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

from 3 to 15 December 2000

The German Government has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2003) 21.

Strasbourg, 12 March 2003

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Copy of the letter transmitting the CPT's report

Strasbourg, 2 August 2001

Dear Mr Lehmann,

In pursuance of Article 10, paragraph 1, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, I have the honour to enclose herewith the report to the Government of Germany drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its visit to Germany from 3 to 15 December 2000. The report was adopted by the CPT at its 45th meeting, held from 3 to 6 July 2001.

I would like to draw your attention to:

- paragraph 17 of the report, in which the CPT requests the German authorities to provide **without further delay** the remainder of the information requested in my letter of 23 February 2001;
- paragraph 182 of the report, in which the CPT requests the German authorities to provide **within six months** a response setting out the action taken upon its visit report. The CPT would ask, in the event of the response being forwarded in German, that it be accompanied by an English or French translation. It would also be most helpful if the German authorities could provide a copy of the response in a computer-readable form.

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

Finally, I would be grateful if you could acknowledge receipt of this letter.

Yours sincerely,

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

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I. INTRODUCTION

A. Dates of the visit and composition of the delegation

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as "the Convention"), a delegation of the CPT carried out a visit to Germany from 3 to 15 December 2000. The visit formed part of the Committee's programme of periodic visits for 2000. It was the CPT's third periodic visit to Germany and its fourth visit in total, the previous visits having taken place in 1991, 1996 and 1998.*

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

- Christina DOCTARE, Head of Delegation
- Renate KICKER
- Adam ŁAPTAŚ
- Andres LEHTMETS
- Pieter Reinhard STOFFELEN.

They were assisted by:

- Timothy Wilfrid HARDING (Director of the University Institute of Forensic Medicine, Geneva, Switzerland (expert))
- Andrew RUTHERFORD, Professor of Law and Criminal Policy, Dean of Faculty of Law, Southampton University, United Kingdom (expert)
- Ulrich Thomas BINDER (interpreter)
- Angela Esther DRÖSSER (interpreter)
- Susan FERGUSSON-GÜNTHER (interpreter)
- Sybille von MÜLMANN (interpreter).

and were accompanied by the following members of the CPT's Secretariat:

- Geneviève MAYER, Deputy Executive Secretary of the CPT
- Michael NEURAUTER.

* The reports on the previous CPT visits to Germany and the responses of the German Federal Government have been published under the following references: CPT/Inf (93) 13; CPT/Inf (93) 14; CPT/Inf (97) 9 and CPT/Inf (99) 10.

B. Establishments visited

3. The delegation visited the following places:

Baden-Württemberg

- Forensic Psychiatric Section and General Psychiatric Unit 33, Nordbaden Psychiatric Centre, Wiesloch

Bavaria

- Munich Police Headquarters, Ettstrasse 2**
- Forensic Psychiatric Clinic, District Hospital, Straubing

Berlin

- Regional Criminal Police Detention Centre, Tempelhofer Damm 12
- Police Detention Centre, Directorate 1, Pankstrasse 29
- German Red Cross Home for Elderly Persons, Gerichtsstrasse 79-83

Brandenburg

- Cottbus Police Headquarters, Bonnaskenplatz 2-3
- Eisenhüttenstadt Detention Centre for Foreigners
- Guben Federal Border Police Station
- Home for Elderly Persons, Wichernhaus, Cottbus

Hessen

- Frankfurt am Main Airport **
- Frankfurt am Main Police Headquarters, Friedrich-Ebert-Anlage 11
- Police Detention Centre, Klapperfeldgasse, Frankfurt am Main
- Police Station 4, Central Railway Station, Frankfurt am Main
- Federal Border Police Station, Central Railway Station, Frankfurt am Main

North Rhine-Westphalia

- Büren Detention Centre for Foreigners

Saxony-Anhalt

- Halle Juvenile Prison
- Halle-Neustadt Police Station, Neustädter Passage 15a, Halle

Moreover, the delegation went to Straubing Prison (Bavaria) and the Forensic Psychiatric Department of Brandenburg an der Havel Regional Hospital (Brandenburg), in order to interview persons deprived of their liberty.

** Follow-up visit

C. Consultations held by the delegation

4. In addition to meetings with local officials in charge of the places visited, the delegation held consultations with various Federal and Länder authorities. Meetings were also held with representatives of other instances, non-governmental organisations and persons active in areas of concern to the CPT.

A list of the national authorities, other instances, non-governmental organisations and persons with whom the delegation held consultations is set out in Appendix II to this report.

D. Co-operation between the CPT and the German authorities

5. The meetings with the Federal and Länder authorities, both at the outset and the end of the visit, took place in a spirit of excellent co-operation. The CPT is very grateful for the time devoted to discussions with the delegation by Mr Hansjörg GEIGER, Secretary of State for Justice of the Federal Republic of Germany, Mr Gustav-Adolf STANGE, Secretary of State for Justice and European Affairs of Brandenburg, Ms Margret SCHLÜTER, Secretary of State for Labour, Social Affairs, Health and Women of Brandenburg, Mr Ernst-Hasso RITTER, Secretary of State for Justice of North Rhine-Westphalia and Ms Mathilde DIEDRICH, Secretary of State for Justice of Saxony-Anhalt.

