. They should also confirm with their signature that the measure has been explained to them, as well as the avenues for appeal (paragraph 60).

At the “treatment” unit, those juvenile inmates are placed under the regime in Level 1 who have seriously compromised the security at the institution in several instances, violating the safety and/or physical integrity of their fellow inmates. This particularly includes inmates who are prepared to use violence or who are violent, as well as inmates massively involved in the criminal subculture or who constantly violate the rules.

The first stage of this concept (securitisation level) is targeted at calming down the inmate in question and securing him or her, while protecting the fellow inmates against (further) attacks. At this stage, the inmate who has shown himself or herself to have acute issues is separated from the other inmates and is placed in a single cell, with restrictive rules and protective measures applying. The intention is for the inmates treated in this way to come to their senses in these conditions, to become aware of their misconduct, to develop an inner readiness for change and co-operation, and for them to seek out the staff of the ward to talk to them. At this point, the staff will discuss the inmate’s misconduct and will work towards convincing him or her to participate in treatment measures. Furthermore, staff members of the ward transferring the inmate will continue to care for him or her while in treatment. In the weekly conferences addressing the enforcement of the inmates’ sentences (“transfer conference”), the decision will be taken, based on the inmate’s development, whether or not he or she should continue to be held in the securitisation level of the treatment concept, whether the inmate should be admitted to Level II (co-operation stage) of the treatment unit, or whether he or she should be allowed to return to the normal ward. In this way, it is assured that the young inmates are subject to the regime of Level I only for as long as this is necessary for reasons of treatment.

For pedagogical reasons, having (another) meeting with the juvenile inmates prior to the regime being applied is held to be counterproductive as this would create the impression with them that they might be able to influence the application of the regime. When the disciplinary proceedings are instituted against the juvenile inmate as a result of the misconduct or violation, a personal meeting is already held with him or her, and this is also done immediately after their placement in the treatment unit in order to inform them of the nature of the treatment there. There is no need to issue a written notice and to inform the inmate of his or her rights separately, which the juvenile

inmate would confirm to have received by his or her signature, as the facility's house rules keep them fully aware of their rights, in particular as regards the judicial remedies available to them. At present, the treatment concept is being revised in order to more precisely take account of each individual case while giving greater consideration to the individual personality of the juvenile inmate involved. The director of Herford Prison will have the CPT recommendations made available to the staff members at the treatment unit so that they may be taken into account in administering the treatment. Furthermore, the director will have an information sheet prepared about the treatment unit, which will be given to the juvenile inmates when they are admitted.

Conditions of detention of adult female prisoners at Schwäbisch Gmünd Prison

The CPT recommends that steps be taken at Schwäbisch Gmünd Prison to ensure that all prisoners are provided with appropriate footwear for outdoor exercise in winter and that the outdoor exercise yards are equipped with adequate protection against inclement weather (paragraph 61).

Immediately following the Committee's visit, Schwäbisch Gmünd Prison procured 128 pairs of winter boots in various sizes and made them available to the inmates. As there was no demand, not a single pair of such boots has been issued to the inmates thus far.

The CPT encourages the authorities of Baden-Württemberg to pursue their efforts to develop the programme of activities for female remand prisoners at Schwäbisch Gmünd Prison. The longer the period for which remand prisoners are detained, the more developed should be the activities which are offered to them (paragraph 62).

Since the Committee visited the Schwäbisch Gmünd Women's Prison, the plans for constructing a new building for workshops have been completed for the most part; this workshop is to improve the programme of activities available to female remand prisoners. The funds required for the construction project were increased once again by EUR 1.2 million to EUR 5.2 million, and this sum was included in the draft budget for 2012 of the Land of Baden-Württemberg. Construction on the workshop building will commence in the course of 2012. Once it is completed, the programme of activities offered to the female inmates will improve significantly.

Conditions of detention of adult male prisoners at Leipzig Prison and the detached unit of Schwäbisch Gmünd Prison at Ellwangen

The CPT recommends that the authorities of Saxony improve the programme of activities, including work and vocational training opportunities, for prisoners at Leipzig Prison; the aim should be to ensure that all prisoners, including those on remand or serving short sentences, are able to spend a reasonable part of the day outside their cells engaged in purposeful activities of a varied nature (work; vocational training; education; sport; recreation/association) (paragraph 64).

The CPT would like to receive more detailed information about the plans to construct a new building for workshops at Leipzig Prison (paragraph 64).

At present, the programme of activities at Leipzig is under review in terms of enhancing it by additional activities, such as a course for obtaining the European computer driving licence and a programme for community work supervised by social pedagogues. Depending on the financial means available, it is planned to implement these measures in 2012.

A new workshop hall has been included in the target planning for the overall expansion of Leipzig Prison and Prison Hospital. In 2008, the funds for this investment project were applied for with the government enterprise responsible for real estate and construction management in the federal Land of Saxony (Staatsbetrieb Sächsisches Immobilien- and Baumanagement). The workshop hall is to provide various work areas in which the inmates will be able to pursue a range of activities. As yet, no specific design plans have been prepared. Efforts will be made towards realising the new building in the coming years, depending on the availability of budget funds.

The CPT recommends that the authorities of Baden-Württemberg take immediate steps to increase out-of-cell activities for remand prisoners at Ellwangen Prison (paragraph 65).

At present, an enhancement of the activities programme available to remand prisoners is being reviewed. As German law does not place remand prisoners under obligation to work, they are offered employment opportunities only if all of the sentenced prisoners have work. Currently, the order situation has meant that of the prisoners placed in the Ellwangen branch of Schwäbisch Gmünd Prison, only 60% could be given work assignments. The inmates' recreational activities include daily yard exercise and the regular temporary lock-up together with fellow inmates in another cell (Umschluss). Moreover, all inmates who are not subject to any special security measures and restrictions as a result of their remand detention may participate in a sports programme offered twice a week, as stipulated by statutory requirements.

Health care

The CPT would like to receive further information on the plans for the construction of a new hospital building at Leipzig Prison (paragraph 67).

The plans for the construction of a new hospital building provide for a modern, three-storey building with good access to natural light and two additional interior courtyards. All in all, the hospital will be able to accommodate 50 inmates in a psychiatric ward and 30 inmates in a somatic ward. As a result of the functional layout of the rooms, conditions for inmates will improve significantly. The patients' rooms are either single-occupancy or double-occupancy rooms having a size of between ca. 12 sqm and ca. 15 sqm. A therapeutic garden, a generously proportioned courtyard with seating arrangements, and additional green spaces are planned along with the new building. The planning and design of this new building are being pursued as a top priority. In light of the Land's distressed budget, the commencement of construction had to be postponed, which initially had been scheduled for 2010. It is intended to file for funds for the new construction project, which will entail total construction costs of around EUR 14.7 million, with the next bi-annual budget for 2013/2014, and to give the project high priority.

The CPT recommends that the authorities of Saxony redouble their efforts to fill as soon as possible the vacant posts for psychiatrists at Leipzig Prison Hospital (paragraph 68).

The Free State of Saxony has always made efforts, and continues to do so, to hire the psychiatric specialists urgently required, in particular those for the Prison Hospital. The vacancies have been advertised in the medical press, in national newspapers as well as in other European countries; offering financial incentives is another means of raising interest in the positions. Due to the accelerated promotions system in place and the supplements paid, all of the medical practitioners working in detention facilities and prisons are paid wages significantly higher than those stipulated by collective wage agreements. Moreover, the prospect is offered to applicants that they may be made civil servants for life. However, neither the easing of restrictions on the freedom of movement for workers from the eastern EU Member States, nor a Europe-wide tender procedure by which the operation of the psychiatric ward of the prison hospital was to be transferred to a private hospital operator have been able to improve the situation. This is aggravated all the more by the fact that there is a significant shortage of psychiatrists, not only in prison hospitals. The responsible authorities continue to make all efforts to fill the vacant positions at Leipzig Prison Hospital.

The CPT wishes to receive the comments of the authorities of Saxony on the issues raised in paragraph 69 concerning Leipzig Prison Hospital, in particular the low level of nursing staff at night and related security-issues as well as the high rate of sick leave amongst nurses (paragraph 69).

At Leipzig Prison Hospital, one nurse currently is deployed in the late shift and during the night shift, and has responsibility for one ward. The calculations done by the competent department indicate that there is a need for additional staff. In all likelihood, this will be covered by the end of this year by staff being transferred from other institutions.

Thanks to the efforts made generally by the health care management department in the past year, it was possible to reduce the rate of sick leave per employee in the prisons and detention facilities of the Free State of Saxony, albeit only slightly; Leipzig Prison Hospital has also benefitted from this development. In order to further reduce the rate of sick leave, it is planned to organise “health days” in all prisons, at which information will be provided on healthy life and work habits. This year, a framework operating agreement (which also covers the detention facilities and prisons) was concluded on “Health Management in the Judiciary of the Free State of Saxony”; this is a significant contribution towards giving local health management schemes a more systematic structure and coordinating them. Additionally, the executive staff of the Saxonian prison system was surveyed online on health promotion. At present, the responsible department is evaluating the feedback. Moreover, it is planned to introduce an action guideline on health management for use by the entities, providing suggestions and recommendations for an effective health management system. Finally, it is expected that once additional staff is deployed to Leipzig Prison and Prison Hospital, the rate of sick leave will diminish as a consequence of the workload of each individual staff member being reduced.

The CPT encourages the authorities of Saxony to provide a wider range of out-of-room activities to psychiatric patients who stay for prolonged periods at Leipzig Prison Hospital (paragraph 70).

We refer to the statements made regarding paragraphs 58 and 59.

The CPT recommends that health-care staffing levels at Herford and Leipzig Prisons be reinforced, in order to ensure a nursing presence within the establishments on all days of the week (including at weekends). This should inter alia make it possible to avoid the need for medication to be distributed to prisoners by custodial staff (paragraph 74).

The CPT recommends that steps be taken at Herford and Leipzig Prisons to ensure that someone competent to provide first aid, preferably with a recognised nursing qualification, is always present on the premises (including at night) (paragraph 74).

At Leipzig Prison Hospital, nurses provide around-the-clock cover. In the prison tract of Leipzig Prison, one nurse is deployed during the daytime.

