

CPT/Inf (2003) 21

**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 3 to 15 December 2000

The German Government has requested the publication of the CPT's report on the visit to Germany in December 2000 (see CPT/Inf (2003) 20) and of its response. The response, translated into English by the German authorities, is set out in this document. The Appendices to the response are not reproduced in this document.

The German text of the response can be found on the CPT's website (www.cpt.coe.int).

Strasbourg, 12 March 2003

**Response of the German Government
to the report of the European Committee
for the Prevention of Torture and Inhuman
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**Observations
by the Federal Government
on the recommendations, comments and
requests for information of the CPT
on the occasion of its visit
from 3 to 15 December 2000**

(14 June 2002)

Introduction

The Federal Government herewith submits its observations on the recommendations, comments and requests for information embodied in the report of the Committee on its visit from 3 to 15 December 2000 (CPT (2001) 5).

From 3 to 15 December 2000, a delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited the Federal Republic of Germany. The visit was part of the Committee's programme of periodical visits for the year 2000. It was the third periodical visit by the CPT to Germany and the fourth visit in total.

The Federal Republic of Germany would like to express its thanks for the positive cooperation with the CPT, and is glad to take note of the critical recommendations and comments and use them as a guide for improvements. It is pleased to observe that the CPT did not discover any serious shortcomings in the visited facilities.

The Committee's report was adopted on 2 August 2001 and forwarded to the Federal Republic of Germany on 13 August 2001.

The following observations are orientated in line with the structure of the Committee's report. The recommendations, comments and requests for information are indented.

Re I D: Co-operation between the CPT and the German authorities

Paragraph 7:

Note:

- The CPT trusts that in future its visiting delegations will be provided with credentials which will ensure that they have unlimited access at any time to any place of deprivation of liberty in any Federal Land.

Paragraph 7 states that the delegation was obliged to wait for more than half an hour before being granted access to Frankfurt am Main Police Headquarters. The Federal Government regrets the occasional occurrence of such delays. The units concerned have been given further information and called upon to ensure trouble-free access for the CPT at any time.

Paragraph 9:

Note:

- The CPT requests the German authorities to review the question of access to medical records for its visiting delegations.

The German authorities are working to remedy the organisational shortcomings that have been revealed. It is welcomed that the Committee does not oppose the fact that prior to the forwarding of medical information the consent of the persons concerned, together with a release from the duty of confidentiality, is obtained. The authorities are also gratified that the Committee shows understanding for the consultation of the doctor in attendance. A certain delay therefore cannot always be ruled out in individual cases.

RE A: POLICE ESTABLISHMENTS

Re II A 2: Ill-treatment in police establishments

Paragraph 17:

The Committee requests:

- the remainder of the information requested by the President of the CPT by letter of 23 February 2001 regarding the two individuals named at paragraph 16
1. In accordance with the information provided by the CPT by letter of 17 December 2001, it is presumed that no further information is required on the case of the inmate of Straubing prison.
 2. The information requested on the case of the patient at the Brandenburg an der Havel Regional Hospital has been provided by separate correspondence.

Paragraph 21:

The Committee requests:

- to be kept informed of the outcome of the investigations initiated in the cases referred to in paragraphs 19 and 20.

1. Case at Berlin–Schönefeld Airport

Investigation proceedings were pending in this case mentioned by the CPT at Potsdam public prosecution office in respect of four officers of the Federal Border Police concerning bodily harm in office. These were terminated on 13 July 2001 in accordance with section 170 subsection 2 of the Code of Criminal Procedure. After resumption of the investigations on 24 January 2002 in response to the complaint dated 20 August 2001 by the lawyer representing the person filing the charge, they were terminated once again by order dated 4 April 2002 in accordance with section 170 subsection 2 of the Code of Criminal Procedure.

In the reasoning for the termination orders dated 13 July 2001 and 4 April 2002, it is stated by Potsdam public prosecution office that conduct on the part of the officers on the occasion when the person filing the charges was injured was justified by the relevant official instructions and by acting in defence. In accordance with the “official instructions for accompaniment by border police of aliens to be returned by air (DA-BL) dated 3 April”, measures involving binding the person to be deported were permissible if considerable resistance had been offered during a deportation attempt in the past (Section II No 1.3.4 of the official instructions). This applies to the case at hand. Previous deportation attempts on 11 February 1998 and 11 November 1998 had been discontinued because of the intense resistance offered. The letter from the Federal Border Police dated 11 November 1998 indicated active resistance in the shape of scratching, biting and shouting. Also, the exact nature of the measure was said to conform to the official instructions and was not objectionable since the instructions permitted both the binding of the legs handcuffing the person’s wrists under her bound legs. These measures were also permitted to be implemented at the service unit prior to starting transportation and had to be effected in such a manner that no change had to be carried out during transport until the person was handed over to the stewards.

The official instructions in this respect had been checked as required by one of the accused and the measures had been considered suitable. Furthermore, it was also not possible to find unlawfulness in the carrying of the binded person using a stick. It was necessary to take account here of the fact that the person filing the charges had already shown in previous deportation attempts that she was not willing to leave the Federal Republic of Germany voluntarily, and had shown intense resistance. Therefore, in the context of the restricted possibilities of transport in the aisles of the aeroplane, transport using a stick was both suitable and necessary in order to avoid resistance. Less incisive means had not been conceivable. The reflexive blow by one of the accused with the right hand in the face of the person filing the charges had been caused by the preceding bite into this hand, and was also not unlawful. This was also said to apply to the use of simple physical force in order to hold the person filing the charges down on the rear seat of the official vehicle, and to the two occasions when the truncheon was used by one of the accused. This use of physical force had been preceded by further considerable resistance on the part of the person filing the charges, in particular the attempt to kick this accused person. Although the escalation was regrettable, no other suitable, less intrusive means had been available in order to terminate the resistance.

Also, no derogating evaluation was suggested in view of Section II of the official instructions. Based on these provisions, it is not possible automatically to deduce the unlawfulness of bodily harm caused by the use of officially permissible operative aids. Section III no. 2 of the official instructions is said to only govern conduct during stop-overs and on arrival at the destination airport, and does not refer to taking the deportee onto the aircraft.

The measures had been made necessary by the person filing the charges herself because of the previous failed deportation attempts. The bodily harm suffered is said to be the consequence of the binding carried out with permissible and necessary means.

The official instructions quoted are available here and can be sent to the CPT where required. They have since then been replaced by the "Regulations on the removal by air of foreign nationals" of 15 March 2000.

2. Case at Stuttgart Airport

Stuttgart public prosecution office initiated preliminary investigations in respect of a doctor made available by the regional government of Stuttgart on the basis of the charge filed by the Cameroonian national. The charge was based on the accusation that the Cameroonian national had been administered a sedative injection by a doctor against his will on the premises of the Federal Border Police inspectorate at Stuttgart Airport during an attempt to deport him. The preliminary investigations revealed that the injection had been given by the doctor in order to prevent self-inflicted injury. By order of 3 April 2001, therefore, investigation proceedings were not initiated since no initial suspicion of criminal conduct on the part of the doctor in question had existed on the basis of the circumstances ascertained.

3. Case at Frankfurt am Main Airport

As to the ill-treatment allegations raised in the case of the Indian national, Frankfurt am Main public prosecution office, which is competent for the case, has initiated investigation proceedings in respect of four Federal Border Police officers and in respect of a doctor made available by the locally competent aliens authority. It is alleged on the basis of the criminal charges filed by the Indian national, dated 9 January 2001, that the accused administered a sedative injection to the person filing the charges against his will when effecting return on 8 January 2001, physically ill treated him with blows and forced him to swallow a tablet. The investigation proceedings have not yet been concluded. Please allow us to point out in correction that the Indian national was not taken to Stuttgart, but to Frankfurt.

The CPT wishes to be kept informed of the outcome of the criminal and disciplinary investigations initiated in the cases referred to in paragraphs 12 and 15 of the report on the 1998 visit and in the German authorities' response thereto, as well as in the case of Aamir Ageeb, who died on 28 May 1999 in the course of his removal from Frankfurt am Main Airport (Paragraph 21);

1. Paragraph 13 of the report on the 1998 visit

Frankfurt am Main public prosecution office has initiated investigation proceedings in respect of three Federal Border Police officers on suspicion of bodily harm in office against an Iranian national. The person filing the charges had claimed that he was ill-treated when being deported, which was planned for 9 February 1998. Frankfurt am Main public prosecution office terminated the investigation proceedings on 21 September 1999, inter alia on grounds that the investigations carried out had given rise to considerable doubt that the situation was as described by the person concerned.

2. Paragraph 14 of the report on the 1998 visit

Frankfurt am Main public prosecution office has initiated investigation proceedings on the basis of the criminal charges filed by a Turkish national, who had stated that he had been physically ill-treated by officers of the Federal Border Police on 11 July 1997. The investigation proceedings were terminated on 5 November 2001 in accordance with section 170 subsection 2 of the Code of Criminal Procedure on grounds that the investigations carried out had not confirmed that officers of the Federal Border Police had been guilty of causing bodily harm in office against the person filing the charges. Rather, the suspicion had been formed that the person filing the charges had done so hoping to avoid or prevent his deportation. In particular, a doctor had been unable to ascertain sufficiently clearly any traces of blows or kicks. An identification parade had proven totally unsatisfactory.

3. Paragraph 14 of the report on the 1998 visit

As was already said in the statement by the Federal Government following the CPT's 1998 report, the investigation proceedings in respect of four Federal Border Police officers on suspicion of bodily harm in office were terminated on 9 November 1998 by Frankfurt am Main public prosecution office in accordance with section 170 subsection 2 of the Code of Criminal Procedure in the case of another Turkish national. The complaint addressed by the person filing the charges against the discontinuation notice was rejected by the chief public prosecution office on 14 May 1999 since an examination of the challenged factual and legal circumstances had not led to a differing evaluation.

4. Other investigation proceedings (paragraph 15 of the report on the 1998 visit)

Including the above investigation proceedings, a total of nine sets of investigation proceedings were initiated in respect of Federal Border Police officers in the period 1997/1998. Apart from the above proceedings from this period, five more sets have been terminated in accordance with section 170 subsection 2 of the Code of Criminal Procedure. In the proceedings concerning an Algerian national, Frankfurt am Main public prosecution office, in contrast, filed charges against a Federal Border Police officer in respect of dangerous bodily harm in office. While the asylum-seekers accommodated in the transit area were being counted, he had sprayed a not inconsiderable quantity of irritant gas from an irritant sprayer (CN solution) with no reason or official instruction into the cubicle of the gents toilet in which the person concerned was, causing him burning, running eyes. The Federal Border Police officer was sentenced with binding effect by judgment of Frankfurt am Main Local Court of 28 November 2000 in office to a prison sentence of seven months, suspended on probation, in respect of dangerous bodily harm.

5. Death of a Sudanese national

On 28 May 1999, the Sudanese national Amir Ageeb died shortly after a flight took off from Frankfurt am Main to Khartoum by which he was to be deported to Sudan. He was accompanied by three Federal Border Police officers, against whom Frankfurt am Main public prosecution office filed negligent homicide charges with Frankfurt am Main Regional Court on 16 January 2002. The three Federal Border Police officers are accused of having pressed Mr Ageeb into his seat during take-off in order to prevent his considerable physical resistance to deportation, and having thereby contributed to his death. The preliminary disciplinary investigation into the officers has been suspended in accordance with section 17 subsection 2 of the Federal Disciplinary Code (Bundesdisziplinarordnung) until the criminal proceedings have been concluded.

Paragraph 22:

The Committee requests:

- information on which agencies other than the BGS and Länder police forces are entrusted with the enforcement of removal orders.

A survey among the Federal Länder revealed that in general only the Land police and the Federal Border Police are entrusted with deportations. In a small number of Federal Länder, deportation orders are in addition or exclusively implemented by the immigration authorities which are competent in accordance with section 63 of the Aliens Act, but as a rule only when taking the person to be returned to the Federal Border Police. Only in individual cases (North Rhine-Westphalia) do members of staff of the immigration authorities accompany persons to be returned to the destination in their home countries.

Returns are also carried out by the security staff of some airlines on behalf of the Border Police Directorate in Koblenz. Here, on principle the same standards apply as to returns carried out by the Federal Border Police. Furthermore, it is possible to carry out returns to Algeria and Yugoslavia with state security staff of these countries on the basis of bilateral agreements.

The Committee requests:

- in respect of 2000 and 2001, information on the number of complaints of ill-treatment during the enforcement of removal orders (broken down by agency concerned) and the number of disciplinary and/or criminal proceedings initiated as a result of those complaints.
- in respect of 2000 and 2001, an account of disciplinary/criminal sanctions imposed on the grounds of ill-treatment during the enforcement of removal orders.

1. There are no separate criminal justice statistics providing information on criminal proceedings carried out in respect of ill-treatment when carrying out deportations or on criminal sanctions imposed in respect of such offences. It is therefore unfortunately impossible to provide the requested figures.

2. A survey has been carried out in the Länder and the Federal Border Police relating to complaints of ill-treatment lodged by foreign nationals in implementing deportations in 2000 and 2001. A complaint received in the Free State of Bavaria was rejected as ill-founded. Additionally, criminal proceedings were initiated in respect of bodily harm in office in accordance with sections 340 in conjunction with 229 of the Criminal Code, which were terminated in accordance with section 170 subsection 2 of the Code of Criminal Procedure. The claim for non-pecuniary damage which had been asserted in this context was rejected. No disciplinary measure was carried out. In North Rhine-Westphalia, a complaint was submitted against two Federal Border Guard officers. The investigation proceedings initiated in this case by Düsseldorf public prosecution office were terminated on 19 July 2001 in accordance with section 170 subsection 2 of the Code of Criminal Procedure for lack of sufficient suspicion of the offence. No information is available concerning other cases.

Paragraph 24:

The Committee recommends:

- that the new internal instruction of the Federal Ministry of the Interior dated 15 March 2000 on the removal by air of foreign nationals by BGS officials should be made applicable throughout the country to all agencies entrusted with the enforcement of removal orders.

The "Regulations on the removal by air of foreign nationals" (BestRückLuft) mentioned by the CPT are an official regulation for the Federal Border Police, given legal force by the Federal Ministry of the Interior on 15 March 2000. The abovementioned regulation was forwarded to the Länder by the Federal Ministry of the Interior on 21 March 2000. The decision to adopt the regulations is a matter for the respective Ministers and Senators of the Interior for the individual Federal Länder.

On the occasion of the CPT's report, the Federal Government has notified the Länder of its recommendation. In response, the Länder reported that when they themselves implement returns by air, the Regulations on the Removal by Air of Foreign Nationals were in principle applied accordingly. In these cases, the provisions were in some of the Länder expressly assumed by corresponding decrees towards the subordinate immigration authorities.

The Committee requests:

- precise information about the device referred to as an "officially authorised head protector".

The head protector officially authorised for the Federal Border Police is intended to provide protection against self-induced injuries to persons to be removed (head injuries) and to protect the accompanying officers of the Federal Border Police against biting injuries by persons to be removed (in particular with HIV). In connection with necessary cuffing, returns should be effected more safely for all concerned, while maintaining adherence to human rights.

This head protector has been developed on behalf of the Federal Ministry of the Interior by making special modifications to a protective sports helmet. The reasons for the changes included, inter alia:

- no chin fastening,
- no visor or protective bar,
- good ventilation and guarantee of freedom to breathe, and
- use of protruding protection against biting.

The head protector was evaluated and considered as a suitable aid by forensic physicians, occupational physicians and police doctors. By carefully selecting the personnel, and providing intensive, ongoing basic and further training and constant practice with this resource, secure application is to be guaranteed. Where required, additional information can be provided.

Paragraph 25:

The Committee requests:

- to be informed of the selection criteria applied by other agencies entrusted apart from the Federal Border Police in the various Federal Länder with the enforcement of removal orders and of the training provided to the staff concerned.