6. The CPT also wishes to acknowledge the valuable assistance provided to the delegation by the CPT's liaison officer, Mr Christian LEHMANN, *Ministerialdirigent*, and by Ms Karin MATUSSEK, *Regierungsrätin*, (both of the Federal Ministry of Justice) before, during and after the visit. It is also grateful to all representatives from the Länder ministries designated to assist the delegation during its visit. In addition, the CPT would like to thank the German authorities for the detailed information provided after the visit on a number of issues raised by the delegation (letters dated 13 March and 12 April 2001).

7. With one exception, the delegation received very good and even excellent co-operation at the places visited; this was the case not only at establishments previously notified that a visit was planned but also in Federal Länder and at places which had not received any advance notice.

The above-mentioned exception concerned Frankfurt am Main Police Headquarters, where the delegation was obliged to wait for more than half an hour before being granted access to the establishment. One of the reasons for this delay seemed to be the absence of credentials issued by the relevant Ministry. On other occasions, the delegation was also told that the credentials provided by the Federal Ministry of Justice were not considered authoritative for establishments falling under the competence of the Federal Ministry of the Interior.

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

8. In contrast to the previous visits to Germany, some difficulties arose regarding access to medical files of persons deprived of their liberty. At the Regional Criminal Police Detention Centre at Tempelhof in Berlin, the medical member of the delegation was initially refused access to the medical files by the health care staff present. At Frankfurt am Main Airport, access to medical files was delayed, due to the fact that the general practitioner in charge was not on duty at the time of the visit and could not be reached for some time. At the Forensic Psychiatric Department of the Nordbaden Psychiatric Centre in Wiesloch, medical members of the delegation were occasionally confronted with delays in gaining access to medical files of patients, as their consultation was made subject to the consent of both the doctor in charge and the patient concerned.

9. Article 8, paragraph 2 (d), of the Convention provides that a Party shall provide "other information available to [it] which is necessary for the Committee to carry out its task." The CPT wishes to stress that rapid access to the medical records of persons who are or have been deprived of their liberty is often fundamental for it to carry out its task. Admittedly, the Convention states that "in seeking such information, the Committee shall have regard to applicable rules of national law and professional ethics"; however, in so doing, it simply lays down procedural rules to be respected by the CPT in gaining access to the information required. In cases where national law constitutes a potential impediment to the effective provision of information which is necessary for the CPT to carry out its task, it is for the State concerned to ensure that it can, nevertheless, meet its obligations under the Convention.

The Committee wishes to add that it has no objection to seeking the consent of persons deprived of their liberty whose medical records it wishes to consult, when this is feasible. As to the requirement that the information may only be supplied by the medical doctor in charge of the persons concerned, this clearly implies that arrangements must be made for the latter to be present or at least contactable within a reasonable time, to enable the Committee to carry out its work.

The CPT requests the German authorities to review the question of access to medical records for its visiting delegations, in the light of the above comments.

E. Immediate observations under Article 8, paragraph 5, of the Convention

10. During the meeting held with the German authorities at the end of the visit, the CPT's delegation invoked Article 8, paragraph 5, of the Convention and communicated two immediate observations.

The first observation concerned the security cell ("*besonderer Verwahrraum*") No 2008 at Eisenhüttenstadt Detention Centre for Foreigners. This cell was fitted with four metal rings anchored to the floor, in order to secure a person hand and foot while lying prone and spread-eagled (cf. paragraph 73). The delegation requested the German authorities to remove immediately the four metal rings and to ensure that four-point restraint using metal cuffs to immobilise a detained person is never used.

The second observation related to the high security area (Units 13 to 16) of the Forensic Psychiatric Section of the Nordbaden Psychiatric Centre in Wiesloch, where a number of patients were placed in a solitary confinement regime which did not have any medical justification and was of a punitive nature. This amounted, in the delegation's view, to inhuman and degrading treatment (cf. paragraph 128). The delegation requested the German authorities to cease immediately to apply the above-mentioned regime.

11. The content of the above-mentioned observations was subsequently confirmed by the President of the CPT in a letter of 21 December 2000, in which the German authorities were requested to transmit within three months an account of the steps taken in response. By letter of 5 March 2001, the German authorities informed the CPT of the measures taken in response to these observations.

These measures will be assessed later in the report. Nevertheless, the CPT already wishes to emphasise the constructive spirit in which the German authorities reacted to the delegation's immediate observations.

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Police establishments

1. Preliminary remarks

12. In the course of the third periodic visit, the CPT's delegation visited ten police establishments in Bavaria, Berlin, Brandenburg, Hessen and Saxony-Anhalt.