Outside of regular working hours, the general practitioners' emergency service of the city of Leipzig is available on-call, as is the ambulance. Moreover, its hospital puts Leipzig Prison in a position, unlike other prisons, to deploy a nurse at any time in its prison tract, also at night, where this is required. In this way, the appropriate medical care of the inmates is safeguarded at any time.

Medication is distributed in the early shift by the medical service of Leipzig Prison and Prison Hospital, which has the added advantage that any questions the inmates may have can be dealt with at that time. In the late shift and the night shift, custodial staff of the different wards distributes the medication – meaning that they hand over to the inmates the medication sorted previously by the medical service. Thus far, no problems have been reported regarding this practice.

At Herford Prison, it is assured by the staffing level of the health care services that nursing staff is available on weekends as well as on holidays. It should be noted that an on-call service has been instituted. Moreover, it is planned to slightly increase the staffing level in order to achieve the employment objective set for Herford Prison.

In the facilities operated in the Land of North Rhine-Westphalia, the members of the general custodial staff in prisons hand out dispensers that previously have been filled by members of the medical services. The medication is prescribed by the physicians working at medical services.

In all prisons of the Land of North Rhine-Westphalia, employees are being trained as first aiders. In this way, first aid is assured.

The CPT recommends that existing procedures be reviewed in all German prisons in order to ensure that, whenever injuries are recorded by a doctor which are consistent with allegations of ill-treatment made by a prisoner (or which, even in the absence of allegations, are indicative of ill-treatment), the record is systematically brought to the attention of the relevant prosecutor, regardless of the wishes of the person concerned (paragraph 76).

It is ensured in all of the Länder that any suspected ill-treatment will be investigated. The findings gained in such investigations are carefully documented and are brought to the attention of the prosecution authorities. The laws of some of the Länder additionally stipulate that prison physicians must disclose information to prison management to the extent this is required in order to avert any danger to the safety and order of the prison, or to the physical integrity and life of the inmates or of third parties, or to the extent this is otherwise required in order for the prison or detention facility to fulfil its tasks. This obligation is consistently complied with.

The CPT recommends that in all the prisons visited, prisoners be made aware that they are not obliged to reveal their reasons for wishing to have access to the health-care service. If they so wish, prisoners should be able to approach the health-care service on a confidential basis, for example by means of a message in a sealed envelope (paragraph 78).

In all of the Länder, prisoners and detainees may contact a physician without having to provide their reasons for doing so. As a matter of course, this may also be done using a sealed envelope. However, it has proven to be effective that prisoners state, simply for organisational reasons, whether or not their need to consult with a physician is urgent.

Other issues

In the CPT's view, steps should be taken by the authorities of North Rhine-Westphalia and Saxony to resolve the problem of low staffing levels and extended overtime obligations at Herford and Leipzig Prisons, not only for the sake of the staff concerned but also because of the negative effects this problem may have on prisoners (paragraph 79).

The staffing levels in the detention facilities and prisons in the Land of Saxony correspond to the German average and are generally assessed as being sufficient. As already stated above, the number of staff at Leipzig Prison will be increased in the very near future.

The staffing levels at Herford Prison comply nearly fully with the staffing target defined for the institution. One additional permanent post each will be allocated to the social services department and to general custodial services in the near future. The management of the institutions has been responsible for the remuneration of additional work and overtime since 2011.

The CPT recommends that the prison authorities of Baden-Württemberg, North Rhine-Westphalia and Saxony take steps to ensure that prisoners subjected to a disciplinary sanction are systematically provided with a copy of the disciplinary decision and informed in writing of the possibilities of lodging an appeal (paragraph 81).

In Saxony, the criticism voiced by the Committee has given rise to the decision to in future provide prisoners with a copy of the disciplinary decision, along with written instructions regarding the means available to them of lodging an appeal. The Land of North Rhine-Westphalia will review this matter separately in the context of amending its Land Prison Act (Strafvollzugsgesetz, StVollzG). In the interests of using available resources sparingly, Baden-Württemberg will maintain its practice of notifying prisoners orally of the disciplinary decision in the case of minor disciplinary sanctions.

The CPT calls upon the authorities of Baden-Württemberg, North Rhine-Westphalia, Saxony and, where appropriate, of other Länder to formally abolish the restriction regarding access to reading material for prisoners subjected to the disciplinary measure of solitary confinement (paragraph 82).

In nearly all of the Länder, the complete restriction of access to reading material as a disciplinary sanction has been abolished. In all of the Länder, the disciplinary sanction of solitary confinement fundamentally is the most serious disciplinary measure available. It is meted out only subject to very strict requirements being met, in order to deal with exceptionally severe violations and in very rare cases. The Federal Government is of the opinion that in light of the seriousness of the offense committed by the prisoner, an individual case may require that for disciplinary reasons, the prisoner be prohibited from reading the newspapers and magazines to which he or she has subscribed. However, in these cases as well, inmates have access to general reading material.

The CPT recommends that the authorities of Baden-Württemberg and all other Länder concerned take steps to ensure that disciplinary punishment of prisoners never involves a total prohibition of family contact and that any restrictions on family contact as a punishment are imposed only when the offence relates to such contact; the relevant Länder laws should be amended accordingly (paragraph 83).

In many Länder, this disciplinary sanction has been abolished.

In those of the Länder in which this measure is still available as a sanction, it is possible to restrict to urgent cases any contact with persons outside of the facility for a maximum term of three months. This sanction as well is ordered only in rare and exceptional cases and requires, as a matter of principle, that the breach of discipline that is to be punished is directly connected to these contacts. Nonetheless, visits by family members that do not contravene the purpose of this measure are generally exempted from this sanction.

The CPT recommends that the role of prison doctors in relation to disciplinary matters be reviewed in all prisons, in the light of the remarks in paragraph 84. In so doing, regard should be had to the European Prison Rules (in particular, Rule 43.2) and the comments made by the CPT in its 15th General Report (see paragraph 53 of CPT/Inf (2005) 17) (paragraph 84).

The Federal Government does not share the concerns raised by the Committee. The fact that the medical practitioner of the prison sees the inmate in fact serves the protection of the prisoner and is intended to allow an assessment of whether or not, from a medical point of view, solitary

confinement can be enforced. Insofar, it is even regarded to be an advantage for the prison doctor to be aware of any illnesses from earlier examinations. It is not likely that this will jeopardise the relationship of trust.

In the CPT's view, the management of all prisons visited should ensure that a record is kept of placements of prisoners in a plain cell (paragraph 85).

Insofar as the so-called plain cells (Schlichtzelle) are a security cell (besonders gesicherter Haftraum), this is a special security measure the implementation of which is documented in all of the Länder – as a matter of principle, all special security measures must be documented.

Insofar as the cells are simply protected against vandalism and have been equipped with indestructible furniture, placement of an inmate therein does not constitute a special security measure, and this will not be separately documented.

The CPT calls upon the authorities of all Länder to take the necessary steps to ensure that prisoners under segregation, whose state of health so permits, are offered at least one hour of outdoor exercise every day. The relevant legal provisions should be amended accordingly (paragraph 86).

As a matter of principle, all prisoners in all of the Länder, including those who have been placed under segregation, have the opportunity to take one hour of outdoor exercise.

However, it must be taken into account that placing inmates in a specially secured cell is tied to strict requirements, and that this measure is taken only in rare cases. In such event, the fundamental pre-requisite is that the conduct or the psychological state of the prisoner must give rise to the assumption that there is an increased risk of the inmate's absconding, or a risk of his or her violently attacking others or destroying objects, or a risk of suicide or self-harm. In these cases, it is not unlikely that any time spent outdoors, outside of the specially secured cell, will turn into an incalculable danger; on the other hand, completely shackling such an inmate and guiding them outside is a degrading procedure. In these exceptional cases, which are severely limited by rules, the option must continue to be available to staff that they may decide not to allow outdoor exercise, after having weighed this decision in strict adherence to the principle of proportionality.

The CPT recommends that steps be taken by the management of Leipzig Prison to follow the approaches at Cologne and Schwäbisch Gmünd Prisons as regards the clothes provided to prisoners during their stay in a security cell (paragraph 87).

Following up on the commission's suggestion, the types of suicide-proof clothing available on the market will be reviewed to determine models with improved comfort for wearers while concurrently meeting security requirements in the required scope.

The Committee reiterates its recommendations that steps be taken by the relevant authorities to ensure that the precepts set out in paragraph 93 are effectively implemented in all prison establishments in Germany resorting to Fixierung (paragraphs 93 and 113).

The CPT wishes to stress once again that the aim should be to abandon the resort to Fixierung in non-medical settings²; it would be desirable for the prison authorities of all Länder to follow the approach adopted by the authorities of Saxony (paragraph 93).

The Federal Government does not believe a general abolition of restraining inmates (Fixierung) to be practicable. This form of restraint must be available as a means of last resort, albeit in strictly limited, exceptional cases, in which the principle of proportionality is strictly adhered to. It is conceivable that situations may arise in day-to-day life at detention facilities and prisons in which all attempts at de-escalation have failed and no less invasive means are available of averting the acute risk of self-harm or harm to others. In all Länder, this means of restraint is used only as a security measure and never as a disciplinary sanction.

In this context, all of the Länder observe the requirements stipulated by the CPT. Accordingly, the means of restraint in application in nearly all of the Länder consist exclusively of strap systems, each prisoner so restrained is continuously and directly monitored (Sitzwache) and a doctor is consulted as a matter of principle. Moreover, the matter is documented in all detail.

The Committee recommends that the prison authorities of all Länder take the necessary steps to ensure that all prisoners, whatever their legal status, are entitled to a visit of at least one hour every week (paragraph 94).

In all of the Länder, the inmates of units for juveniles are entitled to receive visits for four hours per month. For all other prisoners and detainees, the minimum visit entitlements vary between 1 and 4 hours per month.

As a matter of principle, all detention facilities make efforts in their day-to-day practice to allow inmates to receive as many visits as possible. Specifically, some of the Länder have instituted the possibility of receiving longer visits of several hours' duration in special apartments (Langzeitbesuch). Also, all of the Länder are consistently making efforts to expand the hours during which visits may be made. However, for reasons of available space and staffing as well as on organisational grounds, it is not possible to fully comply with the CPT's recommendation. Moreover, the distribution of visits on a monthly basis will be upheld as this allows greater flexibility both to the inmates and to the institutions.