To the extent that the immigration authorities, which are competent in accordance with section 63 of the Aliens Act, are entrusted with deportations, the selection of the particular personnel is a matter for the local authorities. The respondent Länder have no direct influence in such cases. Depending on the extent of the powers and the degree of involvement of the staff in the enforcement of deportations, the nature of basic and further training for these tasks varies.

North Rhine-Westphalia reports, for instance, that as a result of the concentration of most returns in the four central immigration authorities of the Land, a specialised staff had in fact been formed which had acquired considerable knowledge and awareness from its constant cooperation and exchange of experience with the staff of the Federal Border Police. In some areas, the Federal Border Police also provides training courses for the staff of the immigration authorities.

In Lower Saxony, the district governments may appoint persons employed as civil or public servants to conduct deportations and return aliens as so-called "administrative enforcement officers". On appointment, these individuals may use direct force, as may the police under the conditions imposed by the Lower Saxony Act on the Aversion of Danger (Gefahrenabwehrgesetz). These persons do not have further police powers. They are trained by the police, who provide the legal basis and practical exercises (ways of holding people down, etc.).

Paragraph 26:

The Committee would like to know:

- whether in the case of the administration of sedatives, as permissible in accordance with the instruction of the Federal Ministry of the Interior dated 15 March 2000, the consent of the person concerned is required.

The administration of medicines of any type is exclusively effected for medical and ethical reasons. The consent of the person concerned is required, unless it cannot be obtained because the person concerned is not approachable (for instance because they are unconscious, are having a cramp attack or in a state of hyperkinetic agitation) and the administration of the medicine is necessary for medical reasons.

Paragraph 27:

The Committee wishes to be kept informed:

- of further developments as regards the draft Law on Disciplinary Measures and wishes to receive a copy of the Law on Disciplinary Measures once it has been adopted.

The Act to Reform Federal Disciplinary Law (Gesetz zur Neuordnung des Bundesdisziplinarrechts) has now been adopted and published in the Federal Law Gazette (BGBl. 2001 Part I 1509 et seq.). A copy is enclosed (annex 1).

Paragraph 28:

The Committee requests:

- additional information (e.g. composition, powers, tasks, etc.) on the specific bodies outside operational hierarchies of the police, which are mandated to follow up and investigate any allegations of police misconduct.

In Berlin, an independent external auxiliary council was formed in 1997 composed of five honorary members not subject to instructions who in accordance with the Act on Detention Pending Deportation (Gesetz über den Abschiebungsgewahrsam) "help in planning detention pending deportation and the care of deportation detainees, advise the head of the detention centres and in doing so favour the interests of the deportation detainees". The auxiliary council has already submitted two extensive reports which have been the subject of debate both publicly and in Parliament. MPs also regularly avail themselves of the opportunity to personally speak to deportation detainees.

An independent auxiliary council will also be established in Bremen for the area of detention pending deportation, although its composition is still to be decided. Furthermore, there is an internal revision within the police which reports directly to the Chief of Police outside the operational hierarchy.

Reference is made to the information provided re paragraph 82 in respect of the auxiliary prison councils existent in North Rhine-Westphalia in the three deportation detention facilities.

In Mecklenburg-Western Pomerania the citizens' commissioner - within her responsibility for public administration, but outside the hierarchy of the police - will inquire into accusations of misconduct by the police. She will take action only upon a citizen's request.

The Hamburg Police commission mentioned in the CPT's report was dissolved by Hamburg City Parliament following rescission of the corresponding statute on 29 December 2001.

In 2000, the Federal Border Police established special teams in the five headquarters, with the task of preventing and discovering breaches of the law and misconduct by members of the Federal Border Police. The teams of the Organisation for Prevention and Internal Investigation are composed of six officers, each of whom has unrestricted power to inspect files and question persons. As to the content, nature and extent of the clarification of facts, they are not subject to instructions. Criminal procedure investigations as a rule continue until passed on to the respective public prosecution office. Disciplinary investigations mainly take place only in the period preceding disciplinary proceedings. The focus of this tool is however in the field of general, targeted prevention work, which includes for instance early recognition of working conditions which might provide an opportunity to commit criminal offences in office.

According to information provided by the majority of the Länder, there are however no special agencies of the nature referred to in paragraph 28. Nor was there, in light of the existing control mechanisms, any intention to introduce such agencies.

- Information on whether the German authorities are considering the possibility of establishing, on a nation-wide level, independent bodies entrusted with visiting police detention facilities.

Nationwide establishment of independent agencies could only be carried out by the Länder themselves because of their competence for police detention, with the exception of the Federal Border Police. A questionnaire however revealed that neither these nor the Federal Border Police are planning to establish such agencies at present because of the control mechanisms that are in place.

In this context, it is possible to indicate the many national tools which Germany already has to monitor the facilities in which people are deprived of their liberty. For one thing, there is the service and specialist supervision carried out by the Land Ministries of the Interior relating to police facilities and of the Land Ministries of Justice relating to the prisons. The Ministries may also visit the facilities that are subordinate to them unannounced. They have extensive monitoring powers. Furthermore, in regard to the execution of prison sentences, as well as in some other facilities, there are auxiliary prison councils. These are bodies composed of independent citizens who can regularly visit the detention centres, accept complaints and also draw the public's attention to prisons. The petition committees may also file a petition to the Land Parliaments, furthermore, and may accept complaints and examine them independently. In this context, too, it is possible to implement visits to the facilities. Independent examination is also guaranteed by courts and public prosecution offices. Each measure encroaching on basic rights is subject to judicial control. The public prosecution offices also examine allegations objectively and independently. Finally, it is possible for each detainee to turn to human rights organisations. Reference is also made to visits by the CPT in this context.

Re II A 3: Conditions of detention in police establishments

Paragraph 36:

The Committee recommends:

- a review of the conditions of detention in the police establishments mentioned at paragraphs 29 to 35.

Re Paragraph 29: (no dimmable lighting):

The criticism refers to an inmate collection place in local headquarters of the police in Berlin. There are no technical facilities there to dim the lighting. An investigation is under way to determine whether the practice already used at the central Tempelhof Police Detention Centre can be transferred which allows the central lighting to be switched off between 10 p.m. and 5 a.m. and the regular cell checks to be carried out using torches.

Re Paragraph 30 (poor material detention conditions):

The authorities are aware that the space provided in the detention establishments of Frankfurt am Main Police Headquarters unfortunately do not meet the standard of a modern prison. This will however change with the move to new premises which is planned for 2002 (cf. on this the information re paragraph 36 at the end). However, the cells in Klapperfeld Police Detention Centre and the detention cells at Frankfurt am Main Police Headquarters are cleaned on a daily basis and disinfected at suitable intervals by specialist firms. It is possible to open the windows to ventilate each cell. According to information provided by Frankfurt am Main Police Headquarters, all cells are adequately lit and heated.

The lack of a call system is compensated for by the presence of an officer in the corridor. It is not necessary to install a call system before the detention units are moved into the new police headquarters in view of the short time before the move.

Finally, it should be pointed out that Frankfurt am Main Police Headquarters nevertheless attempts to also equip the existing cells in the old building so that they meet the preconditions for dignified accommodation. For example, six of the eight cells at Police Station 4 were redecorated during 2001.

Re Paragraph 31 (placing inmates in small cells and cubicles):

1. The small cells in the guard rooms of Police Station 4 at Frankfurt am Main Central Railway Station are only used in justified exceptional cases and for very short periods. Because of the local circumstances, such as visual and call contact from the cell to the guard, brief accommodation in these cells appears proportionate. According to information provided by Frankfurt am Main Police Headquarters, the accommodation of two detainees noted in December was an exception. This was intended to avoid placing inmates in the detention cells, something which as a rule is linked to considerable extra strain (duration and intensity of the encroachment) for the person concerned. On principle, only **one** person is kept in the small cell for a very short time, and only if this person has proven to be unmanageable and cannot be temporarily placed in the guard room without supervision (for instance until questioning, photographing and fingerprinting, etc.).

2. The cells described in the report in the Regional Criminal Police Detention Centre in Berlin-Tempelhof are not used to accommodate inmates, but refer to the two rooms on the 1st floor (between reception and the legal consultation/interrogation rooms) only used for inmate visits. These are divided into two halves with a Plexiglas partition between the inmate and the visitor, the stated size of 1.3 m² only referring to the part to which the inmate has access during the one-hour maximum visiting time.

Re Paragraph 33 (Provision of items of personal hygiene):

1. According to information provided by the Hesse Ministry of the Interior, the necessary hygiene articles are available at Klapperfeld Police Detention Centre since longer detention is only carried out there. Where needed, these hygiene articles, ladies' hygiene articles in particular, can be issued from there to other units.

Each person detained overnight at the Police Detention Centre is given a set of bedding, a piece of soap and a towel. Further body care items are also available, such as a toothbrush, toothpaste, tampons and nappies, which can be issued as required.

Shoelaces and belts are removed for the duration of accommodation in the cells to protect the inmates. If police officers take such people for questioning, they are however temporarily returned if no particular reasons stand in the way (e.g. risk of suicide).

2. The most necessary body care articles are available and are issued on request in the detention centre at Munich Police Headquarters. They are not issued without request because it has repeatedly been the case in the past that soap or towels in particular were placed in the toilets to make them overflow. The same procedure is followed in the detention cells of the police inspectorates and comparable units.

Paragraph 35: (no food for inmates if submissions and distribution of food at same time):

Because of the lack of specific information, the agencies in question were unable to attribute the allegation to specific cases. In Hesse, appointments are on principle set such that lunch can be taken. There is no information about complaints there. In the detention centre of Munich Police Headquarters, inmates are given packed lunches for appointments which occur outside the building and are likely to go on for some time. In Berlin, meals for inmates who are not in the wing when food is distributed are kept by the wing staff. Insulated packaging ensures that the food remains warm for several hours.

The Committee recommends:

- to ensure that all persons detained overnight be provided with a clean mattress and blankets.

1. It is ensured throughout the country for the Federal Border Police that disposable blankets are available for detainees. The same applies to the provision of mattresses if it is necessary for the person in question to remain overnight. Furthermore, an internal Federal Border Police administrative provision specifies that the detention cells and equipment and personal articles are to be cleaned daily and regularly disinfected.

The detention rooms of the Federal Border Police at Frankfurt am Main Central Railway Station are now used only for short stays. If longer-term accommodation (overnight) is required, the detention establishments of the Land of Hesse are used. The new detention rooms at Frankfurt am Main Central Railway Station are expected to be finished at the beginning of June 2002.

2. In Berlin, for hygiene reasons no mattresses are provided for the detention cells in the detention centres of the local police headquarters. Persons brought in are however provided with disposable blankets should they so desire.

The Land of Berlin reports that according to internal statistics 3,681 individuals were taken to only **one** local headquarters there in 2001. A large number of these individuals was taken there - only because of their physical state - as "helpless persons". In this condition, experience showed that one should expect the cells to be frequently contaminated by vomit, urine or faeces, and occasionally with vermin, so that a proper standard of hygiene could only be ensured with a major effort. Equipping the cells with mattresses was hence objectionable from the point of view of ensuring adequate hygiene. Furthermore, one should take account of the fact that people stay in the detention facilities of the local headquarters for a very short time, and it was hence considered acceptable to do without mattresses.

All persons detained overnight at the Land Criminal Police Office's central police detention facility in Tempelhof are given clean sheets and kept in cells equipped with mattresses. The reason is the – on average – much longer stay of the persons brought in.

It is also pointed out that at present a working party in Berlin is planning a reorganisation of the Berlin detention system which will develop ideas as to how to standardise the procedures.

3. In Hesse, each person detained overnight at the Police Detention Centre in Frankfurt am Main is given a set of bedding, blankets and a mattress. These are in each overnight cell or are issued as appropriate. No mattresses were available yet for security reasons in the cells in Police Station 4 in Frankfurt am Main, since longer stays, especially overnight, are on principle carried out in the Police Detention Centre in Klapperfeldgasse. Blankets are available in all detention cells and are issued on request.

4. On the occasion of the CPT report, all the Länder have been informed once again of its recommendation to provide all persons detained overnight with a clean mattress and clean blankets.

The committee recommends:

- that persons detained for extended periods should be offered at least one hour of outdoor exercise per day.

1. The construction of Munich Police Headquarters in Ettstraße, as well as the necessary organisational and working procedures, do not permit giving detainees the opportunity to take outdoor exercise because of the possibility of escape. Those concerned are however released after being taken before a judge as provided by law, or are transferred to a prison where sufficient outdoor exercise is facilitated. It is not intended for people to stay here for several days.

2. In the area of competence of the Ministry of Interior of the Land of Hesse, persons detained for longer than one night in the Police Detention Centre are as a rule deportation detainees. They are together in an open-plan cell between 9.30 a.m. and 5 p.m. daily. This cell offers sufficient space and opportunity for movement. Furthermore, roughly thirty minutes may be spent outdoors daily, but this opportunity is not taken by all the detainees concerned. Since deportation detainees spend a maximum of two weeks at the Police Detention Centre and the local and staffing situations are difficult, the Land considers this approach to be justifiable.

3. On the occasion of the report of the CPT, all the Länder have been informed once again of its recommendation to provide all long-term detainees at least one hour of outdoor exercise per day.

The Committee requests:

- information on the progress made concerning the construction of new detention facilities for Frankfurt am Main Police Headquarters and the Federal Border Police Station at Frankfurt am Main Central Railway Station.

The new detention establishments in the building of the new Police Headquarters are intended to be finished by mid-2002. These will combine the detention cells of the old Headquarters and those at Klapperfeld. In addition to improving the accommodation conditions, a plan for medical care is currently being worked out. No exact date has yet been set for the move. However, there are plans to move into the detention cells at the same time as the move to the new Headquarters.

Paragraph 37:

The Committee recommends:

- in cases where a person in police custody is, or becomes, highly agitated, the police should immediately contact a doctor and act in accordance with his/her opinion.
- the security cells at Klapperfeldgasse Police Detention Centre in Frankfurt am Main should be equipped with a mattress, and a special register should be kept concerning their use.

The detainees are only transferred into the so-called security cell at Klapperfeldgasse Police Detention Centre in Frankfurt am Main in a very small number of exceptional cases. This only occurs if detainees intentionally damage their cells or for their own protection. A doctor is informed if a person is worryingly agitated. As to medical care and the redesign of the security cells, it is also pointed out that a plan for medical care is being worked out for the new rooms into which the detention establishment will move in mid-2002.

According to information received from the Hesse Ministry of the Interior it is not intended to equip the security cells with mattresses, as it is feared that any mattresses provided would then be damaged or destroyed. Given the fact that detainees are usually kept there only for a few hours, this is considered justifiable.

Any transfer to a security cell is documented in a so-called activity book which records the person's name, the length of stay and the reason therefor. A specific register is therefore not considered necessary.

Re II A 4: Safeguards against ill-treatment in police establishments

Paragraph 41:

The Committee recommends:

- that the German authorities should implement without further delay the recommendations made in paragraph 35 of the report on the 1991 visit and in paragraph 32 of the report on the 1996 visit, namely to ensure that, throughout Germany, all persons deprived of their liberty by the police, for whatever reason, should have from the very outset of their custody
 - the right to inform members of their family or a third party of their choice of their detention; a precise definition of the situations in which the exercise of this right could exceptionally be delayed is also required;
 - a right of access to a lawyer as specified in paragraphs 39 and 40.

A. Notification of the apprehension

1. Apprehension in accordance with the Code of Criminal Procedure

a. Arrest (Verhaftung) (section 114 b of the Code of Criminal Procedure)

In accordance with section 114 b of the Code of Criminal Procedure, a relative of the arrested person or a person trusted by him is to be notified without delay of the arrest and of every further decision concerning the continuation of arrest (subsection 1), and the arrested person himself is to be given an opportunity additionally to notify a relative or a person trusted by him of the arrest, except if this would jeopardise the purpose of the investigation (subsection 2).