13. The legislative framework governing the deprivation of liberty of criminal suspects by the police was summarised in the report drawn up after the CPT's first periodic visit (cf. paragraphs 30 to 45 and Appendix III of document CPT/Inf (93) 13). It is recalled that a criminal suspect can be detained by the police on their own authority until the expiry of the day following that of his/her apprehension. A person can also be detained by the police for the purpose of establishing his/her identity, in which case a time limit of twelve hours is foreseen in Section 163c of the Criminal Procedure Code (*StPO*) as well as in the police laws of the Federal Länder.

14. Foreign nationals may be detained, with judicial authorisation, in police establishments on the basis of the aliens legislation. Such persons are usually transferred at the earliest opportunity to a detention facility for foreigners. However, it was not unknown for immigration detainees to be held for prolonged periods in police establishments; such a practice was observed at the Police Detention Centre at Klapperfeldgasse in Frankfurt am Main and the Regional Criminal Police Detention Centre at Tempelhof in Berlin (cf. paragraphs 50 and 51).

On the basis of the respective police laws of the Federal Länder, persons can with judicial authorisation be detained by the police for periods exceeding 48 hours (ranging, for example, from four days (Brandenburg) to two weeks (Bavaria)) for reasons other than the investigation of criminal offences (e.g. for administrative offences).

2. Ill-treatment

15. As had been the case in 1991 and 1996, the CPT's delegation heard no allegations - and gathered no other evidence - of physical ill-treatment having been inflicted by police officers on persons held in police establishments in Germany. However, some allegations were once again heard of the use of excessive force by police officers at the time of apprehension (*Festnahme*); the most common forms of ill-treatment alleged by detained persons were blows and kicks after they had been restrained and placed on the ground.

In two recent cases, it was claimed that a disproportional use of firearms had been made by police officers.

16. The first case involved a prisoner met at Straubing prison, who alleged that he had been shot several times in his arms and stomach during his apprehension on 12 October 2000. Moreover, he stated that he had been struck by police officers whilst wounded and immobilised on the ground. In the second case, a person hospitalised at the Forensic Psychiatric Department of the Brandenburg an der Havel Regional Hospital, claimed that he had been shot in his back after having been restrained with handcuffs and placed on the ground during his apprehension on 7 November 2000.

By letter of 23 February 2001, the President of the CPT requested the German authorities to provide detailed information on the circumstances of the apprehension by law enforcement agencies of these two persons. Further, the German authorities were requested to provide an account of injuries sustained by them during their apprehension (including copies of any certificate issued following a medical examination) as well as of any medical treatment subsequently provided to them.

17. By letter dated 23 May 2001, the German authorities gave a preliminary partial response concerning only the medical treatment provided to the prisoner met in Straubing Prison. To date, no information has been received in respect of the other questions raised in the above-mentioned letter of the President of the CPT. **The CPT requests the German authorities to provide without further delay the remainder of the information.**

18. During and after its visit, the delegation received a number of allegations of the use of excessive force/ill-treatment of foreign nationals by police officers and *Bundsgrenzschutz* (BGS) officials during the enforcement of removal orders at Frankfurt am Main, Berlin-Schönefeld and Stuttgart Airports. The allegations involved restraining persons with adhesive tapes, gagging, blows inflicted with fists, kicks and verbal abuse.

19. One particular case, dating back to 27 February 1999 and documented in a detailed manner, deserves to be highlighted. The incident led to criminal proceedings both against the BGS officials involved and the person concerned (charged with resistance against a public authority). In the BGS investigation report dated 10 March 1999, the means of restraint applied to a female Nigerian national from 12h50 until around 14h00 at the BGS facilities at Berlin-Schönefeld Airport were described as follows: the woman was placed on a wooden bench, handcuffed underneath her upper legs, feet-cuffed; hand- and feet-cuffs were attached to each other and shackled to the bench. At 14h00, a wooden stick was put underneath her upper legs, in order to carry her into the airplane in the position described above. In the investigation report, such techniques were qualified as common practice (*durchaus üblich*). On board the airplane, a BGS officer pressed one finger underneath the woman's nose and the other hand against the back of her head, in order to break her resistance; the investigation report stated: "such a technique could well prove to be ineffective, since African nationals disposed of a marked insensitiveness to pain" ("*bei afrikanischen Staatsangehörigen kann dieser Kopfhaltgriff durchaus seine Wirkung verfehlen, da sie über eine ausgeprägte Unempfindlichkeit gegenüber Schmerzen verfügen*"). A jacket was reportedly pressed against the woman's face before the removal had finally to be stopped because of the captain's refusal to transport her. During her transfer back to the BGS facilities, the woman was reported as having received two blows with a truncheon whilst handcuffed, in order to force her to leave the van; the investigation report qualified this as an overreaction probably due to stress.

20. In January 2001, the CPT received reports concerning two foreign nationals who had allegedly been administered sedatives prior to their removal from Stuttgart Airport.