² See paragraph 11 of the report on the 2005 visit (CPT/Inf (2007) 18).

The Committee reiterates its recommendations that the authorities of all German Länder make the necessary arrangements to ensure that both remand and sentenced prisoners are granted regular and frequent access to the telephone (paragraph 95).

In most of the Länder, all inmates have the possibility to regularly use the generally accessible telephones at their own expense during the hours when cell doors are kept open. In some instances, remand prisoners may be subject to restrictions in order to protect the ongoing investigations and to avert the risk of evidence being tampered with.

The Committee would like to receive in respect of all German Länder detailed information about independent prison monitoring and complaints bodies (paragraph 98).

In addition to the legal remedies available to inmates with the courts, and their access to other national or international organisations to whom they may address their concerns, prisoners in **Baden-Württemberg** may turn to the following institutions at the level of the federal Land:

- Petitions Committee of the Land Parliament of Baden-Württemberg
- Representatives responsible for detention facilities and prisons (Strafvollzugsbeauftragter) of the party factions represented in the Land Parliament of Baden-Württemberg
- Members of the facilities' honorary advisory councils, who are appointed at the suggestion of the respective municipal council or county council.

The members of the said institutions are granted access to the detention facilities and prisons, without prior notice and without any restrictions, and may communicate with the inmates without supervision.

Moreover, the inmates have the possibility, guaranteed by law, to personally turn to the representative of the facility's supervisory authority with the matters concerning them when said representative visits the prison or detention facility in which the inmate has been placed.

Independently of the judicial remedies available with the courts, inmates in **Bavaria** have the possibility to at all times turn to the management of the facility or its supervisory authority. The Bavarian Land Ministry of Justice and Consumer Protection is responsible for this supervisory function and takes great care in meeting the requirements made upon it. The supervisory authority regularly visits all detention facilities and prisons and is completely informed of their situation at all times.

Concurrently, there is the possibility for inmates to fully avail themselves of the petition rights guaranteed by law. Just as the CPT or the NPM are able to visit prisons and detention facilities, so

is the Petitions Committee (Ausschuss für Eingaben and Beschwerden) of the Bavarian Land Parliament; they do so in order to gain an understanding of the conditions in which the inmates of Bavarian prisons live. The Petitions Committee may also inspect a detention facility or prison in order to clear up any allegations that an inmate may have made in a petition. In actual practice, however, the Petitions Committee of the Bavarian Land Parliament has not availed itself of this opportunity, at least not in the past few years. However, the Petitions Committee does visit various Bavarian prisons and detention facilities at regular intervals, without any specific petitions having been submitted to it. Experience shows that primarily those facilities are visited from which a comparatively high number of inmates turn to the Petitions Committee. In the course of such visits, the Petitions Committee will regularly interview representatives of the inmate council in order to give the prisoners the opportunity to address their concerns to the Bavarian Land Parliament.

It should be noted that in Bavaria, sentenced prisoners have the opportunity, above and beyond filing a petition, to turn to representatives of the Land Parliament with matters concerning the conditions of their imprisonment and complaints, since the chairpersons and deputy chairpersons of the facilities' advisory councils are always members of the Bavarian Land Parliament. Among other matters, the advisory council has the task of receiving the wishes, suggestions and objections of inmates, and to keep informed regarding the conditions of their placement, activities, vocational education, meals, medical care and treatment, and to inspect the facilities and prisons in this context. Accordingly, should a prisoner file a complaint with the advisory council of the facility regarding the conditions of placement, the chairperson or deputy chairperson elected from among the members of the Bavarian Land Parliament is authorised to visit the facility, without prior notice and without further requirements needing to be met, in order to gain an understanding of the circumstances prevailing there. This means that the lawmaker of Bavaria has tasked the facilities' advisory councils with involving the public in the tasks performed by detention facilities or prisons in an institutionalised form.

Advisory councils have likewise been instituted at the detention facilities and prisons in **Berlin**. Their members are involved in shaping the conditions of placement in detention facilities and prisons and assist in caring for the inmates, they provide support to the management of the facility by recommendations and suggestions for improvement and help with reintegrating the inmates into society following their release. The members of the respective facility's advisory council may visit the inmates in their cells; their conversation and written communication will not be controlled. Above and beyond these advisory councils stipulated by law, the detention facilities and prisons in the Land of Berlin have instituted the unique Berlin Prison Council (Berliner Vollzugsbeirat), constituted by the chairpersons of the facilities' advisory councils and other members who, by their professions or their membership in certain organisations (such as churches, associations, government agencies, academic institutions, the media), are particularly suited to support the interests of detention facilities and prisons.

The Berlin Prison Council assists and provides consultancy in planning and further developing the prison system and acts as an intermediary with the general public for a detention system focused on inmates' reintegration into society. The council lends assistance to the Senate Administration for Justice by making recommendations and suggestions for improvement in matters of fundamental significance. Persons are appointed to the facilities' advisory councils and to the Berlin Prison Council who have particular experience in the field of detention facilities or prisons, or who are members of an association that has made it its task to care for prison inmates, for discharged prisoners or similar groups of people, or who work for an organisation or government agency the activities of which contribute to fulfilling the tasks of detention facilities and prisons.

In **Brandenburg**, inmates may bring their complaints before the director of the facility, the Ministry of Justice, the advisory council, the Petitions Committee of the Land Parliament, and, last but not least, before the execution of sentence divisions (Strafvollstreckungskammern) of the regional courts; in this context, the higher regional court acts as the instance for appeals on points of law, as does (once all remedies have been exhausted) the Constitutional Court of the Land of Brandenburg. Independent monitoring is ensured, as a minimum, by the work done by the Petitions Committee, the facilities' advisory councils, the courts and the committees deployed internationally, all of whom enjoy far-reaching rights. Moreover, an external panel of independent experts provides advice to the Ministry of Justice concerning matters of detention and imprisonment; this panel visits the individual facilities and prisons, obtains information about their tasks and how they fulfil them, and, provided the inmates have consented to this being done, inspects their personal files.

There are numerous supervisory committees in **Bremen**. Thus, inmates may address their concerns to the management of the facility, the Senator for Justice and Constitutional Matters as the facility's supervisory authority, the facility's advisory council, the execution of sentence divisions (Strafvollstreckungskammern) and the Petitions Committee of the parliament of the city state, the Bremische Bürgerschaft.

In **Hamburg**, inmates may turn to committees that are independent of the Authority for Justice and Equal Opportunity, which is not authorised to issue instructions to these committees. They include the Petitions Committee (Eingabeausschuss) of the parliament of the city state, the Hamburgische Bürgerschaft. Communications to the Petitions Committee may not be controlled by the detention facilities or prisons. Furthermore, the inmates may turn to the respective facilities' advisory councils with their concerns. The members of these councils are public figures who contribute to shaping the conditions of placement in prisons and detention facilities; they assist the inmates, support the facility's management with recommendations and suggestions for improvement and help reintegrate inmates into society following their discharge. Any contact with the members of the advisory council is confidential. A comprehensive range of other opportunities is available for addressing complaints and any serious deficiencies that may exist, such as complaints about

factual circumstances (Sachbeschwerde) and requests for an administrative review of actions taken by officials (Dienstaufsichtsbeschwerde), which may be filed with the management of the facility and the prison supervisory authority (Strafvollzugsamt). Complaints may also be filed with institutions that are independent of the system of detention facilities and prisons, for example with the Data Protection Commissioner of the city of Hamburg, the Medical Chamber, the public health department and others. A petition may be filed to have any decisions once again reviewed by an independent court that were taken by the facilities, provided that such decisions previously have been reviewed in appeal proceedings. Moreover, there are varied opportunities for communicating within the facilities, also in a confidential manner. Besides the different employees (members of the ward staff, ward director, special services, workshop services, enforcement head of the facility (Vollzugsleitung), director of the facility (Anstaltsleitung), representatives of the supervisory authority), inmates may also address their concerns to the ministers of the facility, the members of the advisory council, staff members working in an honorary capacity, and employees of external institutions who come to the facilities.

In **Hessen**, prisons and detention facilities have a large variety of supervisory bodies. This begins, within the detention facilities and prisons, with their management and the supervisory authorities and continues externally, inter alia, with the facilities' advisory councils, the competent parliamentary committees (in Hessen, this is the sub-committee on prisons and detention facilities (Unterausschuss Justizvollzug), which was specifically created for this task), and in particular includes the courts. Inmates may turn to all of these bodies in order to have the conditions of their placement reviewed.

In **Mecklenburg - Western Pomerania**, the committees and institutions available to inmates are the facilities' independent advisory councils stipulated by the Prison Act (Strafvollzugsgesetz, StVollzG) as well as, more particularly, the Petitions Committee and the ombudsperson. The Land government and the public administrative authorities subject to its supervision are under obligation to submit to the Petitions Committee the files that the latter requires in order to fulfil its duties, to provide it with all information it may need, while also permitting representatives of the Petitions Committee to access the public institutions that they manage. Additionally, the Petitions Committee and the ombudsperson may visit the facilities for on-site inspections in order to clear up any matters. Finally, the inmates have the right and the opportunity to avail themselves of legal remedies. They may file an application for a decision to be taken by a court, and in this context may also file a petition for temporary relief.

In **Lower Saxony**, the following institutions exercise independent control over the detention facilities and prisons:

- a) At the petition of sentenced prisoners, the execution of sentence divisions (Strafvollstreckungskammer) (in units for juveniles: juvenile divisions) of the regional courts. The inmates may appeal the decisions delivered by these courts with the higher regional court of Celle as the central appellate instance for remedies.
- b) At the petition of remand prisoners, the courts responsible for reviewing a remand in custody; in those instances in which such remand is enforced for public prosecution offices from outside of Lower Saxony, this is the local court of the city at which the detention facility is situate. Inmates may appeal the decisions delivered by these courts.
- c) The facilities' advisory councils. They represent the institutional ties to the general public. They will hear requests, suggestions and complaints; are able to inform themselves of the conditions given in the facility; and may inspect all of its divisions. They may visit inmates in their cells; the conversation and written communications with them will not be controlled.
- d) The Land Parliament of Lower Saxony. The committee for judicial and constitutional matters (Ausschuss für Rechts- und Verfassungsfragen) and the sub-committee for prisons and aid to offenders (Justizvollzug und Straffälligenhilfe) deal with the petitions submitted by inmates while also obtaining comprehensive information from the staff members of the Ministry of Justice; their members visit the detention facilities and prisons in Lower Saxony and meet with the inmate councils and the facilities' advisory councils.