The duty to inform in accordance with subsection 1 of the provision refers to the arrest and to every further decision concerning the continuation of arrest. Arrest (Verhaftung) is defined as apprehension on the basis of an arrest warrant in accordance with section 114 b of the Code of Criminal Procedure or in accordance with section 230 subsection 2 or section 236 of the Code of Criminal Procedure. In accordance with sections 127 and 127 b subsection 1 of the Code of Criminal Procedure no notification is provided of provisional arrest, but of any subsequent arrest in accordance with section 128 subsection 2 second sentence and 127 b subsection 2 of the Code of Criminal Procedure. This rule in conjunction with Article 104 subsection 1 of the Basic Law (Grundgesetz) ensures that persons provisionally apprehended on suspicion of a criminal offence must be taken before a judge at the latest on the day after apprehension, and that the relatives or third persons are then to be notified of a decision on the duration of detention.

The restriction that the arrested person himself is to be given an opportunity to notify a relative or a person trusted by him "except if this would jeopardise the purpose of the investigation" merely means that the accused must accept that the judge determines the nature of notification and restricts the group of recipients. The accused's right of notification may however not be entirely removed. Thus, the purpose of the investigation may be jeopardised by for instance letters to co-offenders or participants in the offence to be investigated; in such a case, the judge may require that the accused notifies another person. A more precise definition is not possible; the rule must of necessity be kept abstract in the interest of accommodating all circumstances which might be relevant to the concrete individual case. It must be made clear in this context once more that the right of notification itself continues to exist even if the purpose of the investigation is jeopardised; it is permissible only to restrict the group of recipients or to influence the content of a notification letter.

b. Provisional arrest (Vorläufige Festnahme) (section 127 subsection 2 of the Code of Criminal Procedure)

As stated by the CPT, there is no notification of provisional arrest in accordance with sections 127 and 127 b subsection 1 of the Code of Criminal Procedure, but only of any subsequent arrest in accordance with section 128 subsection 2 second sentence and 127 b subsection 2 of the Code of Criminal Procedure. At least according to the opinion prevalent here, the provisional arrest does not give rise to a right of the arrested person to inform. The reason for this is the provisional nature of the measure which must soon be terminated or be converted into an "arrest" within the meaning of section 114 b of the Code of Criminal Procedure. It should be pointed out in this context that section 128 subsection 1 first sentence of the Code of Criminal Procedure requires the arrested person to be brought before a judge "without delay", so that the maximum time ("at the latest on the day after his apprehension") is unlikely virtually ever to be exhausted – especially with today's technical possibilities.

Independently of this, it is possible to enable the provisionally arrested person to inform his/her family or other persons. A survey among the Federal Länder has revealed that this possibility is also used – with corresponding application of the restriction as regards arrest - on principle in practice. Thus, for instance, the Hamburg police service regulations (PDV 350) refer to "daily service" as being binding for apprehensions:

21.0980.1

If not contradicted by criminal tactical considerations according to the decision of the criminal agency processing the case or, outside general working hours, according to the decision taken by the Land Criminal Police Office No. 22 <KKvD>, in particular where there is no danger of collusion:

- apprehended persons are to be afforded the opportunity to notify relatives or persons enjoying their trust without delay;
- additionally, in the case of apprehended juveniles - including against their will - the parent or guardian is to be informed.

If the apprehended is unable to notify relatives or persons enjoying their trust personally, and if they would presumably have so wished, the police is to undertake that notification. The apprehending unit, which may consult the police station of residence, shall be competent to undertake this notification.

Notification or the apprehended person's waiver of notification shall be included in the files.

2. Preventive police custody

a. Police of the Federation

In accordance with section 41 subsection 2 of the Federal Border Police Act (BGS) and section 21 subsection 7 of the Act on the Federal Criminal Police Office (Bundeskriminalamtgesetz - BKAG), a person in police custody is to be given the opportunity without delay to inform a relative or a person trusted by him provided the purpose of the deprivation of liberty is not endangered thereby. Persons trusted also include lawyers in particular. If the person in police custody is already represented by counsel or another empowered person, in accordance with section 14 subsection 3 of the Administrative Procedure Act this person should also under all circumstances be notified by the officers. If the person in police custody is unable to avail themselves of their right to notify, the Federal Border Police or the Federal Criminal Police Office is to undertake notification unless this would be contrary to the likely will of the person concerned.

When aliens are taken into police custody, Article 36 para 1 (b)) of the Vienna Convention on Consular Relations also expressly provides that on their request the competent Consulate is to be notified of the deprivation of liberty without delay, and that the alien is to be informed without delay of their rights in this context. If the person in police custody – irrespective of whether they have German or foreign nationality – is a minor or if a custodian is appointed for them, furthermore in every case the person who is responsible for personal custody or custodianship is to be notified without delay.

The right of notification in accordance with section 41 subsection 2 first sentence of the Act on the Federal Border Police and section 21 subsection 7 second sentence of the Act on the Federal Criminal Police Office only fails to apply if by means of notification of the person selected by the persons concerned the purpose of the deprivation of liberty, meaning in particular prevention of the criminal offence, would be placed at risk. In which cases this precondition is met cannot be described in detail since there is a large number of conceivable circumstances. Primarily, these are likely to be cases in which a person is to be informed where it cannot be ruled out that they are an accomplice to the planned criminal offence, or that they are at least in contact with probable accomplices.

b. Police forces of the Länder

The principles described in the above section apply in the same manner if a person has been taken into police custody by the police of a Land in order to avert dangers. Section 15 subsection 2 of the Draft Model Standard Police Act (Musterentwurf eines einheitlichen Polizeigesetzes (ME)), and subsequently the various police statutes of the Länder, largely contain the same regulations as to the right and duty of notification as those applying to the police forces of the Federation.

B. Access to a lawyer

1. Criminal proceedings

As already stated in the letter to the CPT of 13 March 2001, the lawyer only has an independent right to be present at interrogations by the public prosecution office. However, the accused may also delay or interrupt police interrogation at which no counsel is present by expressing a wish to consult counsel first.

Additionally, a suspect gains the status of an accused person if the prosecution authorities take measures recognisably intended to pursue criminal prosecution against them. At the latest on arrest, this therefore affords them the “status of an accused person” (cf. also section 127 subsection 1 of the Code of Criminal Procedure, which speaks of accused persons in this sense). The constellation feared by the CPT, according to which a person detained on suspicion of a criminal offence is not at the same time an accused person, hence does not appear to be conceivable.

2. Averting dangers

In accordance with section 15 subsection 2 of the Draft Model Standard Police Act, the person chosen as trusted by the person in police custody him/herself (cf. above on this) may naturally also be a lawyer. Informing a trusted person enables the latter to look after the detainee, but does not give rise to a right to be present for instance at hearings or interrogations.

Furthermore, the police laws of the Länder do not contain provisions relating to consulting a lawyer. Such a right may however be based on section 14 of the Administrative Procedure Acts (Verwaltungsverfahrensgesetze - VwVfG) of the Länder. In accordance with section 14 subsection 1, a person involved in an administrative procedure may be represented by counsel, who in accordance with section 3 subsection 3 of the Federal Code of Lawyers (Bundesrechtsanwaltsordnung) may also be a lawyer. Independently of this, in accordance with section 14 subsection 4 of the Administrative Procedure Act (VwVfG) it is possible to appear at hearings and discussions accompanied by counsel. These provisions are applicable in addition to the police law regulations on notification of trusted persons in cases of police custody. Whilst the latter is intended to prevent persons being subject to state power with no possibility for third parties to be aware of this fact, the provision contained in section 14 of the Administrative Procedure Act gives concrete form to the rule-of-law principle of 'equality of weapons', which characterises a fair administrative procedure and is rooted in the right to a legal hearing and in the general right to privacy from Art. 2 para. 1 in conjunction with Art. 1 para. 1 of the Basic Law.

If, however, a person taken in police custody not for criminal law reasons also has the right to be represented by counsel in the proceedings with the police, he/she must on principle be afforded the right in order to assert this right to talk to a lawyer in private. Further, in accordance with section 14 subsection 4 of the Administrative Procedure Act, they have the right to consult a lawyer or other person as counsel if they are given a legal hearing in connection with their deprivation of liberty.

3. Deportation

In cases of detention pending deportation, section 5 of the Act on Court Proceedings relating to Deprivation of Liberty (Gesetz über das gerichtliche Verfahren bei Freiheitsentziehungen - FEVG) governs who is to be heard. Here, the Act naturally assumes that the person concerned may consult a lawyer.

Paragraph 43:

The Committee recommends:

- that steps be taken to ensure the regular presence of qualified health care staff at the Klapperfeldgasse Police Detention Centre in Frankfurt am Main.

There is no current provision for the constant presence of medical staff at the Police Detention Centre at Frankfurt am Main Police Headquarters. The medical service of the Police Headquarters or emergency medical services are used where needed. In addition to the imminent improvement of accommodation conditions however following the move into new premises, a new medical care plan is currently being devised.

Paragraph 45:

The Committee recommends:

- that steps be taken to ensure that in all Federal Länder, any medical examination of a detainee is undertaken out of the hearing and - unless the doctor concerned expressly requests otherwise in a given case - out of sight of police officers.

1. According to information provided by the Senate Administration for Interior Affairs in Berlin, the recommendation of the CPT to carry out medical examinations of persons in police custody to ascertain suitability for detention out of the hearing and sight of police officers in order not to breach medical confidentiality is adhered to in essence. There had been no internal police instructions to the effect that medical examinations must always take place in the presence of police officers. Rather, it had been the express wish of the doctor in attendance to guarantee the presence of a staff member of the detention centre in order to minimise from the outset misconduct or indeed attacks on the doctor by the person to be examined, which can never be entirely ruled out.

2. On the occasion of the CPT report, all the Länder have been informed once again of the recommendation of the CPT on medical examinations and requested to comply with it.

Paragraph 46:

The Committee recommends:

- that steps be taken to discontinue the practice observed at Munich Police Headquarters according to which a note had been added to the custody register stating that the detainee was infected with hepatitis C, HIV or tuberculosis.

It could not be established by the Free State of Bavaria that the practice observed by the CPT actually exists. It was presumed here that the custody register referred to probably describes either the obligatory acceptance document (detention book) or the so-called doctor's file.

The doctor's file contains certifications of suitability for detention, results of examinations or instructions regarding medical measures to be carried out, which are made by any doctor who may have been consulted. The doctor's file is kept in a safe at Munich Police Headquarters. Only doctors in attendance and the commissioner of the custodial staff for first aid measures have regular access.

Additionally, there is the acceptance document (detention book) mentioned in No. 17 and No. 12 subsection 3 of the Police Prison Code (Haftvollzugsordnung der Polizei - HVOPol). The detention book is kept by prison staff and no other agencies have access to it. The entries regarding infectious diseases (hepatitis C, HIV, TBC) are necessary both for reasons of self-preservation and for preventive reasons for co-detainees (separation/ protection/ disinfection of the cells), in cases of need for consulted doctors and for the inmates themselves (necessary treatment measures, administration of medicines) and are considered to be indispensable.

Paragraph 47:

Note:

- The CPT trusts that the measure adopted in several Federal Länder to give all detained persons forms setting out their rights in several languages will be extended to all Federal Länder.

On the occasion of the CPT report, all the Länder have been informed once again of the recommendation and asked to comply with it. A survey in the Federal Länder revealed that the introduction of such forms in various languages, if not already available, is now being considered in some cases or will be carried out soon. In other cases, it was stated that these were available only for individual detention matters (police detention, prisons, detention pending deportation). In each case, however, it has to be borne in mind that interpreters are always to be used during questioning where necessary.

Paragraph 48:

The Committee recommends:

- that the German authorities reconsider their position on the introduction of a code of conduct or police interrogations.

The Federal Länder have been informed of this question once again in light of the new enquiry by the CPT, and have once again rejected the introduction of a code of conduct for police questioning. They pointed out that the implementation of questioning and adherence to the concomitant rules of conduct is a major element of police officers' basic and further training, and that hence no further need for action existed. In some cases, internal instructions already existed in this field, such as official instruction LKA No. 2/1994 for the Berlin police authority, the official instruction on dealing with detentions/apprehensions (Bremen), Hamburg police official regulation (PDV 350) "Daily Service", an information sheet for police questioning of accused persons and witnesses in criminal cases (Hesse), the guideline for the police of the Free State of Saxony or the communication of the Bavarian State Ministry of the Interior of 24 January 1986 on police questioning in criminal investigation proceedings, which contains all the legal and tactical principles involved in questioning accused persons and witnesses.

Re B: Detention of foreign nationals under asylum/aliens legislation

Re B 1: Preliminary remarks

Paragraph 51:

The Committee recommends:

- that high priority should be given to the creation throughout Germany of holding facilities specifically designed for the accommodation of foreign nationals deprived of their liberty under the Aliens Act.
- that the period during which such persons are held in ordinary police detention facilities should be kept to an absolute minimum.

1. Creation of specific holding facilities

The Federal Government continues to hold the view that persons detained pending deportation should not be held together with other types of inmate since the implementation of detention pending deportation in fact is not an original task of the prison system. The Federal Government has passed on the recommendation of the CPT to the Federal Länder once again on the occasion of the report of 2 August 2001.

Several Federal Länder have stated that they have separate facilities for detention pending deportation, some of which are subject to the justice authorities and some of which are subject to the interior authorities. For example, Berlin has a facility purely for detention pending deportation, which is operated by the police authority. Bremen, Rhineland-Palatinate and Saarland also have separate facilities. Hesse has a central facility in Offenbach a.M. which is subject to the Ministry of Justice and which takes a large share of deportation detainees in Hesse, and intends to build another detention facility to take all deportation detainees. A new detention building is now also being erected for deportation detainees from the airport procedure at Frankfurt am Main Airport. Lower Saxony has a central detention facility in Hanover. In North Rhine-Westphalia, there are three facilities designated specifically for detention pending deportation (Büren, Moers and Neuss).

The accommodation of detainees awaiting deportation at least is carried out separate from accommodation of convicts in other Federal Länder (Baden-Württemberg, Hamburg and Mecklenburg-Western Pomerania for male deportation detainees, Saxony-Anhalt, Thuringia). There are efforts in Mecklenburg-Western Pomerania to remove general responsibility for detention pending deportation from prisons.

In some Federal Länder, there are neither separate detention facilities, nor is there separate placement (Bavaria, Saxony).

2. Persons detained pending deportation in police detention centres

This recommendation of the CPT has also been forwarded to the Federal Länder with a request to make a statement in response. The survey revealed that the Federal Länder are attempting to reduce to a minimum the period of time that persons detained in accordance with the Aliens Act (Ausländergesetz) have to spend in police detention centres.

Only in Hesse is there by way of exception up to 14 days of placement in the police headquarters at Frankfurt am Main and Western Hesse (Wiesbaden), since appropriate accommodation can be guaranteed in these facilities. However, here too great efforts are made to restrict placement period to a minimum.

Re B 3: Conditions of stay for foreign nationals detained under asylum/aliens legislation

Paragraph 54:

The Committee recommends:

- that additional steps be taken to offer a better range of activities for persons held for prolonged periods in Buildings C 182/183 at Frankfurt am Main Airport.

Note:

- The German authorities are invited to remedy the shortcoming described in paragraph 54 in the room used in the transit building of Frankfurt am Main Airport for overnight stays of late arrivals.

It was difficult to create a better range of activities in Buildings C 182/183 because of the restricted movement possibilities and space available. The problems were however discussed again in detail with the commissioned organisation, the Airport Social Service, since the latter is responsible for care, and therefore also for activities. In light of the fact that the new building (587) was made operational in mid-May 2002, it appeared to make sense to tackle this problem in the new building, which will have better infrastructure. The move into the new building will also solve the problem of better accommodation for late arrivals.

The Committee requests:

- information on whether the German authorities intend to re-establish twice weekly play-care services in Buildings C182/183 at Frankfurt am Main Airport.

A carer was installed in Buildings C 182/183 in 1999 who is responsible for caring for unaccompanied minors at the airport and for the other children in the establishment. The focus here is on occupying the children. This person was appointed by the church associations at the airport (FSD) and also has the task of playing with the children. The post is occupied on a 24/7 basis. No further play-care services are planned.