In the first case, a Cameroonian national alleged that, on 8 December 2000, he had received an injection by a doctor at the border police facility of Stuttgart Airport, while restrained to the floor by several police officers. In the second case, an Indian national claimed that, on 8 January 2001, he had been injected with sedatives in his arm by a doctor, while restrained on the floor by several police officers in his cell at a police station in Mannheim. Subsequently, he was said to have been transferred to Stuttgart Airport and escorted into an airplane, where he was allegedly forced to swallow a tranquillising pill. After the pilot's refusal to transport him, he had been returned to the airport detention facility, where he had allegedly been struck by several police officers on his legs, in his abdomen and face. A medical certificate drawn up after the examination of the person concerned indicated that he sustained contusions of the right cheek-bone, the right thorax and the right thigh. In both cases, criminal complaints were lodged by the persons concerned against the officials and doctors involved.

21. **The CPT would like to be kept informed of the outcome of the investigations initiated in the cases referred to in paragraphs 19 and 20. It also wishes to be informed of the outcome of the criminal and disciplinary investigations made in the cases referred to in paragraphs 12 to 15 of the report on the 1998 visit and in the German authorities' response thereto, as well as in the case of Mr Aamir Ageeb, who died on 28 May 1999 in the course of his removal from Frankfurt am Main Airport (cf. letter of the CPT's President of 5 August 1999).**

22. **Moreover, the CPT would like to receive detailed information on which agencies other than the BGS and Länder police forces are entrusted with the enforcement of removal orders. In addition, in order to gain a nation-wide picture, the CPT wishes to receive the following information in respect of 2000 and 2001:**

- **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;**
- **an account of disciplinary/criminal sanctions imposed on the grounds of ill-treatment during the enforcement of removal orders.**

23. As stated in paragraph 16 of its report on the 1998 visit, the CPT recognises that it will often be a difficult task to enforce a removal order in respect of a foreign national who is determined to stay on a State's territory. Law enforcement officials may on occasion have to use force in order to effect such a removal. The circumstances may be such that injuries are sustained by the person concerned (and by law enforcement officials) without this being the result of an intention to inflict ill-treatment. However, no more force than is strictly necessary should be used.

24. The CPT has examined 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 (*Bestimmungen über die Rückführung ausländischer Staatsangehöriger auf dem Luftweg; Best.-RückLuft*). This instruction clearly states that forcible removals must not cause a danger to life and limb of the person to be removed. It bans the use of a helmet (*Integralhelm*) with/without a visor, though allowing the use of an officially authorised head protector (*dienstlich zugelassener Kopfschutz*). It further prohibits gagging and the use of padding items that hinder the respiration as well as connecting hand- and foot-cuffs in such a way that the person has to remain in a position which would hinder respiration. Further, it stipulates that on board an airplane only straps may be used as means of restraint and that the length of time for which they are applied has to be recorded. In addition, a medical examination has to be carried out in every case of a failed removal attempt during which a foreigner has been injured. The CPT welcomes this new instruction and **recommends that it be made applicable throughout the country to all agencies entrusted with the enforcement of removal orders. It would also like to receive precise information about the device referred to as an "officially authorised head protector"**.

25. The CPT also notes with satisfaction the steps taken by the BGS to develop specific profiles for the selection of staff involved in the enforcement of removal orders and to enhance their training. **It wishes to be informed of the selection criteria applied by other agencies entrusted in the various Federal Länder with the enforcement of removal orders and of the training provided to the staff concerned.**

26. The CPT further notes that the above-mentioned instruction of the Federal Ministry of the Interior allows the administration of sedatives only on the basis of a medical indication. **The CPT would like to know if in such a case, the consent of the person concerned is required.**

27. The existence of effective mechanisms to tackle police misconduct is an important safeguard against ill-treatment of persons deprived of their liberty. In those cases where evidence of wrongdoing emerges, the imposition of appropriate disciplinary and/or criminal penalties can have a powerful deterrent effect on police officers who might otherwise be minded to engage in ill-treatment. In their letter of 13 March 2001, the German authorities provided detailed information on the procedures followed in case of suspicion of ill-treatment/misconduct by police officers. The CPT noted in particular that all investigations are led by a prosecutor who can request the assistance of police officers. In the latter case, the investigations must not be carried out by police officers related to the police officer/service under investigation. Reference is also made to the draft Law on Disciplinary Measures, currently pending before the German *Bundestag*. **The CPT wishes to be kept informed of further developments in this matter and to receive a copy of the Law on Disciplinary Measures once it has been adopted.**

28. Finally, the CPT notes with interest that several Federal Länder have created specific bodies outside operational hierarchies of the police mandated to follow up and investigate any allegations of police misconduct, some of which (e.g. the police commission set up in Hamburg) also have the right to visit police establishments. **The CPT would like to receive additional information on the above-mentioned bodies (e.g. composition, powers, tasks, etc.) as well as to know whether the German authorities are considering the possibility of establishing, on a nation-wide level, independent bodies entrusted with visiting police detention facilities.**

3. Conditions of detention

29. As regards material conditions, great variations were encountered in the police establishments visited. The delegation saw a number of establishments offering conditions of a high standard (e.g. the Regional Criminal Police Detention Centre at Tempelhof in Berlin; Cottbus Police Headquarters and Guben Federal Border Police Station (Brandenburg); Halle-Neustadt Police Station (Saxony-Anhalt)). All cells were of a reasonable size for the number of detained persons foreseen, had both access to natural light and adequate artificial lighting and sufficient ventilation. Further, the CPT welcomes the renovation work carried out at Munich Police Headquarters since its 1991 visit (cf. paragraph 25 of the report on the 1991 visit); at present, the material conditions of detention in the establishment can be described as very good in all respects.