Furthermore, inmates may address their requests, suggestions and complaints to the facility in which they have been placed and to the Ministry of Justice; they avail themselves of this opportunity in considerable numbers.

In the Land of **North Rhine-Westphalia**, a commissioner for detention facilities and prisons has been appointed. This commissioner contributes to ensuring that detention facilities and prisons comply with human rights, the principles of a social state and of the rule of law; the commissioner is independent in the exercise of his or her authority and subject exclusively to the stipulations of the law. He or she advises the Ministry of Justice on matters of fundamental importance for detention facilities and prisons, and in particular as regards the continual development of the conditions of placement in detention facilities and prisons. Moreover, the commissioner is also the point of contact for all persons involved with the prison system in North Rhine-Westphalia and serves as the "Ombudsperson for Prisons and Detention Facilities of the Land of North Rhine-Westphalia". Anyone can directly address complaints, suggestions, observations and notes

(petitions) to the commissioner in all matters of the prison system; this also applies to staff members of the detention facilities and prisons, who may by-pass official escalation rules in this regard. Should the commissioner so request, the authorities responsible for detention facilities and prisons must provide information to the commissioner and must allow him or her to access the public facilities under their administration. The commissioner must be given the opportunity to hear a person in a confidential setting at the premises of the authorities responsible for detention facilities and prisons. The commissioner may access the findings obtained by the forensic services of the Land of North Rhine-Westphalia. Should the commissioner so request, the authorities responsible for detention facilities and prisons must hear him or her. The commissioner may submit recommendations to them, citing the reasons therefor, and is furthermore entitled to report to the Ministry of Justice at any time.

In the **Rhineland-Palatinate**, inmates have the possibility of exercising their rights to file petitions and complaints, and to file petitions with the courts for them to decide on a matter; they also may address their concerns to the facilities' advisory councils. The members of these councils may receive requests, suggestions and objections. They can obtain information on the placement, activities programme, vocational training, meals, medical care and treatment, and they may inspect the institutions and their facilities.

The members of the advisory council may visit the prisoners and detainees in their cells. The conversation and written communications will not be controlled.

In **Saxony**, the inmates at any time may contact the advisory councils that have been instituted at the detention facilities and prisons, in confidence; as a general rule, two members of the Land Parliament of Saxony will be sitting on this council. The Petitions Committee of the Land Parliament of Saxony or individual members of the committee that the parliament may correspondingly delegate may visit remand detention facilities and prisons for sentenced inmates, the locked wards of therapeutic institutions and care facilities, as well as all other institutions of the Land of Saxony to which people may be committed for detention purposes; they may do so at any time and without giving prior notice of their visit. In this context, the Petitions Committee or the respective member correspondingly delegated has the opportunity to speak with the persons placed in these institutions, without anyone else being present, and to visit all premises of the institution.

In **Schleswig-Holstein**, too, inmates have the right to file complaints. Prisoners have the right to file a petition for a court to take a decision, and also have the right to file an appeal on points of law against that decision, provided certain pre-requisites have been met. Additionally, the Land Parliament has instituted a Petitions Committee to which any prisoner may address complaints.

In **Thuringia**, inmates may address their requests, suggestions and complaints to the detention facility or prison in which they have been placed, and likewise to the Ministry of Justice. Additionally, the execution of sentence divisions (Strafvollstreckungskammer) and the courts

responsible for reviewing a remand in custody exercise independent control over the detention facilities and prisons. Moreover, the committee on matters of detention facilities and prisons (Strafvollzugskommission) established by the Land Parliament of Thuringia regularly visits the Thuringian prisons and detention facilities and speaks with inmates. In this Land as well, inmates have the possibility to address their concerns to the Petitions Committee of the Land Parliament.

Preventive detention (Sicherungsverwahrung)

Preliminary remarks

The CPT would like to receive detailed information on the concrete measures taken by the federal and Länder authorities, in the light of the judgments of the European Court of Human Rights (ECtHR) and the Federal Constitutional Court referred to in paragraphs 100, 101 and 104 (paragraph 105).

The Committee would like to know:

- **where and under which conditions persons subjected to a placement order under the Act on the Therapeutic Treatment and Placement of Violent Offenders Suffering from Mental Disorders (*Gesetz zur Therapierung und Unterbringung psychisch gestörter Gewalttäter, ThUG*) are being held (e.g. individual care plans, treatment, regime, contact with the outside world, etc.);**
- **whether there are plans to construct any new facilities for this purpose (paragraph 105).**

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Following the ruling delivered by the European Court of Human Rights and that delivered by the Federal Constitutional Court, the lawmakers both at the federal level and at the Land level are under obligation to create a new regulatory approach to the law, basing this on an overall concept for preventive detention that is oriented by freedom and targeted towards treating the persons affected, while taking account of legislative responsibilities. Due to the division of competences in the Basic Law, the federal legislature is restricted to creating the basic framework as a guideline. As soon as the federal legislator has taken the corresponding measures, the Land lawmakers will then provide for the details of how the new laws are to be enforced.

At present, the Länder are working on new concepts for the enforcement of preventive detention. In **Baden-Württemberg**, a comprehensive new concept for preventive detention has already been developed. Basically, the persons affected are to be moved into a separate building on the prison

grounds, which has larger rooms and communal rooms, a yard of its own and generally meets modern standards. This project has already commenced and will continue in line with the progress made by the required conversion work in the building. Other fundamental elements of the new concept include improved staffing levels and the reorganisation of the therapy offered, in the sense of intensive care by teams comprised of experts in various disciplines. The draft budget for 2012 of the Land of Baden-Württemberg provides for a total of 16 new positions to be created in the preventive detention sector. These include six psychologists, four social workers, two work therapists as well as four prison officers. In this way, a roster of care personnel is achieved that corresponds to that given in socio-therapeutic facilities performing similar tasks.

In **Bavaria**, the persons placed in preventive detention in Straubing Prison enjoy various forms of privileged treatment, as compared to that accorded to sentenced prisoners, in order to meet the requirement of establishing a differentiation between preventive detention and prison sentences (Abstandsgebot). This includes, for example, longer visiting hours and hours during which the doors of the rooms are kept open (Aufschlusszeiten), a more comprehensive programme of recreational activities and a better assortment of merchandise that may be purchased, as well as greater freedom in furnishing the rooms in which they live. On the grounds of Straubing Prison, construction of a new building will have been completed by 31 May 2013 that is to house the persons in preventive detention, meaning that it will be possible to enforce their sentence in keeping with the overall concept for preventive detention demanded by the Federal Constitutional Court, one that is oriented by freedom and targeted towards treating the persons affected. The criminological department of the Bavarian administration of detention facilities and prisons has already prepared a comprehensive treatment concept for the preventive detention regime in the new building.

The Land of **Brandenburg** is set to institute a working group shortly that will develop conceptual ideas for the conditions in which persons in preventive detention are kept in the corresponding facilities, as well as for the treatment measures. It is planned to create an independent ward, as a separate building on the grounds of a prison that is already in existence, for persons in preventive detention.

The Land of **Berlin** has instituted a project group. The facility in which persons in preventive detention are kept will be moved away from the wards of sentenced prisoners into a separate building of its own. It is intended to create a separate, closed detention facility with a capacity of 60 places (6 wards of 10 rooms each). In light of the fact that persons in preventive detention do not form a homogeneous group and that they require individual forms of treatment, the facility will be subdivided into several units allowing them to be placed in accordance with their respective needs. In terms of their layout, the placement units will be designed such that the persons in preventive detention have single rooms but will live together during the day-time in the form of a

residential community (Wohngruppe). This means that communication rooms and encounter spaces will have to be provided. The building's design will provide sufficient opportunity, and in fact promote, social exchange among the persons living and working there (communal rooms, kitchen, etc.). Furthermore, the facility is to be equipped, to the greatest extent possible, with separate rooms in which the activities, sports and recreational programmes may take place. Moreover, comfortable rooms for visits are to be a part of the building, while the special needs of physically and psychologically impaired persons kept in detention, as well as the needs of the elderly, will be taken into account. Finally, a separate outdoor area will be created for the persons in preventive detention, allowing gardening activities to be pursued. In light of economic and conceptual considerations, the future facility is to be realised on the grounds of Tegel Prison. This is a maximum security institution at which there are sufficient education, work and qualification opportunities available. The institution is able to provide primary health care and is directly connected to the socio-therapeutic facility and the forensic therapeutic ambulance on its grounds. The prison grounds are sufficiently large for an additional building to be constructed, while the zoning plan allows for the development and expansion of the existing facility. Finally, Tegel Prison has many years of experience in dealing with persons in preventive detention and can build on this.

In **Hamburg**, a new unit for persons in preventive detention in Fuhlsbüttel Prison has commenced operations in January of 2011, comprising three wards with a total of 31 rooms. It is located in a separate building from that in which sentenced prisoners are placed. In the rooms in which the persons in preventive detention live, the sanitary facilities with a WC and a washbasin have been partitioned off. The rooms have a size of ca. 16.7 sqm, which means they are significantly larger than the cells in which sentenced prisoners are housed. Moreover, the rooms are equipped with specially made furniture that was designed to fit in with the layout of the rooms.

In their wards, the persons in preventive detention may move about freely, on work days for around 14.5 hours per day and on weekends and holidays for around 11 hours per day. Additionally, the ward has a separate outside outdoor area, which is freely accessible from March until the end of September from 6:00 a.m. to 8:00 p.m. and from October until the end of February from 6:00 a.m. to 6:30 p.m. The persons in preventive detention may participate in the varied programme of professional training, qualification and work opportunities offered by Fuhlsbüttel Prison and the socio-therapeutic facility.