Paragraph 56:

The Committee recommends:

- the facilities for giving food in Buildings C 182/183 to be reviewed in order to better accommodate the special dietary habits and needs of detainees.
- the timetable for the distribution of food to be reviewed.

In the context of the move in 2002, the whole food distribution system will be re-structured and special problems will be tackled where possible. On principle, account should also be taken of dietary habits and needs in terms of time, but an ordered procedure should also be ensured.

Paragraph 57:

The Committee recommends:

- that without further delay the necessary steps should be taken to provide appropriate accommodation facilities for foreign nationals subject to the airport procedure at Frankfurt am Main.

Reference is made once more to the move into the new building 587.

Paragraph 58:

The Committee requests:

- confirmation of the relocation of Federal Border Police Inspectorate 3 and full information about the new premises.

Construction of building 587 was commenced on 28 May 2001 in the southern section of Frankfurt/Main Airport. In a first construction phase, the rooms for the accommodation of asylum-seekers and the asylum-processing agencies of the Federal Office for the Recognition of Foreign Refugees, of the Hesse Ministry of Social Affairs, of the Federal Border Police Inspectorate and of the border control counters have been built. The new building became operational on 16 May 2002.

This move into the new establishment takes account of the desire to provide better accommodation, a wider range of occupations and suitable movement. The outdoor area, which measures roughly 1400 m², and which can be used freely at any time during the day by the asylum-seekers when needed, comprises play areas (including a field for ballgames and a playground for children) and common rooms to spend time in. Furthermore, there will be several common rooms offering the opportunity to watch television, a separate prayer room, a television room and a large common room.

In the second phase of construction, which will probably be completed in 2003, the premises to accommodate the detainees awaiting removal will be erected.

Paragraph 61:

Note:

- It would be desirable to fully partition all the toilets in the rooms in the deportation detention facility in Büren.

All the toilets in the common rooms of the deportation detention facility in Büren are in closed cubicles. The toilets in the individual detention rooms are partitioned. This is considered to be sufficient.

Paragraph 62:

The Committee requests:

- to be informed of the measures taken to maintain the present level of activities at Büren Detention Centre.

Charities, church organisations and clubs and private individuals have provided social care for inmates pending deportation in the deportation detention facilities of the Land of North Rhine-Westphalia in Büren, Moers and Neuss since 1996. This includes individual discussions in which conflict situations should be recognised and solved at an early stage, enabling inmates to make telephone calls, encouraging contacts with family members and friends, supporting them in contacting authorities, lawyers and facilities, helping with translation and in looking for personal items, as well as offers for leisure (sport, play and handicraft hours).

This care work was funded until the end of 2000 by a foundation specifically created for this purpose, namely "DRK [German Red Cross] Westphalia-Lippe" with an annual budget of roughly DM 1 million. The foundation's funds had been used up by the end of 2000, apart from a residual amount. In order to ensure the continuation of the care work, which was valuable from a specialist point of view, and which made a decisive contribution to the relative peace in the deportation detention centres, and to reduce escalations such as suicide, hunger strikes and violent acts to a minimum, the Land of North Rhine-Westphalia awarded the foundation a grant of DM 670,000 in 2001. Hence, social care could be continued, but with a lower level of care in Büren because since a sub-organisation of the German Red Cross (Soziale Beratungs- und Betreuungs GmbH) which had been committed there until then withdrew on 1.7.2001 for other reasons. The "German Red Cross Westphalia-Lippe" foundation is to be dissolved at the end of 2001.

Social care in detention pending deportation will be effected from the budget year 2002 onwards in accordance with the *"Guidelines on the Granting of Allowances for Social Care of Foreign Nationals in the Establishments of the Land of North Rhine-Westphalia intended Exclusively for Detention Pending Deportation"* drafted by the Ministry of the Interior of the Land of North Rhine-Westphalia on the basis of budgetary law. The budget for 2002 makes provision for EURO 512,800 in social care. Hence, the Land of North Rhine-Westphalia is able to ensure the required social care in its deportation detention centres. It is intended that the Paderborn German Red Cross district association will commit itself to cover the overall care requirement in Büren.

Paragraph 64:

Note:

- The Committee suggests that detainees be provided with means for locking their cupboards at Eisenhüttenstadt Detention Centre.

The cupboards are new original detention furniture which cannot be adapted because of their construction. The house rules already offer detainees the possibility of entrusting private valuables to the authority for safekeeping on arrival.

Paragraph 65:

The Committee recommends:

- that measures be taken to offer a better range of activities to persons accommodated in Eisenhüttenstadt Detention Centre.

Because of the very tight budgetary situation, there is only slight scope to create a better range of activities for deportation detainees. Thus far, the request made several times by the deportation detention facility to charities and refugees' organisations for support in this respect has fallen on deaf ears in virtually all cases.

Re B 4: Health care of foreign nationals detained under asylum/ aliens legislation

Paragraph 66:

The Committee recommends:

- that the German authorities develop health care for asylum seekers at Frankfurt am Main Airport with regard to a medical examination as soon as they arrive and the presence of a qualified nurse.

As stated in the CPT's report, healthcare of asylum-seekers (persons in accordance with section 18 a of the Asylum Procedure Act [AsylVfG]) at the Airport is ensured three times weekly by medical consultation. Where required, the doctor can also be reached by telephone; since he lives nearby, he can also attend quickly in person should emergencies occur. In emergencies, persons can also be taken to the clinic close to the airport. This means that both regular, rapid screening on arrival, including a lung examination, normal care and emergency care are ensured. In screening on arrival, particular attention is paid to possible illnesses, as well as to other potential problems.

There are no plans to have a nurse permanently in attendance since from a specialist point of view and in line with the experience of past years this is not considered necessary. If there is the slightest suspicion of a serious illness, an examination in the airport clinic is ordered. Since this is very close and is continually occupied, medical treatment is guaranteed within a very short time.

Paragraph 67:

The Committee recommends:

- the establishment of a psychiatric and psychological service adapted to the needs of persons accommodated in the Transit Buildings at Frankfurt am Main Airport.

Care for persons in the transit area is provided by social workers and native speaker carers. Since these persons are in constant contact with the persons in the transit area and have considerable experience in dealing with these persons, the mental state of the persons in particular can be given considerable attention. Each change in the conduct of a person is registered and reported to the Land and to the doctor, who looks at the person on his/her next visit, and where appropriate takes further steps. All the agencies involved maintain close contact. More far-reaching constant psychological care is not considered necessary in light of the experience of the past and with the agreement of the church associations. The constant or intermittent presence of a psychological care service in the transit area of the airport, be it in the form of a psychologist or of a psychiatrist, is not considered expedient. One should consider here that psychological care should be carried out in the individual's mother tongue whenever possible.

Non-residential psychiatric treatment is provided by several non-hospital psychiatrists in the Frankfurt area. Four hospitals provide residential treatment. To this extent, medical care in this specialist area is well established.

Furthermore, after the many years of experience it seems that the percentage of mentally ill asylum-seekers in the transit area is very small and certainly comparable to the numbers of illness in other common placement centres, such as in Hesse in Schwalbach and Gießen.

For instance, in 2001, of a total of 1,286 asylum-seekers, residential psychiatric care was only necessary for four persons; non-residential consultation was carried out in roughly the same number of cases. As a rule, this was an acute stress reaction caused to some degree by a long stay (voluntary stay after completion of the asylum procedure in order to obtain the travel documents necessary to travel back) in the transit area. The majority of those affected had been in the facility for more than three months.

In the first Quarter of 2002 (January – March) there were no residential or non-residential psychiatric consultations or treatment. Presumably the reason for this is the considerable drop in the average length of asylum-seekers' stay.

One may say in summary that the proportion of psychiatric illness is roughly the same as in other facilities (without constant psychiatric care) and that skilful psychiatric care is guaranteed quickly.

Paragraph 68:

The Committee recommends:

- that a psychosocial service be established, which is adequately staffed and adapted to the needs of the persons detained in Büren.

Büren Deportation Detention Centre does not consider a psychological service as a regular facility to be necessary since where required in individual cases, psychological care is provided by calling on specialists from the area around the facility.

Furthermore, it is likely that the requirement will be covered from 2002 onwards by social care (cf. information on paragraph 62). The Ministry of the Interior of the Land of North Rhine-Westphalia will strive to ensure in talks with Paderborn German Red Cross district association that the organisation deploys appropriately-trained staff as provided for in the "Guidelines" mentioned in the information on paragraph 62. More details will be revealed in the approval procedure for granting an allowance from the Land to the German Red Cross.

Paragraph 69:

The Committee recommends:

- that steps be taken to develop programmes to provide psychosocial care for detainees and to manage persons at risk at Eisenhüttenstadt Detention Centre.
- the establishment of a psychiatric and psychological service at Eisenhüttenstadt Detention Centre in line with the needs of detainees.
- increased care staff at Eisenhüttenstadt Detention Centre if the centre is fully occupied.

The competent Central Aliens' Authority (ZAB) cannot currently establish a psychosocial service for asylum-seekers in the Deportation Detention Centre because of the existing contract with a private operator and the lack of further budgetary funds earmarked for this purpose. If required, it is possible without delay to call a psychiatrist/psychologist using the house visits system. It is possible for patients to be placed in the psychiatric section of the municipal hospital. A decision will be taken on increasing the care staff if such an occupancy level is reached in the centre, again taking financial aspects into account.

Paragraph 70:

Note:

- The German authorities are invited to ensure that the requirements described in paragraph 70 are met at Büren and Eisenhüttenstadt Detention Centres.

When specific language problems occur, such as when communicating diagnoses, external interpreters are used at Büren Prison as a rule. The prison can call on two firms for this which send interpreters quickly on request.

Eisenhüttenstadt Central Immigration Authority has now entered into a contractual relationship with an interpretation office after a call for tenders so that qualified interpreters can be called on at any time. Additionally, the branch of the Federal Office for the Recognition of Foreign Refugees (BAFl.) which is on the complex of the Central Immigration Authority has trained interpreters who can also be used in the deportation detention centre where needed to provide administrative cooperation.

Re B 5: Other issues related to foreign nationals detained under asylum/aliens legislation

Paragraph 72:

The Committee recommends:

- that at Eisenhüttenstadt Detention Centre an immediate end be put to the practice of occasionally withdrawing outdoor exercise as a security measure.

Withdrawal of outdoor exercise is only used in exceptional cases as a last resort before accommodation in the "special security room" and has established itself such that afterwards as a rule it proves possible to forego the more intrusive measure of this placement. It is applied only in cases in which outdoor exercise has repeatedly been used deliberately for provocation (such as fights between deportation detainees, climbing the exterior fence) and only after the measure had been threatened in advance. Outdoor exercise is prohibited in such cases for a maximum of three days. It was only used twice in 2001, and not at all so far in 2002.

Paragraph 75:

The Committee recommends:

- that the necessary measures be taken to provide suitable accommodation for agitated persons at Eisenhüttenstadt Detention Centre in light of the comments in paragraph 75.
- that clear instructions be delivered to the staff at Eisenhüttenstadt Detention Centre that, in the event that a detainee is or becomes highly agitated, a medical doctor should be contacted immediately and action taken in accordance with the doctor's opinion.
- that staff at Eisenhüttenstadt Detention Centre should receive specific training in dealing with agitated detainees.

Since the deportation detention centre is a new building which was built in 1999 according to the applicable regulations, there are currently neither spatial nor financial capacities to permit redesigning or converting the so-called "special security rooms" – over and above the measures that have already been taken at the suggestion of the CPT. The attentive conduct of the staff in the deportation detention centre, who are given regular internal training for this task with the involvement of appropriate specialists from the police and the judicial sphere, has been such that to date no serious injuries have occurred to agitated persons detained pending deportation who had to be taken to the special security rooms.

The so-called special security rooms are used for aggressive, violent individuals, in particular if an acute danger exists to others or to the inmates themselves (risk of suicide). If in the case of people who place others in danger no clear change in the aggressive, violent state is found after placement in a special security room, on principle a doctor is consulted. Agitated inmates with mental illness are presented to a doctor immediately. Placement in a special security room is only considered in such cases under particularly strict conditions.

If it is necessary to place a person in a special security room for a limited time, there are clear official instructions and constant, case-specific controls as to how staff in the deportation detention facility should deal with them (written record of individual acts). There has been one such case as yet in 2002.

It is being examined whether other equally suitable measures can be taken to care for the needs of this particular category of detainees.

Paragraph 76:

The Committee recommends:

- that - both at Büren and Eisenhüttenstadt - every instance of the use of security measures, including type and duration, be recorded in a specific register established for that purpose.

Büren prison keeps a record of special security measures. The differing information from the CPT is probably due to a misunderstanding. The CPT's recommendation was carried out at Eisenhüttenstadt Deportation Detention Centre soon after its visit.

Paragraph 80:

The Committee recommends:

- that increased attention be given to the selection of staff employed at Eisenhüttenstadt Detention Centre and to enhancing possibilities available to them for initial and in-service training.

Because of the excess staff in the Central Immigration Authority, there is currently little scope to select the staff deployed at the deportation detention centre since it is necessary to use the staff listed in the excess. Prior to the visit of the CPT, however, special training courses were started for the staff deployed at the deportation detention centre. A second series of training is currently underway. The intention is to repeat these training courses at regular intervals in future.

Paragraph 81:

The Committee requests:

- further information on the plans of the Federal Ministry of the Interior to increase in 2001 the number of BGS officers entrusted with the enforcement of removal orders at Frankfurt am Main Airport in 2001.

The examination of the staff requirement to carry out the task of the Federal Border Police at Frankfurt am Main Airport is continuing.

The return of foreigners by officers of the Federal Border Police is listed here as a non-independent area in terms of organisation - and the same is true for all airports involved. These tasks are accommodated in the staff requirement calculation, but no individual posts are specifically organisationally allocated to this. This means that the competent units can react flexibly to changing requirements in this area without measures being necessary at ministerial level. If in the context of the ongoing examination (also taking account of the effort of necessary returns) an increased (total) staff requirement is ascertained, the Federal Ministry of the Interior will take account of this when allocating posts.

Paragraph 82:

The Committee requests:

- to know whether, under the relevant regional legislation of North Rhine-Westphalia and Brandenburg, there is a system of visits of detention centres for foreigners, similar to the one established in Berlin.

The relevant legal provisions of North Rhine-Westphalia and Brandenburg do not provide for a system of visits of detention centres for foreigners, similar to the one established in Berlin. There are however other control mechanisms in place.

Centre advisory councils are at work in all three deportation detention centres in the Land of North Rhine-Westphalia. In accordance with section 162 of the Prison Act (Strafvollzugsgesetz), advisory councils are to be established in prisons, which is why Büren prison also has an advisory council. In both other deportation centres of the Land of North Rhine-Westphalia, namely Moers and Neuss prisons, which are non-independent parts of Moers-Kapellen and Düsseldorf prisons, respectively, the tasks of the advisory council are carried out by the advisory councils of the main prisons in question. The tasks and powers of the auxiliary councils emerge from sections 163 and 164 of the Prison Act, in accordance with which the members of the auxiliary council contribute towards designing the prison system and caring for inmates. Their particular contribution lies in the ability to accept wishes, suggestions and complaints, to gain information on the inmates' situation and to inspect the prison and its facilities, and in doing so they may visit inmates in their cells. Communication and correspondence are not monitored. In addition to the work of the prison auxiliary councils, in North Rhine-Westphalia, regular examination takes place in the context of specialist control.

In accordance with the relevant legal provisions of the Land of Brandenburg, systematic visits to the deportation detention centre - such as by a refugee or aliens advisory council - are not planned. There are regular checks on the work in the detention centre, which operates as a relatively independent establishment of the Central Immigration Authority for asylum-seekers of the Land of Brandenburg, in the shape of specialist control by the Ministry of the Interior of the Land of Brandenburg.

Re B 6: Safeguards for foreign nationals detained under asylum/ aliens legislation

Paragraph 83:

The Committee requests:

- comments from the German authorities on the problem mentioned in paragraph 83 that no translation/interpretation had been provided for immigration detainees subject to a forcible transfer at Frankfurt/Main Airport.