The cells of the Directorate 1 Police Detention Centre in Berlin also offered on the whole satisfactory material conditions. However, the artificial lighting could not be dimmed at night; several detained persons met complained that this prevented them from sleeping.

30. Other police establishments visited offered poor, or even very poor, material conditions of detention. This was particularly the case at all the establishments visited in Frankfurt am Main: many cells were dirty, or even in a squalid state (e.g. a cell with congealed blood on the floor at the Federal Border Police Station at Frankfurt am Main Central Railway Station), were dilapidated and were poorly ventilated and/or lit; further, some cells had inadequate heating. Further, the cells of the Police Detention Centre at Klapperfeldgasse (with a capacity of some 200 detainees) were not equipped with a call system and, as a result, detained persons were obliged to attract the attention of a police officer by banging on the cell door.

31. At Police Station 4 at Frankfurt am Main Central Railway Station, the delegation saw two small cells (*Verwahrboxen*) measuring 2.80 m², which were used for holding up to two persons each. Cells of such a size should be used for holding only one person; further, they should never be used as overnight accommodation. At the Regional Criminal Police Detention Centre at Tempelhof in Berlin, the delegation saw two even smaller holding cubicles (1.30 m²). By virtue of their size alone, they are not suitable for custody purposes, no matter how short the duration.

32. Further, the delegation noted that nine years after the first visit of the CPT to Germany, the Committee's recommendation that mattresses and blankets be provided to all detainees required to spend the night in police custody had not yet been implemented in all places of detention in Germany. This was the case in particular in most of the police stations visited in Frankfurt am Main as well as in the Directorate 1 Police Detention Centre in Berlin.

33. At a number of establishments visited in Frankfurt am Main and at Munich Police Headquarters, detained persons were not provided with basic hygiene products (e.g. soap, toothbrush and paste, sanitary towels, etc.). Such a state of affairs is particularly prejudicial for persons who are brought to judicial hearings. Further, allegations were heard that detained persons often appeared before a judge without their shoelaces and belts having been returned.

34. Between 30 minutes and one hour per day of outdoor exercise were offered to persons detained at the Regional Criminal Police Detention Centre at Tempelhof in Berlin. The situation was less favourable in the other establishments visited (e.g. no outdoor exercise at Munich Police Headquarters; 15 minutes per day at the Police Detention Centre at Klapperfeldgasse in Frankfurt am Main, where periods of detention of up to 14 days were recorded).

35. In all police establishments visited, arrangements were made for the provision of food to detained persons, including one hot meal per day; this is most welcome. Nonetheless, some detained persons alleged that they had not always been able to receive food, as they had temporarily been transferred to other premises for interrogation purposes or court hearings at the time fixed for meal distribution.

36. The CPT recommends that steps be taken to review the conditions of detention in the above-mentioned establishments, in the light of the remarks made in paragraphs 29 to 35. In this context, the Committee in particular calls upon the German authorities to comply without further delay throughout the country, with the longstanding recommendation that all persons detained overnight be provided with a clean mattress and blankets. Further, it recommends that persons detained for extended periods be offered at least one hour of outdoor exercise per day.

The Committee would also like to be informed of 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.

37. Finally, the CPT's delegation was concerned to note that, at Klapperfeldgasse Detention Centre in Frankfurt am Main, agitated detainees were placed by police officers in either of the two security cells (*Beruhigungszellen*) (each equipped with a metal bar partition) without consultation of a doctor. **The CPT must reiterate the recommendation already made in paragraph 25 of the report on the 1996 visit that 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.**

It further recommends that the above-mentioned cells be equipped with a mattress and that a special register be kept concerning their use.

4. Safeguards against ill-treatment

- a. information to a close relative or other third party/access to a lawyer

38. As already highlighted in previous visit reports (and confirmed by the German authorities in their letter dated 13 March 2001), persons arrested (*verhaftet*) by the police on suspicion of a criminal offence have the right to inform without delay (*unverzüglich*) a close relative or a third party of their choice of their situation, either personally or via a police officer, except if this would jeopardise the purpose of the investigation (*sofern der Zweck der Untersuchung dadurch nicht gefährdet wird*; cf. Section 114b, paragraph 2, *StPO*). The same rule applies when persons are apprehended for the purpose of establishing their identity. Persons apprehended by the police for other reasons than suspicion of a criminal offence (administrative detention) also enjoy, according to the Länder police laws, the right to inform a close relative or a third party of their choice of their situation, except if this would jeopardise the purpose of the detention (*soweit dadurch der Zweck der Freiheitsentziehung nicht gefährdet wird*). However, neither the *StPO* nor the Länder police laws contain any further clarification as to the cases in which the purpose of the investigation or detention could be jeopardised.