Insofar as the Federal Constitutional Court has established a requirement to implement the necessary therapeutic treatment already in the course of the execution of a prison sentence preceding the preventive detention, and to complete such therapeutic treatment, wherever possible, prior to the prisoner having served his or her term, it was reviewed, for all sentenced prisoners regarding whom preventive detention had been ordered, which further measures are

required in order to avert, if at all possible, their being placed in preventive detention in order to in this way reduce the period for which they are deprived of their liberty to the absolutely required minimum. In particular, it was reviewed for each of them whether or not they might be treated in the socio-therapeutic facility of Hamburg. Each of the sentenced prisoners newly admitted to the prison, for whom subsequent preventive detention has been ordered, furthermore is subjected at this time to a comprehensive examination by the socio-therapeutic facility of Hamburg in order to determine the treatment regime (Behandlungsuntersuchung).

The regime of preventive detention is being developed by several treatment organisations involved; in particular, the ward of Fuhlsbüttel Prison in which persons in preventive detention are housed and the socio-therapeutic facility of Hamburg understand this to be a joint task that they share.

In this context, it is the particular responsibility of the ward for persons in preventive detention at Fuhlsbüttel Prison to avoid any detrimental impacts that may arise as a consequence of the long period in which these persons were deprived of their liberty, and to prepare the persons so detained for their further-reaching socio-therapeutic treatment. The socio-therapeutic facility is responsible for implementing an intensive treatment in order to avoid the risk of recidivism, while also implementing the transition detention (Überleitungsvollzug), monitored by the socio-therapeutic facility at the Bergedorf branch. As a general rule, any discharge from preventive detention will be implemented via the socio-therapeutic facility or the transition detention facility; in individual cases, this may also be done in open prisons.

In **Hessen**, the preventive detention is being restructured in three steps.

The first is that existing resources are used to meet the requirement of establishing a differentiation between preventive detention and prison sentences (Abstandsgebot) while enhancing the therapeutic treatments available as well as the opportunities for practising social interaction:

- By way of giving concrete form to the requirement of establishing a differentiation between preventive detention and prison sentences, persons in preventive detention may continue to receive packages containing foods and luxury foods pursuant to section 68 (7) of the new Hessian Prison Act (Hessisches Strafvollzugsgesetz, HStVollzG), which right has been abolished for sentenced prisoners in the new Act. The number of packages persons in preventive detention may receive is unlimited.
- The visit entitlements enjoyed by persons in preventive detention were significantly expanded beyond the minimum visit entitlement of three hours per month stipulated by law, with the opportunity now being granted to receive unlimited visits, provided that they take place during the visiting hours of the facility and are in keeping with existing organisational structures. A visiting room was given comfortable furnishings to specifically serve persons in preventive detention.

- The hours during which the doors of the rooms are kept open in the ward (Aufschluss) were extended until 8:00 p.m. also on weekends, meaning that the rooms basically are kept open on Mondays through Thursdays from 6:00 a.m. to 10:00 p.m., Fridays and Saturdays from 7:00 a.m. to 8:00 p.m. and Sundays from 8:00 a.m. to 8:00 p.m. (with the lockage of doors beginning around half an hour earlier).
- The pocket money was increased to 25% of the basic remuneration, meaning that the difference to the amount of pocket money allowed to sentenced prisoners, thus far amounting to 14% of the basic remuneration, was increased. Accordingly, sentenced prisoners receive €1.55 of pocket money per work day, while persons in preventive detention receive €2.76.
- Persons in preventive detention are given additional time for outdoor exercise on work days, meaning they have the opportunity to exercise outdoors for three hours, as they are also allowed to participate in the outdoor exercise hour of the sentenced prisoners.
- Telephone entitlements are unlimited. During the hours in which their room doors are kept open, persons in preventive detention may use the ward telephone to call numbers the detention facility has previously reviewed and approved. The facility will activate 15 reviewed telephone numbers, in addition to the telephone numbers of attorneys.
- Additionally, Schwalmstadt Prison offers therapeutic group sessions by a psychologist.
- In order to ensure that the persons in preventive detention can maintain their life competence, and by way of preventing any detrimental impacts arising as a consequence of the long period in which these persons were deprived of their liberty, they may take short, escorted leave from the facility once or twice during the respective period in which their detention is continued (Fortschreibungszeitraum).
- A number of the persons in preventive detention have requested that they be allowed to prepare their own meals; this is currently being subjected to initial testing as part of a project. In order to prepare the persons involved for this task, they are taking a cookery class at present, in which they are taught about a healthy and balanced diet and how to cook low-cost meals.

This will be followed by a concept for the interim that is to bridge the time until new and adequate spaces have been developed (in a newly constructed building), which provides for a significantly expanded programme of therapeutic options. In this concept, the psychological and socio-therapeutic treatments available to the persons in preventive detention, along with other therapies, will be significantly increased and enhanced.

Subsequently, in the long term, the requirements made by the court will be implemented on a continual basis once a new building has been constructed to house the persons in preventive detention, and once the corresponding staffing levels have been achieved.

In **Mecklenburg - Western Pomerania**, the facility responsible for enforcing preventive detention in the Land (Waldeck Prison) has been tasked with developing a corresponding treatment concept for persons in preventive detention that will also ensure their placement in a ward of their own,

separate from the other prisoners. In order to review the treatment and therapy measures for each individual case, all persons in preventive detention and all sentenced prisoners who might be placed in preventive detention will be transferred to the diagnostic center (forming part of Waldeck Prison) that is the center responsible for this task in Mecklenburg - Western Pomerania.

Many measures have already been implemented in **Lower Saxony** that are targeted at improving the circumstances in which people live in the facility.

Thus, persons in preventive detention are allowed to spend a significantly longer amount of time outside of their rooms and outdoors, for example, than are the sentenced prisoners; they may use the available sports facilities at times reserved specifically for them, decorate their rooms in a more individual way, make an unlimited number of telephone calls, and have higher visit entitlements. The pocket money they are given is higher than that allocated to sentenced prisoners, and they may make purchases as part of relaxations of the regime. Other measures are in planning.

Additionally, a socio-therapeutic facility was instituted at Celle Prison in the spring of 2011 that, by its concept, focuses on the so-called first phase of integrative sociotherapy (preparatory phase) in accordance with the Umbrella Concept for Social Therapy in the Prisons and Detention Facilities of Lower Saxony. It is intended that patients achieve the following objectives, among others, and learn to: take responsibility for their life planning; distance themselves from the values and norms of a criminal subculture; strengthen their ability to exercise self-criticism; develop sufficient introspective abilities; accept responsibility; develop a sufficient control of impulses and basic social skills; and comply with rules.

Nonetheless, it is not possible to implement all of the measures at Celle Prison that must be taken in order to comply with the court's orders. For this reason, it is planned to construct a new, independent building on the grounds of Rosdorf Prison.

In this building, it is planned to place the persons in preventive detention in single rooms, while having them live together during the day-time in the form of a small residential community (Wohngruppe); these communities will be structured such that the residents are differentiated according to the various stages they have reached in their treatment. The members of the groups will have sufficiently large rooms, which will be kept unlocked during the day-time as a matter of principle, with integrated sanitary facilities including a shower; it will be possible to decorate these rooms individually. Additionally, there will be common rooms for social exchange, communal kitchens in which residents will be able to cook meals together, and access to a separate outdoor area reserved for persons in preventive detention.

A generally therapeutic setting will be created at this facility, which will be enhanced, if required, by individual treatment and therapy programmes.

In future, the staff of this facility will have more of a care-giving role as motivators, and will act less as guards; they will support and motivate the persons in preventive detention to make progress in their treatment, and will assist them in maintaining their independence. By using creative solutions and increasing the staffing levels, other forms of further reducing strictures within the facility are to be found.

In **North Rhine-Westphalia**, the requirement of establishing a differentiation between preventive detention and prison sentences (Abstandsgebot) is met by persons in preventive detention enjoying a considerable range of privileges as compared to sentenced prisoners. This includes their entitlement to keep personal property; have outdoor exercise; be in contact with the outside world; wear their own clothes; take short, escorted leave from the facility; opportunities to make purchases; and the option to prepare their own meals. The persons in preventive detention are placed in wards of Aachen Prison and Werl Prison that are separate from the wards of sentenced prisoners. Communal rooms have been instituted in the ward. At Werl Prison, the persons kept in preventive detention live in larger rooms; the yard serving outdoor exercise purposes is accessible to them all day and provides them with a generously proportioned area for physical activities. In order to further improve the conditions of placement, the departments responsible for preventive detention have applied for additional funds to be made available to them; instructions have been issued to comply with these requests.

At present, upon being admitted to the facility in which the measures of correction and prevention are enforced, persons in preventive detention are subjected to a comprehensive examination in order to determine the treatment regime (Behandlungsuntersuchung); on this basis, a correction and prevention scheme is prepared. In the preventive detention wards, those persons are allowed to pursue individual counselling for whom this therapeutic form is suitable; persons in preventive detention with a particularly high motivation are placed in a socio-therapeutic facility. Other improvements include:

- Positions in social services and psychological services have been allocated to the currently existing wards for preventive detention;
- Key factors for a therapy concept serving preventive detention have been compiled;
- Preparations are under way to institute a facility in Werl Prison that will provide treatment oriented by socio-therapeutic methods;
- The competent department has calculated the additional staffing required in specialist services, general custodial services and for other custodial personnel.

In North Rhine-Westphalia as well, a new building is to be constructed to house the preventive detention facility. It is planned to put up a building with a capacity of 150 residents undergoing treatment on the grounds of Werl Prison.

The Länder of **Schleswig-Holstein** and **Rhineland-Palatinate** likewise are planning to construct new buildings in which to place persons in preventive detention.

The Länder **Saxony**, **Saxony-Anhalt** and **Thuringia** have instituted a project group that is to develop a conceptual structure for preventive detention. The focus of this group is on exchanging ideas on new therapy options and ways of keeping participants motivated.

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In **Bavaria**, persons to be treated pursuant to the Act on the Therapeutic Treatment and Placement of Violent Offenders Suffering from Mental Disorders (Gesetz zur Therapie und Unterbringung psychisch gestörter Gewalttäter, ThUG) are currently placed in Straubing district hospital. They are kept strictly separate from sentenced prisoners and persons in preventive detention. Their therapy is geared to the individual course of illness the patients have suffered. It is not necessary to construct any new buildings as the available spaces are sufficient.