Detention with forcible transfer is in line with the detention code of the Federal Border Police. Accordingly, inter alia the personal details of the person concerned, information on any notification of relatives, on the ability of the person concerned to undergo detention, as well as a list of the articles and cash taken from the person concerned, are to be recorded in writing. This information is to be voluntarily confirmed by the signature of the person concerned; if the person concerned does not wish to sign, this is not necessary. The form is provided by electronic data processing and is in German. An interpreter is consulted if there are problems in understanding. A more precise check of this item was unfortunately not possible because of a lack of information on individual cases.

Paragraph 84:

The Committee requests:

- information concerning immigration detainees' access to free legal counselling in the Land of Brandenburg as well as in the other Federal Länder.

1. As there are no other serious offers (e.g. from the Chamber of Lawyers), legal advice in Eisenhüttenstadt can only be given by staff working in the deportation detention centre itself, in the Central Aliens Authority and in the branch of the Federal Office for the Recognition of Foreign Refugees. Intensive efforts to find competent institutions for this task have so far been unsuccessful. For free legal advice, however, the commissioners for the interests of foreigners, the Jesuit Refugee Service or charitable facilities may also be used.

In the deportation detention facilities in Mannheim and Rottenburg prisons in Baden-Württemberg regular discussions are conducted by the competent immigration authority (district unit for asylum). The advice sessions take place once weekly. In the Land of Berlin, legal advice is carried out and funded independently by the Republican Association of Lawyers – as a rule once weekly. Deportation detainees are informed of the legal advice on arrival by an information sheet provided by the immigration authority. Prior to any appointment, each inmate is enabled to register for advice by entering their name in a list available in the wings. At Moabit prison in Berlin, furthermore, foreign inmates may participate each month in a consultation of staff of the office of the commissioner for the interests of foreigners and discuss problems and questions from the area of the law on aliens (residential status, deportation, etc.). Interpreters are used where necessary. Also in all three deportation detention facilities of the Land of North Rhine-Westphalia, the detainees pending deportation have access to legal advice costing them nothing. In Bremen, foreign inmates are offered free legal advice in prison by a charitable association.

2. Furthermore, in any case deportation detainees without means may also receive legal advice aid and, where necessary, may require representation by a lawyer in accordance with the Act on Legal Advice Aid and Representation for Citizens on a Low Income (Gesetz über Rechtsberatung und Vertretung für Bürger mit geringem Einkommen [Beratungshilfegesetz]).

Paragraph 85:

The Committee requests to be informed of:

- the number of allegations received of ill-treatment, upon arrival in the country of origin, of foreign nationals who have been removed from Germany in 2000 and 2001.
- the action taken by the German authorities to investigate such allegations and the outcome of that action.

1. The Federal Republic of Germany only occasionally receives complaints of foreign nationals having been ill-treated in their state of origin after their deportation from the Federal Republic of Germany, and partly these are also submitted directly to the German representations abroad. No statistics on such complaints are kept, and therefore there are no precise figures for 2000 and 2001.

The German representations abroad in the respective country of origin investigate each specific indication of ill-treatment. Depending on the nature of the case and the local circumstances, this research may for instance cover enquiries being made of the government or other state agencies, non-governmental organisations, relatives or acquaintances. Frequently, the complaints asserted cannot be verified by such enquiries, or they turn out to be groundless. In individual cases, it has however been confirmed that deportees have in fact been ill-treated.

If appropriate knowledge is available on time, the Foreign Office strives to exercise an influence as early as possible in the interest of correct treatment of deportees on their return to their countries of origin, such as by virtue of the presence of members of German representations abroad at the airport on entry. This is however not possible in some states because of the local situation.

2. A survey among the Länder has revealed that these as a rule have no information relating to such occurrences. Only the Ministry of Justice of Lower Saxony is aware of three cases of Turkish nationals having asserted such allegations. These three individuals have now re-entered the Federal Republic of Germany and been recognised as being entitled to asylum. In the case of a Syrian asylum-seeker whose asylum application had been rejected with the force of law, it emerged that he was arrested immediately on arrival in Syria. Information that is so far unconfirmed suggests that he has been sentenced to two years in prison for agitation for the PKK in Germany. The Foreign Office has taken on the case and is attempting to clarify the matter and if possible to help the person concerned by diplomatic means.

Re C: Halle Juvenile Prison

Paragraph 86:

The Committee requests:

- further information on the new juvenile prison in Raßnitz.

Raßnitz juvenile prison, which is planned to come into operation in the 3rd Quarter of 2002, will be the successor establishment to Halle Juvenile Prison, which because of its construction is no longer able to meet the requirements of a modern juvenile prison. The future Raßnitz juvenile prison will cover a complex of approx. 160,000 m² and will have an occupancy capacity of 400 detention places – including 20 detention places in open prison.

Detainees will be placed in accommodation groups which in contrast to the traditional forms of accommodation favour a treatment-friendly atmosphere, and thus should meet a major condition for successful resocialisation of young inmates.

A special focal point in planning was formed by the complex of training and workshop areas. After completion of the vocational preparation year, detainees will be offered training in the centre's own apprenticeship workshops, in which trades such as painter, paint sprayer, carpenter, gas-fitter and plumber will be taught, as well as gardening and landscaping. Furthermore, companies may set up shops in Raßnitz juvenile prison in which different types of work are offered. For inmates requiring special levels of treatment who have considerable shortcomings in their social and personal development, furthermore, a social therapy department and a work therapy shop are also planned.

Since a large proportion of criminal offences are committed during leisure time among juveniles in particular, special emphasis has been placed on constructing a building in which young inmates can be offered an appropriate amount of sport and leisure. Thus, Raßnitz juvenile prison will have its own multifunctional sports arena and a modern sports hall. Furthermore, there are plans for exercise and handicraft rooms in the detention buildings.

A core staff of roughly 230 is planned to perform the many tasks in Raßnitz juvenile prison, including psychologists, doctors, social workers, teachers, chaplains and master craftspersons, so that the staffing and structural framework for successful educational work with the young inmates will be created. The prison will also have its own ecumenical chapel in which in addition to services, also other festivities and (leisure) events can take place.

In order to ensure security, Raßnitz juvenile prison will be equipped with a security system consisting of mechanical, optical and electronic components offering a maximum level of security towards the outside world.

The information brochure "Building of the new Raßnitz juvenile prison" is enclosed (annex 2) with this statement for further information of the CPT, which was distributed at information events to interested citizens.

Paragraph 87:

The Committee recommends:

- that measures to combat overcrowding in prison establishments be actively pursued.

The Federation and the Länder continue to actively pursue the measures described in the letter of 12 April 2001 against prison overcrowding. Reference is made to this letter; the following information from the Federal Länder can also be communicated.

a) Non-residential/prison measures

There are now 14 special facilities in Saxony-Anhalt with a total of 65 places in order to avoid remand detention within the meaning of sections 71 subsection 2 and 72 subsection 1 of the Youth Courts Act (Jugendgerichtsgesetz - JGG), none of these being closed homes. The agencies involved have been obliged by a joint circular from the Ministries of Social Affairs, the Interior and Justice to examine in each case prior to ordering remand detention the possibility of temporary placement in a suitable youth assistance home in order to relieve the burden on the Land's prisons. Since 1 July 1999, the Land of Saxony-Anhalt also operates a coordination agency with a total of six places for the short-term placement of juveniles who can be accepted there for up to three weeks on the basis of a judicial placement order, during which further placement of the juveniles and mediation to suitable facilities can be arranged.

Furthermore, the Länder are making progress in reducing imprisonment in lieu of a fine which is being replaced by community service ("lending a hand instead of doing time"). Baden-Württemberg, Berlin, Hamburg and Mecklenburg-Western Pomerania in particular report that this has enabled them to considerably reduce the burden on the prison system. In Berlin, it has been possible since the entry into force of the Deletion Ordinance (Tilgungsverordnung) of 14 April 2000 to replace the ordering of imprisonment in lieu of a fine by community service in 1,550 cases between June 2000 and June 2001. In Mecklenburg-Western Pomerania, too, the "Solution Project" which permits the deletion of imprisonment in lieu of a fine by doing community service even after commencement of sentence, the number of instances of imprisonment in lieu of a fine has been much reduced. Finally, Baden-Württemberg has been able to considerably reduce the ordering of imprisonment in lieu of a fine by consistently implementing the "lending a hand instead of doing time" concept (community service instead of imprisonment in lieu of a fine) and has significantly reduced the burden on the Baden-Württemberg prison service by these means. In Hamburg, the project "day by day" which enables prisoners to work off one day of imprisonment by one day of community work has helped to reduce the prison population.

b) Building new prisons

As a measure to combat overcrowding in its prisons, Baden-Württemberg has created a fast-track building programme by means of which 466 additional prison places are to be created by the summer of 2003. By building a new Offenburg prison, additionally, the capacity of that prison is to be increased from 50 to 300 detention places.

100 additional detention places will be made available in a closed men's prison in Berlin by opening a new prison hospital in 2005.

The Hamburg government is planning a new prison for male adults which after completion of the first phase of construction in 2003 will have an additional capacity of about 200 places.

Hesse has created an additional 550 detention places since 1999, and by 2005 another 500 detention places are to be provided by building a new prison. An additional new prison is planned.

Mecklenburg-Western Pomerania reports that – after opening the newly-built Waldeck prison, with a total of 334 detention places, and Neustrelitz Youth Prison with 310 detention places – in January 2002 the construction of a new detention building in Bützow prison was completed, creating another 129 detention places. Taking over a container building previously used for detention with a view to reformation in Ueckermünde in September 2001 contributed another 40 detention places in Mecklenburg-Western Pomerania. Furthermore, with the construction of a new prison on the complex of Stralsund Youth Prison – retaining the previous detention capacities – the detention conditions of the inmates there have been considerably improved.

Rhineland-Palatinate has expanded its detention place capacities in 2001 by 59 places, and by 130 in 2002, while another 130 new detention places will be added in 2003.

The Land of Saxony-Anhalt has also been able to increase the number of detention places available since 1991 from 1075 to 2419. Once various new buildings, conversions and extensions have been completed, in particular the building of a new youth prison, more than 400 additional detention places will be made available in the Land of Saxony-Anhalt this year. Further building measures are to create another 774 detention places in the medium term.

The expansion of Tonna prison, which was opened at the beginning of 2002, will make available another 228 detention places in Thuringia by 2004. The building of a new youth prison with 300 places and another new prison with 700 detention places is planned.

Re C 2: Ill-treatment in Halle Juvenile Prison

Paragraph 89:

The Committee recommends:

- that immediate steps be taken to ensure that the approach described in paragraph 89 is no longer used at Halle Juvenile Prison vis-à-vis suicidal inmates.

The statement by the CPT regarding the treatment of the referenced suicidal inmate is not correct. The director of Halle Juvenile Prison was unfortunately not given the opportunity on the occasion of the visit of the CPT to correct the circumstances described in the report, which were based exclusively on the description given by the inmate concerned.

The convict, who was born in 1982, had attempted to commit suicide on 1 December 2000 at about 8.45 p.m. in the arrivals area by cutting his left lower arm with a razor blade. The emergency doctor immediately called treated the inmate and ordered at about 9.15 p.m. that he be transferred to a public hospital for further treatment. There, the wound was treated once again. Since the inmate was in a highly unstable emotional state at this point, he was taken to a psychiatric clinic in Halle for out-patient psychiatric treatment. When he returned to Halle Juvenile Prison at about 0.50 a.m. on 2 December 2000, it was necessary to keep him in a special security room because of the continuing acute risk of suicide. Since the actual danger existed that he would do himself further harm, he had to be temporarily secured on hand and foot to his bed for his own protection. However, it was possible to remove the security measure on 3 December 2000 at about 8.30 a.m.

Maintenance of the security measure was regularly monitored during the entire period by a prison psychologist and the prison unit leader who also talked with the inmate. Furthermore, the inmate was also presented to the prison doctor and to a psychiatrist after the security measure had been removed.

It is not true that the inmate was left alone while the security measure was being implemented, and it is also not true that the inmate was secured on hand and foot to his bed for 36 hours, including two nights of uninterrupted restraint.

It is a matter of course that young inmates in Halle Juvenile Prison who appear to be suicidal are given all possible assistance, in particular also by the psychological, social and medical services.

Paragraph 90:

The Committee recommends:

- an amendment of section 88 of the Prison Act (StVollzG) to ensure that instruments of restraint may not be applied to an inmate for a period of days at a time.
- that every instance of resort to instruments of restraint be recorded in a specific register established for that purpose. The entry should include the following: the times at which the measure began and ended, the circumstances of the case, the reasons for resorting to such measures, the type of measure, and an account of any injuries sustained by inmates or staff.

1. The view of the CPT is shared that the use of instruments of restraint in prison – especially binding an inmate and placing in a specially secure detention cell with no potentially dangerous items - must always be the last resort is shared without restriction. Accordingly, the Länder use these measures sparingly in prisons. Reference is made to the information provided by the Federal Government in its letter dated 12 April 2001 in answering the CPT recommendation on avoiding the application of instruments of restraint to inmates for a longer period of time.

2. The view of the CPT that the continuous application of instruments of restraint for a period of days can never be justified is not shared, however. It is conceivable, for instance, that suicidal inmates need to be observed for several nights. This was also revealed by a survey carried out among the Länder which have spoken against an amendment to section 88 of the Prison Act. It is also pointed out that the special security measures can be reviewed by a court, also in urgent proceedings, so that an imminent special security measure can be rejected or discontinued. An amendment of section 88 of the Prison Act, as suggested by the CPT, therefore does not appear to be necessary.

The application of special security measures is documented by all Länder in writing, in detail and in intelligible way, in accordance with the recommendation by the CPT, whereby for instance the Federal Länder Mecklenburg-Western Pomerania, Rhineland-Palatinate, Saxony and Saxony-Anhalt have issued special administrative provisions which set the details of security measures over and above the national administrative provisions regarding section 88 of the Prison Act. In some cases – as for instance in Baden-Württemberg, Hamburg, Saxony and Berlin - the security measures ordered are documented in the inmate's personal file, but in some cases also in special

lists (Bavaria, Hesse, Brandenburg, the Saarland, North Rhine-Westphalia, Rhineland-Palatinate and Thuringia). In some Länder, such as in Rhineland-Palatinate and Brandenburg, the measures are checked by the supervisory authority at regular intervals to verify that their ordering and implementation was lawful in the individual cases. In Hamburg, for instance, binding measures have to be documented specifically and have to be reported to the supervisory authority. The provisions of the Länder are supplemented by the national administrative provisions on section 88 of the Prison Act, in accordance with which, moreover, it is to be examined at suitable intervals whether and to what extent the special security measures must be maintained. Additionally, any placement in a specially secure cell or binding measure is to be notified to the supervisory authority without delay if it is maintained for longer than three days.

Paragraph 94:

The Committee recommends:

- that a comprehensive strategy should be developed and implemented to address the problem of inter-prisoner violence and intimidation, in the light of the above remarks. Immediate steps must be taken to ensure that prisoners convicted of sexual offences are able to take daily outdoor exercise in safety.

1. The Länder, which are responsible for the prison service, have developed national and local strategies to combat all forms of violence between inmates.

2. Violence and intimidation between inmates are phenomena typical of prisons, and hence have always been an established element in the basic and further training of staff in Saxony-Anhalt. The prison staff are trained to recognise signs of impending violence and intimidation in advance and to avoid attacks by well-considered, but decisive action. This task is taken very seriously by all prison staff. Violent conflicts between inmates are worked out with those concerned under the guidance of the specialist social pedagogical and psychological services.

When the new Raßnitz juvenile prison is brought into operation, most of the young inmates will be accommodated in single cells, which is only possible in Halle juvenile prison in exceptional cases because of its construction. One may anticipate that single accommodation, and the associated possibility to withdraw to a "private area" if tension occurs, will considerably reduce conflicts between inmates.