Despite the recommendations previously made by the CPT, criminal suspects apprehended (*vorläufig festgenommen*) by the police in case of imminent danger (*bei Gefahr im Verzug*), pursuant to Section 127, paragraph 2, *StPO*, still do not have a formal right to inform a close relative or a third party of their choice of their situation until they have been brought before a judge to decide on the imposition of remand detention (i.e. at the latest until the end of the day following that of their apprehension).

39. As regards the right of access to a lawyer, the 2000 visit confirmed that there had been no change in the situation described in paragraph 29 of the report on the 1996 visit, despite the recommendations made by the CPT over almost a decade. Criminal suspects apprehended by the police still do not enjoy the right of access to a lawyer from the very outset of their detention. This right is only granted from the moment such persons become accused (*Beschuldigter*).

As regards persons other than criminal suspects deprived of their liberty under the Länder police legislation, the right of access to a lawyer is provided by law. However, it may be subject to restrictions for the purpose of safeguarding the aim or the order of police custody (*um den Zweck des Gewahrsams zu sichern oder die Ordnung im Gewahrsam aufrecht zu halten*) (cf. Section 1, paragraph 3, of the Order of the Ministry of the Interior of Baden-Württemberg on the implementation of the Law on the Police).

As to the content of the right of access to a lawyer, this question was dealt with in detail by the CPT in paragraphs 30 and 31 of the report on the 1996 visit. The Committee stressed in particular that the right of access to a lawyer should include the right to talk to him/her in private and to have him/her present during any interrogation conducted by police (whether this be during or after the initial period of police custody). Under the current Federal and Länder legislation, these rights are granted to criminal suspects as from the moment when they acquire the status of "accused" persons. Persons other than criminal suspects deprived of their liberty by the police may in certain Länder, but not in all, talk in private with a lawyer; it was unclear whether such persons can have a lawyer present during police interviews.

40. The CPT is obliged to stress yet again that it is during the period immediately following the deprivation of liberty that the risk of intimidation and ill-treatment is at its greatest. No State is free from the risk of such acts. Consequently, the possibility for persons taken into custody by the police to have access to a lawyer during that period is a fundamental safeguard against ill-treatment. The existence of that possibility will have a dissuasive effect on those minded to ill-treat detained persons; moreover, a lawyer is well placed to take appropriate action if ill-treatment actually occurs.

As already emphasised in paragraph 31 of the report on the 1996 visit, the CPT recognises that, in order to protect the interests of the police investigation, it may exceptionally be necessary to delay for a certain period a detained person's access to a particular lawyer chosen by him/her. However, this should not result in the right of access to a lawyer being totally denied during the period in question. In such cases, access to another, independent, lawyer who can be trusted not to jeopardise the legitimate interests of the investigation should be arranged.

To maintain its effectiveness as a safeguard against ill-treatment, it is axiomatic that the right of access to a lawyer must include the right to talk to him/her in private and to have him/her present during any questioning conducted by the police. Naturally, the fact that a detained person has stated that he/she wishes to have access to a lawyer should not prevent the police from beginning to question him/her on urgent matters before the lawyer arrives.

41. In the light of the above remarks, **the CPT calls upon the German authorities to 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, 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 situations in which the exercise of this right could exceptionally be delayed is also required;**
- **a right of access to a lawyer as spelt out in paragraphs 39 and 40 above.**

b. access to a doctor

42. The CPT's delegation heard no complaints about access to a doctor during police custody. In most of the police establishments visited recourse was had to emergency services doctors when medical assistance had been requested by a detained person. The delegation was able to observe that such assistance was provided in reasonable time and that, if necessary, detained persons could be transferred to a hospital. At the Regional Criminal Police Detention Centre at Tempelhof in Berlin, health care staff was employed on a full-time basis.

43. However, the CPT is concerned to note that the Police Detention Centre at Klapperfeldgasse in Frankfurt am Main did not have any designated health care staff. Although recourse was had to an emergency services doctor in urgent cases, the existing arrangements were clearly not sufficient in view of the establishment's capacity and vocation. **The CPT recommends that steps be taken to ensure the regular presence of qualified health care staff at Klapperfeldgasse Detention Centre.**

44. The CPT is pleased to note that its recommendation that persons in police custody have the right to be examined, if they so wish, by a doctor of their choice, has been implemented in practice in all Federal Länder, some of which have also made explicit provision therefor in their respective police laws.

45. At the Directorate 1 Police Detention Centre in Berlin, the CPT's delegation noted that medical examinations were carried out in the presence of a police officer. According to the staff met, this practice was in compliance with internal instructions by the police authorities. However, such a practice is not in conformity with the principle of medical confidentiality, and could well undermine the effectiveness of access to a doctor as a safeguard against ill-treatment.

The CPT 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.