In **Hessen**, the limited liability company Einrichtung zur Sicherung und Resozialisierung Hessen GmbH (institution serving prevention and reintegration purposes of Hessen) of Landgraf-Philipp-Platz 3, 35114 Haina, serves as the facility in which persons are placed in accordance with the Act on the Therapeutic Treatment and Placement of Violent Offenders Suffering from Mental Disorders.

The Land of **North Rhine-Westphalia** has created a specific facility serving the placement of violent offenders to be treated in accordance with the Act on the Therapeutic Treatment and Placement of Violent Offenders Suffering from Mental Disorders by converting a former prison in Oberhausen; this has a capacity for up to 18 patients. Should an emergency require a patient to be treated in a psychiatric clinic, they can be transferred to the LVR Klinikum Essen psychiatric hospital. A separate Land law on enforcing the treatment and placement of violent offenders is currently being prepared. Until this law is passed, the Land laws of North Rhine-Westphalia governing the execution of the measures of reform and prevention serving to protect the public (Massregelvollzug) will be applied.

The placement of violent offenders in the Oberhausen therapeutic facility for treatment is based on a comprehensive treatment concept. It provides that within the first weeks of the offenders having been placed in the institution, and following comprehensive diagnostic examinations, an individual treatment plan is established which will be updated at regular intervals. As part of this plan, the therapies indicated in each individual case are offered, such as various forms of psychotherapy, occupational therapy and expressive arts therapy, measures serving to activate the patients such as sports and exercise therapy, or practice sessions in which to train social skills. In addition to treating the individual disorders, the general focus is placed on the treatment of the hospitalisation consequences resulting from the many years in which the patients have been deprived of their liberty, and on their developing sufficient motivation to participate in the therapies offered. The regime may be relaxed (Lockerungen) subject to the progress the person placed in treatment makes in his or her therapy. A team of qualified therapists, nurses, social workers and occupational therapists is available in the facility, along with supplementary staff serving security purposes. Where needed, the provision of special therapeutic treatment is ensured by involving the corresponding specialist staff from neighboring psychiatric institutions on the basis of the consultation system in place with these facilities. The patients are placed in single-occupancy

rooms in which the sanitary facilities have been partitioned off. Inside the residential units, the persons so placed for treatment may move about freely, while a secured interior courtyard permits them to take outdoor exercise. Spaces are made available in which to perform day-to-day work and pursue recreational activities, and the corresponding materials are provided; patients may use a fully equipped communal kitchen, dining room, common room with a television set and stereo system, a sports room with fitness equipment and a smokers' room. The persons placed in the institution may bring personal belongings and goods of their own, or may acquire them, unless this is prohibited for security reasons.

At present, there are no further concrete plans to add any further facilities to the institution now created.

In the **Rhineland-Palatinate**, the issue of placing violent offenders in accordance with the Act on the Therapeutic Treatment and Placement of Violent Offenders Suffering from Mental Disorders is as yet unresolved. For the time being, they can be placed on the grounds of a facility at which the measures of correction and prevention are executed (Massregelvollzugsanstalt). It is not planned to construct any new buildings for this purpose.

Since 2 September 2011, a Land law has entered into force in the **Saarland** that governs the placement conditions of violent offenders in therapeutic treatment institutions, this being Law no. 1743 on determining the responsible authority pursuant to the Act on the Therapeutic Treatment and Placement of Violent Offenders Suffering from Mental Disorders and on the enforcement of said Act in the Saarland (Saarländisches Therapieunterbringungs- und -vollzugsgesetz - SThUZVollzG) of 13 April 2011, amended by the Land law of 24 August 2011 (published in the Official Bulletin I p. 282). As regards the organisational aspects of placing violent offenders in therapeutic treatment institutions, the Act for the most part includes by reference the Land law of the Saarland on the Execution of Measures of Correction and Prevention in Psychiatric Hospitals and Detoxification Facilities (Gesetz über den Vollzug von Massregeln der Besserung und Sicherung in einem psychiatrischen Krankenhaus und einer Entziehungsanstalt – MRVG), in particular the provisions made concerning medical social work; the degree to which a person is deprived of his/her liberty, including relaxations of that regime; the rights of the persons placed in treatment and the restriction of such rights; the money these persons are allowed to have; data protection aspects and the right to inspect files. It is not planned to construct any new buildings specifically for the purpose of placing violent offenders in therapeutic treatment institutions. At present, there is one person who has been placed in the Saarland Clinic for Forensic Psychiatry based on a temporary placement order pursuant to the Act on the Therapeutic Treatment and Placement of Violent Offenders Suffering from Mental Disorders.

In **Saxony-Anhalt**, patients are placed in accordance with the Act on the Therapeutic Treatment and Placement of Violent Offenders Suffering from Mental Disorders in psychiatric hospitals at which the measures of correction and prevention are executed.

In **Berlin, Mecklenburg - Western Pomerania, Saxony and Thuringia**, no violent offenders have been placed in treatment institutions in accordance with the Act on the Therapeutic Treatment and Placement of Violent Offenders Suffering from Mental Disorders. Accordingly, it is not intended to construct any new facilities.

Unit for preventive detention at Freiburg Prison

The CPT requests detailed information on the implementation of the measures and plans to improve the situation of persons in preventive detention at Freiburg Prison. In particular, it would like to be informed of the new staffing levels in the unit for preventive detention and be given an account of the “motivation programmes” and therapeutic activities in which inmates are engaged on a regular basis (paragraph 108).

Freiburg Prison offers treatment to the persons in preventive detention in the form of individual and group counselling, the latter serving in particular as the treatment programme for violent offenders and sexual offenders. Moreover, persons in preventive detention have the opportunity to seek treatment in a socio-therapeutic facility.

In the course of implementing the concept, these offerings will be further intensified, moreover, they will be enhanced by providing the option of occupational therapy in one of the two workshop operations joined to the facility. In parallel, a comprehensive programme of recreational activities will be made available.

Unit for preventive detention at Burg Prison

The CPT would like to be informed whether the conflict between inmates in the unit for preventive detention and the management of Burg Prison concerning the extent to which personal belongings could be kept inside the cells has been resolved (paragraph 111).

The Committee would like to receive detailed information on the therapeutic activities which are followed by inmates in preventive detention at Burg Prison (paragraph 111)

The CPT recommends that steps be taken at Burg Prison to ensure that all medical examinations/consultations of inmates are conducted out of the hearing and – unless the doctor concerned requests otherwise in a particular case – out of the sight of prison officers (paragraph 112).

In the preventive detention ward of Burg Prison, the restrictions on permitted personal belongings in the rooms of the persons placed in the institution were liberalised significantly as early as at the end of 2010, and the scope of activities available on a daily basis was substantially enhanced in terms of the activities' content. These aspects in particular had previously led to numerous

complaints being filed by the persons in preventive detention and an overall atmosphere of tension, as correctly described by the CPT.

In the meantime, the frictions at the preventive detention ward of Burg Prison have been reduced considerably, which may also be due to a staffing change made at the management level of the facility, so that the conflicts described by the CPT have ceased to exist at the latest since the beginning of 2011.

The programme of therapies presently available at Burg Prison comprises, in the preventive detention ward, counseling about the offense and deficits, anti-violence training, individual psychotherapy sessions, substance abuse counseling, preparation for addiction therapy, family therapy, debtor counseling, social training and preparation for sociotherapy. The sociotherapy as such is implemented at the socio-therapeutic department of Halle Prison. In future, the therapeutic offering available to the persons in preventive detention will be expanded further in light of the requirements made by the Federal Constitutional Court. In all other regards, the requirements that will be made in the normative overall concept remain to be seen.

Burg Prison has complied with the CPT's recommendation to institute regular consultation hours of physicians and to perform medical examinations behind closed doors as a general rule.

Preventive detention at Schwäbisch Gmünd Prison

The CPT would like to be informed of the measures taken by the authorities of Baden-Württemberg in respect of the sole woman held in preventive detention, in the light of the recent judgments of the ECtHR and the Federal Constitutional Court referred to in paragraphs 100, 101 and 104 (paragraph 114).

The sole woman held in preventive detention in a corresponding facility in Baden-Württemberg was comprehensively examined once again in August of 2011 by an experienced and reputable specialist for psychiatry with a focus on forensic psychiatry. In the opinion submitted by the psychiatric expert, the negative prognosis regarding the woman's criminal propensities is upheld (high likelihood that she will commit further violent crimes and arson), the expert comes to the conclusion that the woman suffers from a combined personality disorder. On the basis of this expert report, the execution of sentence division (Vollstreckungskammer) of the regional court of Ellwangen has ordered on 19 December 2011 that her preventive detention continue, while taking account of the increased requirements that the ruling delivered by the Federal Constitutional Court on 4 May 2011 has stipulated. Concurrently with this decision, the court has announced that as soon as its order has attained legal validity, it will review whether or not the woman might be transferred to a psychiatric hospital at which the measures of correction and prevention are executed, with the objective of motivating her to co-operate in a psychological milieu therapeutic treatment.

Berlin Juvenile Detention Centre

The CPT would like to receive updated information on the implementation of the plan to construct a new juvenile detention centre and detailed information on the future organisation of that centre (e.g. capacity for each sex and type of detention, staffing levels, arrangements for educational and recreational activities) (paragraph 116).

At present, the Land of **Berlin** is reviewing whether or not it is necessary to expand its juvenile detention centre. The question of whether or not this is required, and moreover: when this will be required, depends first and foremost on the number of juvenile detainees that will need to be placed.

The Land of **Brandenburg** is likewise planning to construct a new building for its juvenile detention centre. As before, the facility will have 23 single-occupancy cells for the detainees, three of which will be reserved for female juveniles; furthermore, there will be spaces for group meetings, classes, workshop activities and hobbies, and a gym. The facility is designed such that with the aid of the highly committed staff, it will be possible to enforce the detention of juvenile delinquents based on a modern, treatment-oriented manner that focuses on vocational training and education; the new facilities will enable this to be done in a significantly improved manner.

The CPT would like to receive the comments of the authorities of Berlin about the complaints received from a number of juveniles regarding the quality of food provided to them (paragraph 118).