In all prisons in Saxony-Anhalt, furthermore, special attention is now being paid to the relationship between foreign and right-wing extremist inmates. It is however not possible to completely separate foreign and right-wing extremist inmates in practice, nor is this the intention because inmates with right-wing extremist views in particular are to get to know how to live and to work together with foreigners in prison and experience this as a matter of course. Against this background, anti-violence training has been taking place successfully for years in Halle juvenile prison in addition to other targeted pedagogical measures in the context of which right-wing extremist inmates, too, are to learn to accept foreigners as equal partners.

Protection of sexual offenders, who have always had a lower status in the hierarchy of prisoners, is taken very seriously in all prisons in Saxony-Anhalt. Such sub-cultural developments frequently become evident only when they come to the notice of staff, in some cases on the basis of information provided by inmates. As soon as sufficiently secure knowledge is available, reactions consist of specific measures ranging from pedagogical talks, through to transferring inmates, taking care that the respective measures are proportionate. Appropriate security measures are taken if in an individual case an inmate refrains from taking outdoor exercise for fear of attacks by other inmates.

Paragraph 95:

The Committee recommends:

- that a system of recording incidents be introduced in Halle juvenile prison.

A written record is kept of incidents between inmates in Halle juvenile prison, and this record is evaluated in writing. The record is included in the inmate's personal file.

Furthermore, the head officer of the general prison service in the individual detention buildings keeps an "activity book" in which particular incidents are documented. The up-to-date excerpts from the activity books are submitted to the prison management every morning and evaluated at the early conference. Furthermore, the prison management is separately informed, comprehensively and in detail, at least once per week, of all educational and disciplinary measures that had to be ordered against inmates in Halle prison. Particularly significant incidents are also notified without request to the supervisory authority which can request further reports at any time.

By this system of informing and checking, it is guaranteed that the prison management and the supervisory authority are informed at all times of events in Halle youth prison and are able to intervene for controlling purposes where necessary.

Re C 3: Special Unit 2/1 in Halle juvenile prison

Paragraph 97:

The Committee recommends:

- that the prison regimes in Special Unit (VA 2/1) of Halle juvenile prison be reviewed to ensure that all inmates benefit from purposeful activities and appropriate human contact.

The Committee requests:

- information on the safeguards which apply to inmates placed in the Special Unit (VA 2/1) (i.e. are they informed in writing of the reasons for their placement; are they given an opportunity to express their views; do they have an effective possibility to appeal to a relevant authority against their placement in the Special Unit?).

1. The regime at Halle youth prison is based on the concept of care and education for the young inmates that is as individual as possible. It is therefore presumed on principle that the inmates are able to understand and to learn. The overall concept pursued in the regime of the prison system at Halle youth prison from 10 September 2000 is hence based on a larger degree of differentiation in placing inmates, using school and vocational training resources and leisure.

2. Inmates whose conduct makes it impossible for them to be integrated into the differentiated prison departments are temporarily removed from the prison department and placed in a special care station (the so-called orientation wing) to which the recommendation of the CPT obviously refers. In particular, these are inmates who have repeatedly come to notice as a result of physical conflicts, blackmail or continual verbal attacks on staff or fellow inmates.

3. The orientation wing consists of 24 individual detention places that have been established in a newly-renovated detention building (detention building 3/ wing 1). Here, a psychologist, a social worker and three selected staff members in the intermediate general prison service with particular experience in education are employed. Because of the special atmosphere in the wing, a female staff member also works there. The increased intensity of care in comparison with other prison departments makes it possible to target work with the inmates more precisely, and to influence them to become reintegrated into one of the other prison departments as quickly as possible.

4. The placing of inmates in the orientation wing is not considered punishment. The holding of personal possessions (such as a television, radio, etc.) is hence not restricted. The daily routine is sub-divided – as in the other prison departments – into the usual sections of work, leisure and quiet time.

During work time, the inmates on principle remain integrated into the training or work process in which they were involved prior to their transfer to the orientation wing. If the conduct of an inmate does not permit this work or training to be continued, they are deployed during work time on auxiliary activities in the wing or in the external complex with a maximum of two other inmates of this wing. After being transferred back to the prison department, they may return to training or their previous work duty. The teachers at Halle youth prison are instructed to cover the teaching material that has been missed by means of specific individual aid.

Depending on their ability to become socially integrated, inmates placed in the orientation wing may be able to participate in the leisure activities in the youth prison. Inmates whose conduct makes them unsuitable for such activities (as yet) are also given individual care in this respect. In particular, two to three times per week the sports officer of Halle youth prison offers sports activity in small groups of two to three inmates where needed. Furthermore, special leisure activities are offered which allow the practice of appropriate conduct in a community. These include especially – in addition to limited freedom of association in the cell of another inmate – topic-related discussion groups with a social worker and a voluntary staff member of the youth prison who does not work full-time in the prison, and only cares for the inmates in the orientation wing. His/her work in particular also makes the regime in this wing transparent to the public. A nun offers weekly events on the exercise of religion and organises bible studies.

5. The conceptual focus of the orientation wing lies in the targeted care of individual cases. In particular, care by a prison psychologist, who is currently attending additional therapeutic training, combines individual and group measures aimed to stabilise the conduct of the inmates. The conduct diagnostic of the prison psychologist – taking into account the type of crime (e.g. violent or sexual crime) – can lead to inmates being transferred to the social therapy facility of the Land of Saxony-Anhalt.

Staff of the intermediate general prison service with special training in carrying on discussions keep records of the conduct and the personality development of inmates in the orientation wing. The records are evaluated at a weekly conference attended by all staff deployed in the orientation wing. It is decided each week whether to suggest to the so-called transfer conference (see below) the return of the inmate to the prison department. Placement in the orientation wing hence lasts at least one week. The inmate must be returned to the prison department after a maximum of three months.

6. Transfer of an inmate to the orientation wing or return to the prison department is effected on the basis of a weekly transfer conference chaired by a member of the prison management. This conference is attended in particular by the staff of the specialist services of the youth prison, in other words by the prison psychologist – as well as by the heads of the prison departments. A joint decision is taken on suggestions by the prison department head concerning the transfer of individual inmates to the orientation wing or on suggestions by the head of the orientation wing to return them (see above). The decision and its reasons are recorded in a conference record that is included in the inmate's personal file. The head of the prison department or the head of the orientation wing discloses the decision of the conference in a personal conversation with the inmate and explains the reasons for transfer or return. At the same time, he/she informs the inmate of the judicial legal protection open to them. The inmate confirms with his/her signature on a form that they have taken note of the possibilities of legal protection. The inmate is given a copy of the conference record if he/she so wishes. He/she is also informed of this possibility.

Inmates in the orientation wing may address complaints to the prison management in writing at any time, as can all other inmates in Halle youth prison. In addition to a monthly group discussion with the inmates of the orientation wing, a member of the prison management of Halle youth prison carries out weekly consultations in this wing where inmates may express their opinions and complaints, including against placement. Each complaint submitted is examined and decided on. In an information sheet which is given to inmates on arrival in the orientation wing, the inmates are also informed of the possibility of addressing a representative of the Ministry of Justice of the Land of Saxony-Anhalt with matters concerning them or of availing themselves of their right of petition. The information sheet is part of an information pack in which the prison regime in the orientation wing is described, and which is given to the inmates on arrival and explained, allowing for the nature of the addressees.

7. Finally, it is pointed out that the overall concept of 10 September 2000 mentioned, and in part criticised, by the CPT is currently being revised and to some extent no longer serves as a working basis in the youth prison. The same applies to the "three-level educational programme" described in paragraph 96 of the CPT report; this programme is no longer applied. If requested, the Land of Saxony-Anhalt would be glad – when available – to provide to the CPT the new concept which is being developed especially in view of the transfer planned in 2002 of the majority of juvenile and adolescent inmates from Halle youth prison to Raßnitz youth prison.

Re C 4: Conditions of detention in Halle juvenile prison

Paragraph 98:

The Committee recommends:

- that high priority be given to the refurbishment of House No. 1 and the installation of a call system in all cells.

The Land of Saxony-Anhalt has attached high priority in recent years to the modernisation of the detention cells. This strategy will also be pursued in future. The refurbishment of House No. 1 suggested by the CPT in Halle juvenile prison and the installation of a call system in all cells against this background has for a long time headed the list of priorities for large new building, conversion and extension measures. However, the opening of Raßnitz juvenile prison which is planned for the 3rd quarter of 2002 will provide a considerable improvement of accommodation conditions for young inmates in the Land long before the start of refurbishment of House No. 1 of Halle juvenile prison.

Paragraph 99:

The Committee recommends:

- that increasing the number of inmates involved in activity programmes (e.g. education, sport, vocational training, recreation and other purposeful activities) at Halle Juvenile Prison should be given a high priority.

There is always a certain proportion of inmates in prison who are unable to undertake regular work for physical or psychological reasons. It is therefore a major task of prison to introduce these inmates in particular to regular work. This also takes place in Halle juvenile prison, inter alia through work therapy measures. The result of this has been that roughly 80 % of convicts in Halle juvenile prison are currently in measures of school or basic and further vocational training, in employment in one of the two work therapy shops or in one of the workshops.

It is however difficult to integrate remand detainees into long-term employment because of their high turnover. However, roughly 10 % of the young remand detainees in Halle juvenile prison attend school basic and further training. Furthermore a comprehensive leisure programme is available for all young remand detainees, ranging from creative and handicraft circles, or training courses on computers, through to a broad range of sport offerings.

Re C 5: Health care in Halle juvenile prison

Paragraph 100:

The Committee recommends:

- that health care staff be reinforced
- the constant presence of a person competent to provide first aid, preferably someone with a recognised nursing qualification, on the prison premises.

In the medical field, attempts are being made to train additional staff in first aid in order to also ensure immediate care at night. In practice, however, the emergency doctor arrives in a matter of minutes if immediate medical care is required.

Psychiatric care of inmates has so far been ensured by external specialists visiting the prison as required. In spite of this fact, a full-time psychiatrist has now been appointed as a separate measure on the basis of the recommendation of the CPT.

Paragraph 101:

The Committee recommends:

- that the content of the establishment's programme of care be set out in writing and made available to all members of staff who may be called upon to participate in it.

The care and treatment programmes are an element of a comprehensive prison concept that is set out in writing. They are known to the staff involved in their implementation and are also accessible to each person concerned, also in written form.

The Committee requests:

- a statement by the German authorities on the considerable lack of co-operation between various services at Halle juvenile prison.

Cooperation between the specialist services at Halle prison has been reviewed. It was not possible to identify a general lack of cooperation between specialist services in the review. Medical and psychosocial care of the young inmates in Halle juvenile prison is ensured. If specific losses in cooperation have been identified and complained of by individual staff members, this is a general phenomenon to be found in all administrations and companies which have a complex organisational structure similar to that of a prison, in which different professional groups work. The Land of Saxony-Anhalt is aware of this and counters it by means of appropriate measures. Halle juvenile prison therefore has a comprehensive, differentiated system of conferences, supporting and improving cooperation between the specialist services.

Paragraph 105:

The Committee recommends:

- that a suicide prevention policy be developed and implemented without delay at Halle Juvenile Prison.

The inmates in question in Halle juvenile prison receive assistance from all staff in coping with their situations, but in particular from the medical, psychological and social service.

Not lastly at the suggestion of the CPT, a comprehensive concept has also been worked out in the juvenile prison for suicide prophylactics, involving not only the various specialist services, but all the staff of the general prison service.

A comprehensive reception process is carried out in Halle juvenile prison in accordance with section 6 of the Prison Act which may take up to six weeks, depending on the duration of detention, the crime and the personality of the inmate. Within the first four hours of acceptance of an inmate, a suicide anamnesis is carried out in a talk with the prison psychologist and the wing staff. An additional arrival diagnosis is carried out within the next 48 hours by the prison psychologist. The further comprehensive personality analysis of the inmate in the acceptance procedure makes it possible to initiate targeted treatment and care measures on the basis of a differentiated detention plan. These include placing inmates in special units adjusted to their specific treatment needs. Later, the suicide prophylactics form part of the close-knit care of the inmate provided by all staff within a treatment group. The prison psychologist is then involved on request by the inmate or if the conduct of an inmate suggests that this is necessary.

Furthermore, all staff at Halle youth prison have received written information on how to deal with suicidal inmates and are regularly trained on this topic – in particular on the possibilities of early recognition of suicidal inmates – by the prison psychologist.

Paragraph 109:

The Committee recommends:

- the development of a comprehensive strategy for the management of drug-related problems (prevention and treatment).

1. Since prison, which also includes the treatment of drug addicts in prison, is a matter for the Federal Länder, there is no uniform national strategy for dealing with drug problems. The Federal Länder are however aware of the problem, and each has developed its own concept to deal with the drug problem in prisons. In these concepts, they take account of the fact also mentioned by the CPT (paragraph 108 of the report) that prison is only able to implement drug therapies to a restricted extent, but that it is also the job of prison to identify and promote the therapeutic opportunities that are available.

For instance, the Land of North Rhine-Westphalia, in cooperation between the Ministries of Justice and Health, has developed a comprehensive strategy for the care of drug-addicted inmates in prisons and expressed it in a joint circular (of 3 November 1998). This targets supra-departmental cooperation in the fight against drug addiction in prison and involves all institutions concerned with treating, advising and caring for addicted inmates both within and outside prison. Suitable information for judges and public prosecutors dealing with drug-addicted criminal offenders is hence expressly provided for. A copy of the decree is enclosed as annex 3 with the statement. A similar comprehensive concept is now also being worked out in the Federal Land of Saxony-Anhalt - in line with the recommendation of the CPT - for dealing with young drug-addicted inmates.

2. In addition to measures intended to prevent drugs being brought into prisons, the Land strategies concentrate on measures of prevention and treatment, advice and care of drug-addicted inmates.

There are attempts to start the treatment of drug-addicted inmates as early as possible. In some cases, firstly physical withdrawal is effected under medical supervision. The treatment however focuses on psychological withdrawal and on the increasing motivation of drug-addicted inmates. This is carried out firstly by means of individual and group therapies, and secondly by a prison regime adapted to drug addiction. For instance, in prisons in the Land of Bavaria the responsibility of the addicted inmates is targeted for encouragement by giving inmates regular activities and integrating them into residential and leisure groups within the prison, as well as by increasing or creating tenable links with suitable persons outside the prison. If psychological withdrawal is unsuccessful during detention, an attempt is made to motivate inmates to undergo treatment after release or their acceptance in a suitable facility is prepared. In the Land of North Rhine-Westphalia, for instance, a care concept starting immediately on arrival in a prison seeks to achieve the acceptance of addicted inmates in external residential therapy facilities or their release into non-residential care and treatment measures as quickly as possible.

As a result of special administrative provisions, substitution treatment is also a regular element of the Land concepts for treatment of drug-addicted inmates - such as in the Land of North Rhine-Westphalia. Another focus is on protection against infection, where special significance attaches to educating inmates. Additionally, inoculation of staff and inmates is carried out to differing extents. Furthermore, the Länder have developed special strategies to reduce the spread of hepatitis in prisons. "Needle exchange programmes" are rejected by most Federal Länder for fundamental reasons; in the Länder of Berlin and Lower Saxony they are however being tried out for reasons of healthcare in pilot tests.

General drug prevention is also considered particularly important by the Federal Länder. In some cases, prevention concepts are established and are adjusted to the conditions in the respective prison in cooperation with the regional drug advice agencies.

Finally, effective checks in the prisons are made to prevent drugs being brought into the prisons and the Länder drug concepts being circumvented by such channels.

3. In developing and implementing these strategies, the Länder depend not only on addiction advice within the prisons, but also on facilities and specialists outside the prisons. By interlinking addiction work within prisons with drug advice, AIDS assistance, social psychological services and self-help facilities outside the prison, the greatest effectiveness is to be achieved. In Bavaria, for instance, the care of inmates at risk of addiction or already addicted has been effected in all prisons also by external specialists since 1997. 1.5 million EUR are provided for this per year. With this, advice can be offered in all Bavarian prisons and carried out at the same high level. In the prisons of the Land of Saxony-Anhalt, too, drug addiction advice is ensured both through own staff and by means of external drug and addiction advice agencies. Temporary difficulties in funding the external drug advice agencies, referred to by the CPT (paragraph 106 of the report), have now been remedied. It is nevertheless intended to implement drug and addiction advice in future with amplification from own staff (especially with staff from the social services and with so-called addiction helpers who have special training for this work). This is to further improve the quality of the advice available.