46. Further, at Munich Police Headquarters, the delegation was concerned to learn that for a number of detained persons, a note had been added to the custody register indicating that the person concerned was infected with Hepatitis C, HIV or tuberculosis. It appeared that this data was accessible to all police establishments which were connected with the Criminal Data Service (*KDD*) of the Federal Criminal Agency (*BKA*) in Wiesbaden. This state of affairs is also not acceptable in terms of medical confidentiality. **The CPT recommends that steps be taken to discontinue the practice described above.**

c. information on rights

47. In their letter of 13 March 2001, the German authorities informed the CPT that in a number of Federal Länder, detained persons were given forms setting out their rights in several languages. The CPT welcomes this development; **it trusts that this measure will be extended to all Federal Länder.**

d. conduct of interrogations

48. In the reports on the 1991 and 1996 visits, the CPT recommended that the German authorities consider the possibility of introducing a code of conduct for police interrogations. In their responses, the German authorities indicated that they did not see any need to implement that recommendation. The CPT remains of the view that a code of conduct for police interrogations is necessary; in particular, it would serve to underpin the lessons learnt during police training. Moreover, in countries where such a code has been introduced, it has proved to be a valuable tool for police personnel entrusted with the task of interviewing persons.

Consequently, **the CPT recommends that the German authorities reconsider their position on this subject.**

B. Detention of foreign nationals under asylum/aliens legislation

1. Preliminary remarks

49. As indicated in paragraphs 9 and 10 of the report on the 1998 visit, foreign nationals who request asylum on arrival at an airport and who are subject to Section 18a of the Asylum Procedure Law (*AsylVfG*) may spend up to three weeks in holding facilities such as those in Buildings C182/183 at Frankfurt am Main Airport, pending examination of their request. As in 1998, foreign nationals whose asylum requests have been rejected, may subsequently stay in such facilities for much longer periods whilst awaiting the enforcement of a removal order.

According to Section 57 of the Aliens Act (*AuslG*), a foreign national, already in Germany, may be placed in detention, in order to secure the enforcement of a removal order. The detention is subject to a judicial order by a judge (*Amtsrichter*) and can be either a preparatory detention (*Vorbereitungshaft*) for up to six weeks or a preventive detention (*Sicherungshaft*) for up to 18 months (including any time spent in preparatory detention).

50. Federal law does not specify in which institutions foreign nationals detained under the aliens legislation are to be held. A number of Federal Länder have established special holding centres for foreigners (e.g. Brandenburg, North Rhine-Westphalia). In others (e.g. Bavaria), foreign nationals are held in prison establishments. They can also be kept for prolonged periods in police detention facilities before being transferred to holding centres or prison establishments (cf. paragraph 14).

51. The CPT welcomes the efforts made in a number of Federal Länder to establish special holding centres for foreigners. It also notes that the German authorities "share the view held by the Committee that detainees pending deportation should not be kept with remand detainees or sentenced inmates", but that, at the same time, the Federal Government considered that "keeping such detainees in prisons also had its advantages" (cf. response of the German authorities to the report on the 1996 visit).

For its part, the CPT considers that to hold immigration detainees in prison is a fundamentally flawed approach, even if the actual conditions of detention for the persons concerned in a given prison establishment are adequate. As already emphasised in paragraph 76 of the report on the 1996 visit, a prison is, by definition not an appropriate place in which to detain someone who is neither suspected nor convicted of a criminal offence. Admittedly, in certain exceptional cases, it might be necessary to hold an immigration detainee in a prison. However, as a rule, persons deprived of their liberty for an extended period under the aliens legislation should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal situation and staffed by suitably qualified personnel.

As far as police establishments are concerned, the CPT recognises that, in the very nature of things, immigration detainees may have to spend some time in an ordinary police detention facility. However, conditions in police stations will frequently - if not invariably - be inadequate for prolonged periods of detention.

In the light of the preceding remarks, **the CPT recommends that the German authorities give a high priority to the creation throughout Germany of holding facilities specifically designed for the accommodation of foreign nationals deprived of their liberty under the aliens legislation. It also recommends that the period during which such persons are held in ordinary police detention facilities be kept to the absolute minimum.**

2. Ill-treatment

52. The CPT's delegation heard no allegations – and gathered no other evidence - of physical ill-treatment by custodial staff of foreign nationals held in the establishments visited, namely the holding facilities at Frankfurt am Main Airport and Büren and Eisenhüttenstadt Detention Centres.

3. Conditions of stay

a. follow-up visit to Frankfurt am Main Airport

i. *holding facilities for foreigners subject to the airport procedure (Buildings C182/183)*

53. At the time of the visit, a total of 54 foreign nationals were held at Buildings C182/183, about one third of whom had been there for more than three weeks (in one case 143 days).

54. The CPT appreciates the efforts made to improve the material conditions at the Transit Buildings (e.g. cupboard padlocks installed, additional furniture provided for children, etc.). However, the inadequacy of the ventilation remained a considerable problem (cf. also response of the German authorities to the report on the 1998 visit). Moreover, the delegation noted that in one room used for overnight stays of late arrivals, the privacy of occupants was not adequately protected, as it had a large window facing an inner yard used by airport staff. **The CPT invites the German authorities to remedy this latter shortcoming.**

As regards the regime, efforts had been made to provide some books and reading material as well as toys and games, and a satellite TV had been installed. On the other hand, the delegation was informed that the playroom activities (twice a week), which had been mentioned in the response of the German authorities to the report on the 1998 visit, had been discontinued. Overall, recreational activities were still rather limited for persons staying for prolonged periods. **The CPT recommends that additional steps be taken to offer a better range of activities for persons held for prolonged periods in Buildings C182/183.** Further, **it would like to know whether the German authorities intend to re-establish twice weekly play-care services.**

55. After the CPT's visit in 1998, one room on the ground floor of part C183 of the complex had been transformed into a special holding facility for unaccompanied minors. Overall, its material conditions were acceptable. However, it was also affected by the problem of inadequate ventilation.