Contrary to the statement made at paragraph 118 of the report, the food budget per juvenile currently amounts to €3.07 per day. Independently of the criticism by the CPT, others had shared the view that there is room for improving the meals.

From 1 January 2012, the meals for juvenile detainees will be prepared by the commissary of Plötzensee Prison. Generally, the quality of the food prepared there is not objected to, although it must be said that complaints about the quality of the food in detention facilities and prisons can never be entirely ruled out.

The CPT recommends that steps be taken by the authorities of Berlin and all other Länder to ensure that all young offenders who are held in a juvenile detention centre for more than 24 hours are granted outdoor exercise of at least one hour per day (paragraph 120).

In nearly all of the Länder, the juvenile detainees have the opportunity to exercise outdoors for at least one hour per day. If there are any exceptions at all, these will concern the days on which the

juveniles are admitted to the facility and the day of their discharge – on both days, the juvenile detainees have the opportunity to exercise outdoors. The Senate Administration for Justice has taken the criticism submitted by the Committee as its occasion to ensure that in future, all juveniles who are held in the juvenile detention centre for longer than 24 hours will be granted at least one hour of out door exercise per day.

The CPT recommends that the legal provisions governing disciplinary sanctions in detention centres for juveniles in Germany be revised, in the light of the remarks made in paragraph 122 (paragraph 122).

In drafting the Land laws regarding the enforcement of juvenile detention, the Länder will include the recommendation the Committee has made in their considerations. However, it should be noted that at present, it is general practice in nearly all of the Länder to enforce “separate placement from the group” (abgesonderte Unterbringung) only in exceptional cases, which are strictly defined, and to limit this confinement to a maximum of 24 or 48 hours. In this context, the juveniles are not deprived of reading material.

The Committee recommends that inmates in all juvenile detention centres in Germany be allowed more frequent contacts with the outside world (in particular, with close relatives), in the light of the remarks made in paragraph 124 (paragraph 124).

The Länder will also include this recommendation by the Committee when they draft the Land laws regarding the enforcement of juvenile detention. At present, the general practice in nearly all of the Länder is that inmates’ contacts with the outside world are promoted as a matter of principle, provided that these contacts serve the best interests of the juvenile detainees. However, it must be taken into account in this context that it is not a rare matter for detainees to come from severely dysfunctional families, in which they are under considerable strain. In the interests of allowing them to accept and embrace their new situation to the fullest extent possible, in particular at the outset of their detention, and of enabling more in-depth encounters while achieving better opportunities to work at a pedagogical level with the juveniles, it may be sensible to limit their contacts with the outside world taking the form of visits and telephone conversations. This is intended to enable the juveniles to face these social contacts with a certain distance and with the critical perspective that they stand to gain at the facility.

Rheine Forensic Psychiatric Clinic

Preliminary remarks

In the CPT's view, it is not acceptable that patients are held in a hospital where an essential element of treatment is lacking. Patients at Rheine Forensic Psychiatric Clinic should benefit from access to Lockerungen in the same way as patients in other forensic psychiatric establishments in Germany. This precept should be applied equally to all forensic institutions in other Länder which operate under restrictions of the kind observed at Rheine (paragraph 127).

Fundamentally, the Federal Government shares the concerns brought forward by the CPT as regards the separate placement of patients in so-called "long-stay" hospitals without giving them the perspective of foreseeably relaxing the regime (Lockerung). Pursuant to the statutory task given to the corresponding facilities of "correction and prevention", depriving offenders of unsound mind of their liberty is justified only for as long as the danger that the mentally ill offenders pose to society requires their fundamental rights to be restricted. As a consequence, the state is responsible for the welfare of its citizens in that it must remedy, as promptly as possible, the dangerousness of the offender by taking the suitable therapeutic measures, and to enable him or her to reintegrate into society. In this context, the sentenced offender is to be allowed as much freedom as is justifiable in order to test his or her reliability while executing the measures of reform and prevention serving to protect the public (Massregelvollzug), for example by relaxing the regime applying therein (Vollzugslockerungen).

As a matter of principle, it must be noted that in nearly all of the psychiatric hospitals of the Länder at which the measures of correction and prevention are executed, the corresponding relaxation opportunities have been provided for and are also granted.

This having been said, the hospital in Rheine (North Rhine – Westphalia) that the Committee visited is a transition facility that does not allow for any relaxation measures outside of the clinic grounds.

Access to such relaxations of the regime can be granted only where they serve the purpose pursued by the measures of correction and prevention, and where they are not contravened by other interests. Accordingly, exclusively patients who have made sufficient progress in their therapy can and may be granted relaxations of their regime, and more particularly relaxations outside the facility's grounds.

For the therapeutic reasons set out hereinabove, or as a consequence of the legal circumstances of their placement (section 126 a of the Code of Criminal Procedure (Strafprozessordnung, StPO)),

the patients placed in the psychiatric hospital of Rheine by way of executing the measures of correction and prevention ordered, do not fulfil the requirements for relaxations of the regime to be granted to them outside of the facility, and this will continue for some time yet. The lease agreement concluded by the city of Rheine, the Land of North Rhine-Westphalia and the Federal Republic of Germany expressly stipulates that only such persons may be placed in the Rheine facility for whom no relaxations outside of the institution will be granted. It was possible to conclude said agreement only subject to this condition. However, in light of the level of overcrowding at the facilities in which the measures of correction and prevention are executed in the Land of North Rhine-Westphalia, this agreement absolutely had to be concluded.

The same case is given, in terms of the legal situation, at the Straubing district hospital in Bavaria. Nonetheless, the institutions concerned are making all efforts to achieve therapeutic success for the patients in order to be able to transfer them to a clinic allowing the corresponding relaxations. The Rheine clinic was able to do so, in the period from January to November of 2010, for eleven patients. Moreover, planning work has commenced in North Rhine-Westphalia in the meantime for the construction of a total of around 650 further places in facilities serving the execution of measures of correction and prevention. It is an express stipulation of these plans that there will be no separate clinics for “long-stay” patients deprived of any relaxations of their regime.

Staff and Treatment

In the CPT’s view, more educational activities should be offered to patients at Rheine Forensic Psychiatric Clinic (paragraph 131).

The CPT would like to be informed whether the staffing situation at Rheine Psychiatric Clinic regarding psychologists has been remedied (paragraph 130).

The request for information made by the CPT in this regard may be the result of a misunderstanding. On the day the Committee visited the facility, one of the psychologists was ill; the position was certainly not vacant. Neither the administrative body operating the clinic, nor the clinic management view the staffing situation in the therapeutic services to be “problematic”. On the contrary, they point out that treatment at Rheine Clinic, in particular psychotherapeutic treatment, is not provided primarily or exclusively by psychologists – this is a task shared in equal measure by (specialist) physicians for psychiatry and psychotherapy. Accordingly, even if one of the members of staff has fallen ill, as was the case at the time the Committee visited the clinic, it cannot be said that the treatment programme available is lacking.

As a matter of principle, patients at the Rheine Clinic are offered a programme of education and professional qualification; however, this is implemented taking account of the organisation of the

placement institution and the special abilities of the patients. The programme is targeted at their rehabilitation and discharge. Accordingly, such programmes are indicated to a significantly lesser degree for patients such as those who have been placed in the Rheine Clinic, who have no perspective of being discharged in the foreseeable future, than for those patients placed in other hospitals serving the execution of measures of correction and prevention. An additional factor is that in light of their organisational demands, such measures can be realised only together with external providers, in particular in smaller clinics. However, it is out of the question for patients who have no access to the corresponding relaxations of their regime to participate in such courses. The special composition of patients, and more particularly their lack of a discharge perspective and their insufficient status in terms of relaxations of patients' regime all combine to restrict any education measures to a much greater extent at the Rheine Clinic than would be the case in other hospitals at which measures of correction and prevention are executed. Nonetheless, the clinic is making efforts also under these special circumstances to provide individualised and flexible programmes to inmates, as is evidenced, for example, by the fact that one patient has passed the "Abitur" school-leaving examination in a correspondence degree course .

Seclusion and means of restraint

The Committee recommends that the authorities of North Rhine-Westphalia and all other Länder take the necessary steps to ensure that, in civil and forensic psychiatric establishments, all psychiatric patients whose state of health so permits (including those who display aggressive/violent behaviour) are offered at least one hour of outdoor exercise per day (paragraph 133).

In nearly all of the Länder, it is ensured that patients are able to take at least one hour of outdoor exercise per day. In exceptional cases, which are subject to strict requirements, medical, security or therapeutic reasons may mandate that this principle is deviated from. However, these deviations must be sufficiently justified and documented.

Safeguards

The CPT recommends that steps be taken to encourage members of visiting commissions of psychiatric establishments in North Rhine-Westphalia and, where appropriate, in other Länder, to communicate directly with patients (paragraph 138).

In nearly all of the Länder, independent visiting commissions regularly inspect institutions. At these visits, the commissions are regularly given the opportunity to speak directly with patients.

The use of surgical castration in the context of treatment of sexual offenders

The Committee recommends that immediate steps be taken by the relevant authorities to discontinue in all German Länder the application of surgical castration in the context of treatment of sexual offenders. The relevant legal provisions should be amended accordingly (paragraph 145).

The Federal Government wishes to note, on the principle of the matter, that the option of voluntary surgical castration does not constitute a punishment of sexual offenders. By contrast, it enables severe illnesses, mental disorders and suffering tied to an abnormal sex drive of the person affected to be cured or at least alleviated. The law stipulates as a pre-requisite that this surgery must be indicated. This may be the case where illnesses connected to an abnormal sex drive must be treated, or in order to counter the risk of future unlawful offences being committed by sexual offenders and/or violent offenders, and to thus assist the person affected in managing his life in future. Whether this indication is in fact given is something that the members of the respective Review Board for Voluntary Castration (Gutachterstelle für die freiwillige Kastration) must carefully review. Moreover, they must ensure that the petitioner or his custodian understand the psychological consequences of castration and will take these into account in their decision.

The task of the Review Board is to assess whether or not the pre-requisites required by law for a voluntary castration are met in the cases of the persons filing the corresponding petition, and whether these persons have been comprehensively instructed regarding the physical and psychological consequences of a castration.