Hesse has completely removed advice from the internal social services and has outsourced drug advice. The job of this institution, which has been in existence since the end of the seventies, includes in addition to helping prisoners to recognise and face their addiction problems, finding places for residential treatment in an open facility of imprisonment of convicts and detention with a view to reformation and in partly-residential facilities, in non-residential care or treatment/therapy and in self-help facilities. Here, it carries out the advice and motivation work (inter alia in substitution treatment) and promotes willingness to undergo therapy. As a result of conceptual further development, the external drug advice service also undertakes prevention work with the large group of drug-endangered inmates and, in the organisation's advice centres, cares for drug addicts during leave and after release. The cost runs to Euro 960,000 per year; there has also been a written concept since 1998, an updated version of which is enclosed as annex 4. Furthermore, in relation to all Länder it should be pointed out that particular attention attaches to basic and further training of staff engaged in caring for drug-addicted inmates.“

Paragraph 111:

Notes:

- The German authorities are invited to explore the possibility of abolishing the deprivation of reading material and limitation of contacts with the outside world as sanctions in respect of juvenile prisoners.

The Committee recommends:

- that immediate steps be taken to ensure that any prisoner subject to the sanction of cellular confinement be allowed access to reading matter.

1. In accordance with No. 87 subsection 1 of the national administrative provisions on juvenile prisons (VVJug) as disciplinary measures within juvenile prisons inter alia the restriction or deprivation of reading material is possible for up to two weeks and radio and television for up to three months, but deprivation of both at once is permissible only for up to two weeks (No. 87 subsection 1 (3) of the national administrative provisions on juvenile prisons). As further disciplinary measures in the juvenile prisons, the limitation of contacts with the outside world for up to three months is permissible for urgent cases (No. 87 subsection 1 (8) of the national administrative provisions on juvenile prisons). Finally, No. 87 subsection 1 (8) of the national administrative provisions on juvenile prisons provides for the ordering of detention for a period of up to two weeks. The above disciplinary measures may be combined.

In accordance with No. 88 subsection 5 second sentence of the national administrative provisions on juvenile prisons, inmates have no access to periodicals, radio or books during detention unless otherwise ordered. As a disciplinary measure, detention is hence to be different than the normal prison regime. However, in accordance with No. 87 subsection 2 of the national administrative provisions on juvenile prisons, detention may only be imposed for serious or repeated breaches. Additionally, inmates continue to have the right during detention to at least one hour's outdoor exercise and to contact with their counsel or assistants.

2. The CPT's recommendation regarding eliminating the disciplinary measures "restriction or deprivation of reading material for a period not exceeding two weeks" and "limitation of contacts with outside world" is viewed differently by the Länder. On principle the Länder attempt to have at their disposal in youth prisons a spectrum of measures that is as flexible as possible in order to meet the educational concept of youth prison. Nevertheless, the practical significance of these measures is rather low. Thus, deprivation of reading material in particular is not ordered at all in some cases as a separate disciplinary measure (Baden-Württemberg, Berlin, Hamburg, Rhineland-Palatinate, Saxony, the Saarland) or is applied only in very rare cases. In addition, limitation of contacts with the outside world is seldom ordered as a disciplinary measure (for instance not in Saxony or the Saarland), but is required in some cases in prison practice of the Länder (e.g. Berlin, Hamburg) from an educational point of view in order to counter damaging effects on the juvenile and adolescent inmates.

Where the CPT recommends to ensure access to reading material in confinement, this recommendation is regarded with reserve by the Länder. Very largely, the Länder take the view that the measures are to remain a last resort in order to make clear the nature of arrest as a sanction compared with ordinary youth imprisonment and to make the regime of arrest quite different to the normal prison regime. In some Länder which facilitate unrestricted access to reading material for inmates in confinement – such as in Hesse - restrictions are imposed from educational points of view where necessary in order to prevent access to reading material that depicts violence or is pornographic in nature.

3. Complete abolition of the sanctions "deprivation of reading material" and "limitation of contacts with the outside world" is hence not planned. In particular if the contact with persons outside the prison leads to criminal offences or other breaches, it is necessary to be able to limit this contact. In this sense, No. 87 subsection 4 of the national administrative provisions on juvenile prisons also provides that the above measures on principle are only to be ordered if the breach is linked with the rights to be limited or removed. In accordance with No. 88 subsection 4 of the national administrative provisions on juvenile prisons, inmates whose contacts with the outside world are limited are to be given the opportunity to inform a person with whom they are corresponding or who regularly visits them. Additionally, correspondence with counsel, courts and judicial authorities remains unrestricted. Deprivation of reading material may also comprise a sensible sanction in individual cases.

Paragraph 113:

Notes:

- The German authorities are invited to explore the possibility of increasing inmates' visit entitlements.

1. The view of the CPT that maintenance of good relationships with the outside world is extremely important for persons deprived of liberty is shared in essence. Section 10 subsection 1 of the Prison Act takes this into account, in accordance with which a suitable inmate with his/her consent is to be placed in an open prison; this prison regime is much better suited to maintain and establish existing relationships with the outside world than is a closed prison.

2. The experience in prison practice has however shown that relationships with the outside world can certainly also be detrimental to inmates' treatment process. Restrictions on relationships with the outside world are hence not only justifiable with considerable security reservations or thoughts related to available resources, but also with the unfavourable or detrimental impact these contacts may have on inmates' treatment process. In the interest of inmates' successful (re)socialisation, there is therefore a need to carefully examine in each case which outside contacts are tenable and should be encouraged.

3. Convicts in closed prisons are however permitted visits of at least one hour per month in accordance with section 24 subsection 1 of the Prison Act. The same applies to juvenile prisons (No. 19 subsection 1 of the national administrative provisions on juvenile prisons). In the framework of remand detention, remand detainees are to be allowed a visit of at least thirty minutes every two weeks (No. 24 subsection 1 and No. 25 of the Remand Detention Code [Untersuchungshaftvollzugsordnung - UvollzO]). This minimum visiting time, depending on the respective situation in the prison and judge's or public prosecution office's approval, is frequently considerably exceeded with remand detainees (No. 24 subsection 1 of the Remand Detention Code). Prison practice in the Länder is in line with these points of view, whereby expanding visiting times over and above the prescribed extent varies from one Land to the other and depends on the respective building, organisational and staffing conditions.

Paragraph 114:

The Committee recommends:

- that inmates at Halle Juvenile Prison be offered regular access to a telephone.

The view of the CPT that telephoning, as a modern means of communication, may be particularly suitable to promote tenable social contact for the young inmates is shared.

Halle juvenile prison therefore attempts to expand the possibilities for inmates to make telephone calls where this can be made compatible with the organisational, spatial and staffing situation on the one hand and the necessary security requirements on the other.

Paragraph 115:

The Committee requests:

- information on the issue of extending access to telephones for remand prisoners within the framework of the preparation of the law on custodial remand.

Reference is made to the information already provided in the letter of 12 April 2001. Additionally, it can be stated that the draft law on custodial remand is intended to create greater differentiation in monitoring outside contacts according to reasons for detention. By these means, a reduction in encroachments on inmates' legal interests is to be achieved. For instance, acoustic monitoring of visits or checking the content of letters is to be carried out only in cases where detention was effected because of the danger of collusion or where the court has expressly ordered acoustic monitoring or checking the content of letters. In order to avert the danger of abuse of this very far-reaching provision, the draft permits the prison authorities to carry out random checks of letters. The extent to which the draft is to be revised from a security point of view in light of the events of 11 September 2001 is currently under discussion.

Paragraph 116:

Note:

- The CPT trusts that steps will be taken to fill the two vacancies in the Advisory Council competent for Halle Juvenile Prison as soon as possible.

The members of the prison Advisory Council not in place at the time of the visit of the CPT have now been nominated; all places on the prison Advisory Council are now occupied.

Paragraph 117:

The Committee requests:

- the German authorities' explanation of the fact that there is no specific legislation governing the imprisonment of young offenders.

Because of the age-specific problems faced by young inmates, the imprisonment of young offenders requires a special educational-orientated structure. The currently insufficient statutory regulation entails a risk of non-standard prison regimes. The important tools of the current juvenile detention, such as placement in accommodation groups, school and vocational training, social training and the interests of young female inmates, require a separate statutory provision in order to comply with the youth-specific particularities.

The creation of statutory provisions for youth prisons over and above the existing legal framework is an important project. It has however not been possible to implement a legislative procedure because of years of different views on the concept behind the imprisonment of young offenders as these relate to treatment concepts, aspects of security and order and the protection of the public, as well as financial difficulties in the Länder, which are competent for youth prisons.

There should therefore be a new concept created by a broad consensus for the regulation of juvenile prisons. There is a particular need to reconcile the opposing criminal policy and fiscal policy ideas and to find ways to accommodate the particularities of imprisonment of young offenders without unjustifiably increasing the costs. The Federal Government has asked a group of experts to carry out preparatory work.

Re D: Psychiatric establishments

Paragraph 119:

Note:

- minors should be cared for in special units/institutions.

The view that juveniles placed in detention with a view to their reformation should be cared for in special units or institutions where possible is shared in essence. In Bavaria, therefore, there is a special establishment for young drug addicts at Parsberg district hospital. This is not currently possible for mentally ill juveniles. Several surveys have shown that this is a relatively small number of juveniles against whom a reformation-orientated measure is ordered in accordance with section 63 of the Criminal Code (StGB). Between 0 and 4 patients aged up to 21 were placed in each establishment in 2000, making a total of 13 juveniles. A national-level establishment would therefore be necessary for sensible planning. With this small number of persons, however, in the view of the questioned Federal Land of Bavaria, the advantages of placement close to home outweigh those of concentrating these juveniles in a national-level establishment.

Paragraph 121:

The Committee requests:

- that it should be informed of the measures taken or envisaged by the German authorities to address the problem of overcrowding in the forensic psychiatric units of the Nordbaden Psychiatric Centre in Wiesloch.

The following measures have been or will be undertaken to relieve the general situation in the forensic department of the Wiesloch Psychiatric Centre (hereinafter referred to as: ZfP):

- As an emergency measure, newly-arriving convicts from Ellwangen Regional Court district are generally placed in the forensic department of Bad Schussenried ZfP, while convicts from Ettlingen and Pforzheim Local Court districts are placed in the forensic department of Emmendingen ZfP (change of the reception competences in accordance with the prison plan).
- It has been possible to considerably increase the number of test residents placed externally by establishing a special "follow-up integration team".
- An additional department will be opened in Wiesloch with 18 – 20 beds as a short-term provisional solution (probably from 1 July 2002).
- There are medium-term plans to establish a department at Weinsberg ZfP under section 63 or patients from the Weinsberg catchment area who are currently placed in Wiesloch.

The better internal transfer possibilities this creates also permit an improvement of the overcrowding situation in the high-security area of Wiesloch ZfP (departments 13 to 16). Furthermore, with acute overcrowding situations in the framework of individual solutions, transfers are possible to other prisons in the Land executing imprisonment with a view to reformation of inmates.

Re D 2: Deliberate ill-treatment in psychiatric establishments

Paragraph 122:

Note:

- The CPT trusts that the German authorities will take the necessary steps to ensure that the patient whom the delegation met at Brandenburg an der Havel Forensic Psychiatric Department continues to receive, throughout his stay, appropriate care.

According to information provided by Brandenburg an der Havel Land Clinic, the abovereferenced person is placed in wing F2/3 with another person in an area for patients who are not suited to long-term relaxations of prison regime. He can move freely within the wing and lives in a double room by himself. He has at his disposal both the sports room and the room for work therapy. The latter takes place daily; instruction is given by work therapists twice per week. Sport therapists carry out exercises with both patients, also twice weekly. Depending on the weather and the security situation, the patients may use the sport ground of the Clinic for Forensic Psychiatry. The right to one hour's outdoor exercise per day is satisfied in a separate outside area. On the basis of the instruction of Frankfurt/Oder Regional Court, the abovereferenced patient may now receive visits from his defence counsel and have contacts with the outside world by telephone. He is also able to have contact with other patients. Based on this information, one may presume that he is continuing to be cared for as well as possible and that he has suitable accommodation which takes account of the population's need for security, whilst still taking his personal interests into account.

Paragraph 123:

The Committee recommends:

- that the nursing staff of the Forensic Psychiatric Section in Wiesloch be given the clear message that the ill-treatment of patients is unacceptable and will be dealt with severely.

There are ongoing further training courses at the Forensic Psychiatric Section in Wiesloch on the topic "Dealing with patients". There – amongst other things – it is also made clear to nursing staff that no form of ill-treatment is permissible and that it may have severe consequences. The report of the CPT has been taken as an opportunity to indicate these facts to the nursing staff once again.

Re D 3: Means of restraint in psychiatric establishments

Paragraph 127:

Note:

- The German authorities are invited to verify that all patients placed in seclusion at Straubing Psychiatric Clinic, whose state of health so permits, are offered one hour of outdoor exercise every day.

The district hospitals are aware that each patient must be offered at least one hour of outdoor exercise every day. According to information provided by Straubing district hospital, all patients who have to be placed in an observation room are permitted to stay in the department garden if the state of their health permits this.

Paragraph 129:

The Committee requests:

- information relating to the Forensic Psychiatric Section in Wiesloch in respect of 2001 on the number of patients placed, the period of time spent in seclusion in each case, and the reasons for resorting to this measure.

A total of 89 patients spent time in seclusion at Wiesloch ZfP in 2001. Seclusion was imposed for genuine medical reasons, and in each case was ordered for the shortest possible time. The number, duration and reasons for the means of restraint can be obtained from annex 5.

Paragraph 131:

The Committee recommends:

- that the renovation of all the "strongrooms" of the Forensic Psychiatric Section in Wiesloch should be undertaken without delay.
- that the German authorities should ensure that all the patients placed in seclusion in the Forensic Psychiatric Section in Wiesloch are decently clothed.
- that the offer should be made to all patients placed in seclusion, whose state of health so permits, of one hour of outdoor exercise per day, in conditions that enable them to benefit fully from it.

The Committee requests:

- information on the results of the discussions being held between the Baden-Württemberg health authorities and the management of the Forensic Psychiatric Section on seclusion.

The discussions between the Social Affairs Ministry of Baden-Württemberg and the management of the Forensic Section have led to the following results:

In the context of spatial, construction and organisational changes, all "strongrooms" (crisis rooms) have been redecorated and redesigned. The changes (furniture and colours) were carried out together with the patients. The rooms are equipped with a bed, an armchair and a table/armrest in foam rubber and a new stainless steel WC with a foam cover.

Patients are on principle enabled to wear their own clothing or training suits. Only in one case of a badly disturbed, aggressive patient with a tendency towards self-injury was a so-called "stiff shirt" employed at the patient's own request.

Each patient is offered at least one hour of outdoor exercise daily, which can be varied according to the patient's requirements; some patients however do not want to avail themselves of this offer.

The instructions and recommendations of the CPT on suitable means of restraint have been discussed at several talks with all the staff. It was ensured that the implementation of means of restraint – related to each individual measure – are strictly checked and approved or modified by the departmental physician or the head physician. Hence, a multi-tiered procedure achieves individual solutions. Seclusion times have been much reduced. Permitting personal effects and actively offering reading material led to a considerable reduction in tension during conflict situations. See on this also the statements on paragraphs 132 to 136.

Paragraph 132:

The Committee recommends:

- the review of the duration of use of instruments of physical restraint in psychiatric establishments.

In both facilities, the recommendation of the CPT has been taken as an occasion to examine the duration of the application of physical restraint. According to information provided by Straubing district hospital, measures serving to directly physically restrain patient (with five fixation points) are only ordered when they are absolutely necessary from a therapeutic point of view and only for the shortest possible duration. Fixing over a period of several days was not ordered in 2001.