Moreover, it should be noted that from a medical perspective, a general abolition of surgical castration does not seem mandated, even taking into account the medical and scientific arguments brought forward by the Committee. As far as the Federal Government is aware, there are quite a number of scientific studies on the criminological long-term effects of surgical castration. For example, the 1997 paper by Wille and Baier³ provides a follow-up history of 104 sexual offenders who subjected themselves to castration in the decade between 1970 and 1980, and for whom a re-offending rate was established, following the surgery, of 3 %, whereas this rate was 46 % for the control group of the 53 sexual offenders whose petitions for castration had been refused or retracted in the same period. By contrast, as far as the Federal Government is aware, no scientific proof has as yet been established that the alternatives of chemical treatment and methods of psychotherapy the Committee has cited (anti-androgens and LHRH analogs) have a correspondingly strong effect in preventing further crimes from being committed. Moreover, in comparing the potential benefits and risks of surgical castration with those of chemical castration,

³ Sexuologie 1 (4) 1997: 1-26 / Gustav Fischer Verlag

the possible side effects of such pharmaceutical treatment should be taken into account (e.g. nephritic damage by the LHRH analogs). In light of the group of sexual offenders who can be assumed to benefit from surgical castration, the practice of performing orchiectomy would seem justified from the perspective of forensics and sexual medicine where it is subject to the strict requirements of the Law on Voluntary Castration and Other Methods of Treatment (Kastrationsgesetz).

Insofar as the report addresses the concern that the consent by the parties affected may be more of an “acquiescence” in order to avoid an indefinite deprivation of their liberty, the following should be stated:

In addition to the statutory provisions of the Law on Voluntary Castration and Other Methods of Treatment, the stipulations of medical professional standards apply in instructing anyone regarding the planned surgery and in obtaining that person’s consent. Any valid (“informed”) consent accordingly requires the patient to have been instructed in such detail that, based on his personal abilities, he is able to assess the nature, scope and import of the measure and the health risks it entails, and can take the corresponding decision. According to the consistent practice of the Federal Court of Justice, it is incumbent upon the attending physician to duly assess the circumstances and to accordingly orient the manner in which he or she instructs the person affected. Where the medical intervention is of a severe nature, the courts have ruled that an appropriate reflection period must lapse between the instruction and consent on the one hand, and the surgery on the other (as a general rule, a minimum of 24 hours)⁴.

However, the Federal Government understands that the Committee takes a critical view of surgical castration, a matter that is highly compromised both in terms of medical history and legal history, and that it questions its application from an ethical perspective against the backdrop of alternative treatments. This context also serves to explain why sexual offenders in Germany have opted for surgical castration only in a very few individual cases. It is currently being reviewed whether this issue should be discussed in the context of a debate involving representatives of several disciplines, and also under ethical aspects, for example by the German Ethics Council.

⁴ See, for example, the ruling delivered by the Federal Court of Justice on 25 March 2003, reference number VI ZR 131/02, published in *Neue Juristische Wochenschrift* (NJW, New Judicial Weekly Journal) 2003, p. 2012-2014

APPENDIX I

Ermittlungsverfahren mit Sachgebietsschlüssel 53 (Gewaltausübung und Aussetzung durch Polizeibedienstete)

Berichtsjahr 2009	alle StAen	StA Bautzen	StA Chemnitz	StA Dresden	StA Görlitz	StA Leipzig	StA Zwickau
Neuzugänge (nach Abzug der Abgaben innerhalb der Staatsanwaltschaft)	131	-	35	41	19	36	-
Erlidigte Verfahren (nach Abzug der Abgaben innerhalb der Staatsanwaltschaft)	102	-	31	25	13	33	-
davon							
- Anklage	1				1		
- Antrag auf Erlaß eines Strafbefehls	2			1	1		
- Einstellung mit Auflage nach § 153 a StPO	3		1		1	1	
- Einstellung wegen Geringfügigkeit	1				1		
- Einstellung nach § 170 Abs. 2 StPO	93		30	24	9	30	
- Abgabe an eine andere Staatsanwaltschaft	1					1	
- Verbindung mit einer anderen Sache	1					1	
davon							
gerichtliche Erledigung							
Einstellung nach § 153a StPO (Geldbetrag) im Jahr 2009	1			1			
Freispruch im Jahr 2009	1				1		
Ablehnung der Eröffnung des Hauptverfahrens im Jahr 2010	1				1		

Berichtsjahr 2010	alle StAen	StA Bautzen	StA Chemnitz	StA Dresden	StA Görlitz	StA Leipzig	StA Zwickau
Neuzugänge (nach Abzug der Abgaben innerhalb der Staatsanwaltschaft)	129	7	56	25	7	25	9
Erlidigte Verfahren (nach Abzug der Abgaben innerhalb der Staatsanwaltschaft)	134	4	58	35	9	19	9
davon							
- Anklage	3	1	0	0	1	1	0
- Antrag auf Erlaß eines Strafbefehls	1	0	0	1	0	0	0
- Einstellung mit Auflage nach § 153 a StPO	3	1	0	0	0	0	2
- Einstellung wegen Geringfügigkeit							
- Einstellung nach § 170 Abs. 2 StPO	124	2	57	34	8	16	7
- sonstige (vorläufige) Einstellung.	1	0	0	0	0	1	0
- Abgabe an eine andere Staatsanwaltschaft	2	0	1	0	0	1	0
- Verbindung mit einer anderen Sache							
davon							
gerichtliche Erledigung							
Einstellung nach § 153a StPO (Geldbetrag) im Jahr 2011/2010		1		1			
Freispruch im Jahr 2010						1	

Berichtszeitraum 1. Quartal 2011	alle StAen	StA Bautzen	StA Chemnitz	StA Dresden	StA Görlitz	StA Leipzig	StA Zwickau
Neuzugänge (nach Abzug der Abgaben innerhalb der Staatsanwaltschaft)	25	2	5	7	0	11	
Erlidigte Verfahren (nach Abzug der Abgaben innerhalb der Staatsanwaltschaft)	30	5	5	7	3	10	
davon							
- Anklage	2	0	0	0	0	2	
- Antrag auf Erlaß eines Strafbefehls							
- Einstellung mit Auflage nach § 153 a StPO							
- Einstellung wegen Geringfügigkeit							
- Einstellung nach § 170 Abs. 2 StPO	28	5	5	7	3	8	
- sonstige (vorläufige) Einstellung.							
- Abgabe an eine andere Staatsanwaltschaft							
- Verbindung mit einer anderen Sache							

Berichtszeitraum 2. Quartal 2011	alle StAen	StA Bautzen	StA Chemnitz	StA Dresden	StA Görlitz	StA Leipzig	StA Zwickau
Neuzugänge (nach Abzug der Abgaben innerhalb der Staatsanwaltschaft)	17	1	5	7	2	2	
Erlidigte Verfahren (nach Abzug der Abgaben innerhalb der Staatsanwaltschaft)	17	0	4	7	0	6	
davon							
- Anklage							
- Antrag auf Erlaß eines Strafbefehls							
- Einstellung mit Auflage nach § 153 a StPO							
- Einstellung wegen Geringfügigkeit							
- Einstellung nach § 170 Abs. 2 StPO	17	0	4	7	0	6	
- sonstige (vorläufige) Einstellung.							
- Abgabe an eine andere Staatsanwaltschaft							
- Verbindung mit einer anderen Sache							

Berichtszeitraum 3. Quartal 2011	alle StAen	StA Bautzen	StA Chemnitz	StA Dresden	StA Görlitz	StA Leipzig	StA Zwickau
Neuzugänge (nach Abzug der Abgaben innerhalb der Staatsanwaltschaft)	23	0	4	7	2	8	2
Erlidigte Verfahren (nach Abzug der Abgaben innerhalb der Staatsanwaltschaft)	22	1	2	8	1	8	2
davon							
- Anklage	2	0	0	0	1	0	1
- Antrag auf Erlaß eines Strafbefehls	1	0	0	0	0	1	0
- Einstellung mit Auflage nach § 153 a StPO							
- Einstellung wegen Geringfügigkeit							
- Einstellung nach § 170 Abs. 2 StPO	19	1	2	8	0	7	1
- sonstige (vorläufige) Einstellung.							
- Abgabe an eine andere Staatsanwaltschaft							
- Verbindung mit einer anderen Sache							

APPENDIX II

EL.1.3.1.SG Ermittlungsverfahren, Verfahren nach dem Ordnungswidrigkeitengesetz und sonstige zu erledigende Geschäfte insgesamt

Land Schleswig-Holstein

Oberlandesgerichtsbezirk nach Sachgebieten

		Sachgebiet 52		Sachgebiet 53		Sachgebiet 54	
		vorsätzliche Tötungsdelikte durch Polizeibedienstete		Gewaltausübung und Aussetzung durch Polizeibedienstete		Zwang und Missbrauch des Amtes durch Polizeibedienstete	
		2009	2010	2009	2010	2009	2010
002	Neuzugänge (nach Abzug der Abgaben innerhalb der Staatsanwaltschaft)		1	24	25	23	27
003	Erledigte Verfahren (nach Abzug der Abgaben innerhalb der Staatsanwaltschaft)		1	18	29	15	34
	Art der Erledigung der Verfahren						
537	Erledigte Verfahren		1	18	29	15	34
	davon erledigt durch						
538	- Anklage				1	1	1
	davon vor						
544	- dem Strafrichter				1	1	1
553	- Einstellung mit Auflage nach § 153 a StPO			1			1
	davon als Auflage						
	- Schadenswiedergutmachung (Abs. 1 Satz 2 Nr. 1)			1			
555	- Geldbetrag für gemeinnützige Einrichtung oder Staatskasse (Abs. 1 Satz 2 Nr. 2)						1
564	- Einstellung wegen Geringfügigkeit						1
571	- Absehen von der Erhebung der öffentlichen Klage (§ 154 e StPO)			1			
574	- Einstellung nach § 170 Abs. 2 StPO		1	16	27	13	30
576	- Verweisung auf den Weg der Privatklage				1	1	
577	- Abgabe an die Verwaltungsbehörde als Ordnungswidrigkeit (§ 41 Abs. 2, § 43 OWiG)						1

Quelle: StA-Statistik der Länder