According to information provided by the North Baden Psychiatric Centre in Wiesloch, physical means of restraint are only used as a last resort, and then for the shortest time possible. Very regular attempts are made to forego means of restraint (fixing). If the attempt to remove the restraint fails (in rare cases of highly-disturbed patients) the reasons are individually documented.

Paragraph 133:

The Committee recommends:

- that a specific register be established in psychiatric establishments to record the use of physical restraint.
- that medical and nursing staff at the forensic psychiatric department in Wiesloch be reminded of their obligation to fill in thoroughly the relevant forms each time resort is made to physical restraint.

1. At Straubing district hospital, documentation takes place through the competent doctor and the nursing staff filling in special forms which are then centrally collected and evaluated. Hence, the handling of such incidents is documented and it is possible to obtain information on their frequency.

2. In Wiesloch, a separate record is used with special computer-aided documentation sheets in order to record physical means of restraint. The documentation sheets have been developed on. Separate ordering and documentation sheets have been worked out for seclusion, fixing, closing and coercive medication. Hence, the use of physical restraint is documented and an overview can be obtained. Documentation is made easier on completion of conversion to electronic data processing. Doctors and nursing staff have been urgently called upon once again to document incidents carefully.

Re D 4: Handcuffing persons in psychiatric establishments

Paragraph 136:

The Committee recommends:

- that steps be taken to review the practice of handcuffing patients at the Forensic Psychiatric Section in Wiesloch and at Straubing Forensic Psychiatric Clinic.

1. The opinion of the CPT that handcuffing patients on principle may not be a part of the therapeutic programme is shared. However, handcuffing may be necessary with particularly dangerous patients as a last resort because of their tendency to act immediately on impulse due to their illness. This applies to outdoor exercise in particular, which could not be offered and accepted unless handcuffing were to be used. Furthermore, the Federal Land of Bavaria requests that it should be pointed out that the head of a forensic psychiatric establishment is always a doctor who must assume responsibility not only for the therapeutic, but also for the security-related aspects. It is hence not possible to fully separate these two aspects.

2. The forensic department in Wiesloch has now been requested to restrict handcuffing to extreme exceptional cases, and where appropriate to limit it to the minimum level of what is absolutely necessary. Furthermore, handcuffing is no longer necessary with the currently present patients in the form it was at the time of the visit of the CPT.

3. It can be stated with regard to Straubing district hospital that not all patients usually have to wear handcuffs while in the garden during the first days after acceptance. This is only ordered with particularly dangerous, unpredictable patients - roughly half of all new arrivals - and in most cases is only used for one or two days. This approach has proven to be necessary according to information provided by the district hospital because the lion's share of new patients are accepted because of conduct that is aggressive towards others or because of the danger of escape. One may expect some newly-arrived patients to display unpredictable impulse disorders, especially if these are primary measures to intervene in crises, in the first few days.

Re D 5: Staff in psychiatric establishments

Paragraph 137:

The Committee recommends:

- that steps be taken to fill the vacant posts, especially those for nursing staff, at Straubing Forensic Psychiatric Clinic.

Straubing district hospital informs the Committee that all nursing posts have now been filled.

Paragraph 138:

The Committee recommends:

- that steps be taken to fill all vacant posts at the Forensic Psychiatric Section in Wiesloch.

Considerable efforts have been made to adequately fill the vacant nursing posts. Regular, comprehensive media advertising and payment of bonuses for the successful recruitment of new colleagues helped find three additional qualified nursing staff. These efforts will be continued.

Paragraph 139:

The Committee recommends:

- that steps be taken (for instance, through recruitment of additional staff, training and appropriate supervision) to ensure that the medical and nursing staff of Units 13 to 16 of the Forensic Psychiatric Section in Wiesloch establish a genuine therapeutic relationship with patients.
- that the functioning of the therapeutic teams be reviewed, in the light of the remarks made above.

The report of the CPT was taken as a reason – both in intensive internal discussions and by external checks – to revise the working of the team of therapists again. The examination (inter alia through talking to the patients) has revealed that the medical and nursing staff are able in almost all cases to establish a genuine therapeutic relationship with the patients. Independently of this, wings 13 to 16 form a special high-security area in which Baden-Württemberg patients are placed who have a high aggression and violence potential for themselves and others. The assessment of the dangerousness of a patient is a major prognosis criterion which also plays a central role in day-to-day therapeutic work with the patient.

Re D 6: Living conditions in psychiatric establishments

Paragraph 141:

The Committee recommends:

- that the material living conditions in Units 13 to 16 of the Forensic Psychiatric Section in Wiesloch should be improved without delay, in the light of the remarks in paragraph 141.

It is true that there are differences as to the material conditions of stay between the general psychiatric Unit 33 and Units 13 to 16. Unit 33 was made operational fifteen years ago in a building that was then newly converted. Units 13 to 16, by contrast, are in a building made operational in the seventies planned as a high-security area and hence – in comparison to the general psychiatric units – of necessity show restrictions as to comfort.

Improvements that are possible in the context of the existing construction are being carried out, but the special requirements of a high-security area must be taken into account. The stated signs of neglect, especially concerning cleanliness, have been remedied.

Re D 7: Treatment in psychiatric establishments

Paragraph 143:

The Committee recommends:

- that the therapeutic care of patients in Units 13 to 16 of the Forensic Psychiatric Section in Wiesloch be reviewed in order to ensure that the treatment objectives advocated by the management team are fully implemented.
- that there should be the offer to all patients - whether they are placed in seclusion or not - whose state of health so permits, of one hour of outdoor exercise per day, in conditions that enable them to benefit fully from it.

The statement by the CPT has been debated in extensive internal discussions. Further, the external check of therapeutic care has revealed that the treatment goals are reached (cf. also paragraph 139). The so-called "care of relationships" system is used in Wiesloch. This includes the building up of a personal therapeutic relationship with the patients and the devising of mutual obligations together. If possible, access here is also afforded to sensible treatment and rehabilitation measures.

All patients are offered at least one hour of outdoor exercise per day which - where possible - can be taken individually.

Paragraph 144:

The Committee recommends:

- that the administration of medicines in Units 13 to 16 of the Forensic Psychiatric Section in Wiesloch be reviewed and the necessary steps taken to ensure that patients are fully informed about the medicines they are prescribed and their effects.

It is therapeutically necessary in individual cases to administer extremely high doses of neuroleptics in order to make the terrorising psychotic symptoms controllable. The administration of anti-parkinsonian medication requires a strict indication since these preparations also have side-effects and in some cases themselves cause extrapyramidal symptoms. For patients with such problems, a special movement disturbance consultation has been established at which two experienced neurologists provide treatment recommendations on the basis of specific examinations.

Treatment planning includes ensuring that the patient is informed both about their illness and about potential ways of treating it. Equally, they are informed by the doctor in attendance of the specific effects and side-effects of the medication suitable for them. Furthermore, a specific discussion is carried out in the units in the group on this topic (psychoeducative group).

Re D 8: Safeguards in the context of involuntary placement in psychiatric establishments

Paragraph 147:

The Committee recommends:

- that the necessary steps be taken to ensure that patients who are to be transferred are informed in writing of the reasons for their transfer, that they may express their point of view and lodge an appeal against the measure with a clearly defined authority.

When patients are transferred to one of the establishments visited, they are informed in advance if this is possible. Such prior information is only omitted for therapeutic or security reasons. The information is usually provided orally.

Patients can appeal against the measure by applying for a court ruling (sections 138 subsection 2 in conjunction with 109 of the Prison Act). If a patient expresses an intention to apply for a court ruling, they are informed of the measure in writing if this has not yet taken place. The period only begins to run once written notification has been given (sections 138 subsection 2 in conjunction with 112 subsection 1 first sentence of the Prison Act). The prisons executing imprisonment with a view to reformation of inmates is obliged to forward applications for a court ruling to the competent court without delay (sections 138 subsection 2 in conjunction with 110 of the Prison Act).

Furthermore, all patients have the right to submit a complaint to the Ministry of Social Affairs or a petition to the Land Parliament.

Paragraph 148:

Note:

- The German authorities are invited to review the practical arrangements in Straubing and Wiesloch for using the telephone, in order to ensure that the seating provided to patients offers a minimum degree of comfort and that they may hold conversations without being overheard by other patients.

1. One cordless telephone has now been acquired for each wing of Straubing District Hospital which can be given to patients to make telephone calls. They can therefore make calls in their rooms without disturbance. A member of the nursing staff dials the number for the patient and then hands over the telephone. Once a telephone call is ended, patients cannot dial new numbers from their rooms without supervision. The acquisition of the telephones ensures that all patients can now make phone calls undisturbed by other patients and can use the seating available in their rooms.

2. The telephones in the North Baden Psychiatric Centre in Wiesloch are in an open space close to the so-called unit office. It is not possible to provide permanent seating since the telephones are in a thoroughfare. However, a chair is provided there when required. The North Baden Psychiatric Centre in Wiesloch is attempting to improve this situation. So that patients can make telephone calls without being overheard by other patients, an acoustic shell has now been installed.

Paragraph 149:

Note:

- The CPT trusts that that the situation described in Paragraph 149 will be remedied as to the patients' representative.
- The CPT invites the German authorities to encourage all patients' representatives in Germany to meet patients (and not only those who specifically ask to see them) regularly in their living units, especially when patients are subject to a measure of restraint.

1. As already in the past, patients in Wiesloch are informed at the regular unit meetings and via a notice of the existence of a patients' representative. The information provided by the CPT has however been taken as a reason to provide even more extensive information to patients. In future, a special information sheet which explains the existence and function of the patients' representative will be given to all patients on arrival.

Patients are either visited at their request during the consultation time or also at other times. The patients' representatives have been encouraged on principle to visit all patients in their residential areas, including without being asked; for the volunteer patients' representatives, this can however be difficult to organise for time reasons.

2. The suggestion of the CPT that the patients' representatives should regularly visit all patients in their living units poses practical problems for Straubing district hospital. The visits by the patients' representatives usually take place during the general therapy period, so that most patients are then in workshops, the clinic school or in other therapeutic activities. Hence, the rule has been introduced that patients register to talk to the patients' representative and are taken to them by the nursing staff. Furthermore, it should be pointed out that the patients' representatives work on an honorary basis and hence may not have sufficient time to visit all patients in their living units.

3. The Federal Government has informed the Länder on the occasion of the CPT report of its request concerning the patients' representatives and has asked them to consider this request.

Paragraph 150:

The Committee requests:

- a statement by the German authorities on the functioning of the visiting commission at Straubing Forensic Psychiatric Clinic.

Straubing District Hospital has been visited five times since 1991, the latest visit taking place on 13 June 2001. Unfortunately, the competent authority omitted to forward the reports to the Ministry of Social Affairs and the visited facility. However, all records are now available for all visits. All visiting commissions were notified by letter of 24 January 2000 that inspections do cover patients who are hospitalised with a view to their reformation and also requested to keep to the two-year rhythm.

- information as to whether the Forensic Psychiatric Section in Wiesloch is subject to independent monitoring and, if so, the terms of reference of the monitoring body concerned.

Regular visits by representatives of independent bodies take place in that the annual hearings of the patients by the commissioned judge take place in the psychiatric institution. Inspections are also carried out at irregular intervals by representatives of the Ministry of Social Affairs. The Ministry of Social Affairs has specialist control of the institutions executing imprisonment with a view to reformation of inmates in Baden-Württemberg.

Moreover Baden-Württemberg has no other institutional control by an external agency for the institutions executing imprisonment with a view to reformation of inmates.

Paragraph 151:

The Committee requests:

- a statement by the German authorities relating to the apparent procedural and financial obstacles when transferring patients to establishments in other Federal Länder nearer to their families or homes.

In accordance with the provisions of the Ordinance on the Execution of Sentences (Strafvollstreckungsordnung), patients should on principle be placed where they live or are staying (sections 53 in conjunction with 24 of the Ordinance on the Execution of Sentence). Exceptions from this principle are only permissible for important reasons. With applications for transfers to other Länder, the head of the institution executing imprisonment with a view to reformation of inmates decides in agreement with the competent agencies of the other Federal Land. If the necessary capacity is available and no therapeutic or other important reasons disfavour it, requests for transfer for family or social reasons that are conducive to their rehabilitation are complied with. In individual cases, however, this is currently difficult and leads to laborious negotiations.

Until 1991, transfers to other Länder were governed by a Land agreement on competence for costs. Since termination of this agreement as a result of legal disagreements, a new Land agreement is being worked on. A draft to govern covering costs is already available which has been approved by almost all the Länder. After it has been adopted, one may expect that the difficulties described here will be remedied at least in the main.

Re E: Homes for elderly persons

Paragraph 155:

The Committee requests:

- a statement by the German authorities on the inappropriate material conditions for old people in Wichernhaus home for elderly persons suffering from physical, mental and psychological disorders.

The shortcomings in the equipment in the home objected to by the CPT are known to the home supervision. The old building of Wichernhaus home for elderly persons is therefore going to be closed and replaced by a new building which is likely to be promoted with Federal funding. The new building is expected to be completed in 2004. It will meet the requirements of the Minimum Home Building Ordinance (Heimmindestbauverordnung). The shortcomings objected to by the CPT delegation will be reliably remedied at that time.

Paragraph 156:

The Committee requests:

- information on whether the recommendations by the Medical Service of the Health Insurance after its last quality inspection at Wedding home for elderly persons have meanwhile been implemented.
- information on the progress made in the implementation of the plan of the establishment's director for the improvement of Unit 3 of Wedding home for elderly persons.

The Medical Service of the Health Insurance (MDK) carried out an evaluation in Wedding Long-Term Care Facility on 15.10.2001. For Unit III, primarily addressed by the report of the CPT, the evaluation report states that the long-term care plan for the closed residential area had been completed in July 2001. This plan describes the therapy goals relating to specific environments, the structure of everyday life, care and nursing, further development of work with relatives and therapeutic offerings.

Furthermore, group care has been introduced. The residential area has been sub-divided into three groups. Three or four staff members are responsible for each group.

Furthermore, in order to increase security for the residents, the lighting has been replaced. A large activity room with a therapy kitchen is currently being built and equipped.

The report by the MDK contains no differentiated statement on the daily routine in this residential area. It was however ascertained by carrying out random checks on the long-term care documentation of the whole establishment that social care is only given very general attention in the care documentation. However, it can be anticipated that the psychological care shortcomings will be further reduced by implementing the residential area concept.

Paragraph 157:

The Committee requests:

- a copy of the Law on Homes (Heimgesetz) and of the Law on Safeguarding the Quality of Care (Pflegequalitätssicherungsgesetz)

The Act on Quality Assurance and to Strengthen Consumer Protection in Long-Term Care (Gesetz zur Qualitätssicherung und zur Stärkung des Verbraucherschutzes in der Pflege - Pflege-Qualitätssicherungsgesetz - PQsG) is enclosed as annex 6. The Act entered into force on 1 January 2002.

Furthermore, a synopsis with a copy of the new Law on Homes is enclosed as annex 7, which entered into force on 1 January 2002. The amendment to the Law on Homes was intended to create the necessary legal framework to improve the legal position and the protection of home residents and to enhance the quality of care and nurse. In section 2 subsection 1 No. 1 of the new Law on Homes, the dignity of residents has now been expressly listed as an interest to be protected. Additionally, the new Law on Homes is given many individual provisions to ensure the quality of care. Section 11 can be referred to by way of example, which obliges the organisations of the homes amongst other things to establish care plans and to operate quality management. Furthermore, in section 15 of the new Law on Homes, home supervision has been established as an independent supervisory authority with greater powers, and at the same time its set of intervention tools has been improved. Accordingly, the homes supervision as a rule must check each home at least once annually. These checks can on principle take place at any time - with or without prior warning. The rights of the home supervision to inspect are accompanied by a right to advise the operators of the homes.

Finally, it should be pointed out that the Minimum Home Building Ordinance and the Home Cooperation Ordinance (Heimmitwirkungsverordnung) are currently being revised. The goal of both ordinances is to further increase protection of the interests and needs of home residents and to safeguard their independence and responsibility for themselves in the home.