Concerning activities, a play-area with toys and table tennis equipment was available in the spacious room. In addition, all minors were looked after 24 hours a day and were offered outdoor exercise of two hours per day, usually accompanied by a social worker of the Airport Social Service. The CPT welcomes these developments.

56. The delegation received numerous complaints from persons interviewed at Buildings C182/183 about the food provided. It was said to be often insufficient in terms of quantity and quality and little account was apparently taken of the religious requirements, dietary habits and needs of the persons concerned. No possibility was given to purchase additional food (e.g. fruit). Moreover, lunch and dinner were distributed at the same time (around 14h30) and, as a result, foreign nationals had to store their dinner in their rooms. In addition, those foreign nationals who arrived later (i.e. after 14h30) were not always offered a meal upon arrival. Such a state of affairs is not satisfactory. **The CPT reiterates the recommendation made in paragraph 25 of the report on the 1998 visit that the food arrangements be reviewed, in order to cater better for the specific dietary habits and needs of detained persons. Further, it recommends that the timetable for the distribution of food be reviewed, in the light of the above remarks.**

57. From the very beginning, the accommodation in Buildings C182/183 of foreign nationals subject to the airport procedure had been regarded by the German authorities as a temporary emergency measure (cf. the German authorities' response to the report on the 1998 visit). The 2000 visit confirmed that the current premises could hardly offer satisfactory living conditions to persons staying there. Already during the 1998 visit, the German authorities informed the CPT of plans to build new premises for the accommodation of foreign nationals subject to the airport procedure. For this reason, the German authorities, in their response to the report on the 1998 visit, did not see the utility of major investments to improve the material conditions (in particular, the ventilation) in the current premises. However, two and a half years after the 1998 visit, no final decision on the exact location and the construction of new premises had yet been taken. **The CPT recommends that the German authorities take without further delay the necessary steps to provide appropriate accommodation facilities for foreign nationals subject to the airport procedure at Frankfurt am Main.**

ii. *BGS inspectorates*

58. In the BGS Inspectorates visited (1, 2, 3 and 4), material conditions in the holding facilities for aliens awaiting the enforcement of a removal order were on the whole adequate. However, in Inspectorate 3, some persons had to wait standing in the corridor due to lack of space. The delegation was informed that Inspectorate 3 was due to be relocated in a new building in 2001; **the CPT would like to receive confirmation of that relocation and full information about the new premises.**

b. newly-visited establishments

i. *introduction*

59. Detention centres for foreigners should provide accommodation which is adequately furnished, clean and in a good state of repair, and which offers sufficient living space for the number of persons involved. Further, care should be taken in the design and layout of the premises to avoid as far as possible any impression of a carceral environment. As regards regime activities, they should include outdoor exercise, access to a day room and to radio/television and newspapers/magazines, as well as other appropriate means of recreation (e.g. board games, table tennis). The longer the period for which persons are detained, the more developed should be the activities which are offered to them.

ii. *Büren Detention Centre*

60. Büren Detention Centre for Foreigners is run by the Ministry of Justice of the Land of North-Rhine Westphalia, on behalf of the immigration authorities (*Ausländerbehörde*) of the regional Ministry of the Interior. This centre, opened in 1994, was converted from former NATO barracks; it holds male foreign nationals pending their removal from Germany.

The Centre, which has a capacity of 530 places, was holding 440 foreigners at the time of the visit (three of whom were juveniles aged between 16 or 17). The average length of stay in the centre was 49 days; however, some detainees had been held in the centre for over a year.

61. The material conditions of detention can be described as broadly satisfactory. The rooms were spacious, well lit and ventilated and adequately equipped (including with television and radio). All the rooms had adjoining sanitary facilities (washbasin and WC) and the toilets were generally in a separate cubicle. **It would be desirable to fully partition all the toilets in the rooms.**

62. The delegation gained a very positive impression of the range of activities available to foreign nationals. In particular, due to the proactive approach by the management, workshops had been created capable of employing 150 foreign nationals. The Centre also provided German lessons and various leisure activities in an area equipped for this purpose (with indoor sports equipment, a billiard table, board games, music facilities, etc.) as well as open-air activities (football, volley/basketball and badminton). The establishment also had a well-stocked library.

This satisfactory situation seemed to be on the verge of being jeopardised. The Centre's management informed the delegation that it was expected that these activities would have to be curtailed as from 1 January 2001, as a result of budgetary restrictions, which would lead in particular to a substantial reduction in the staff responsible for activities. During the meetings that took place at the end of the visit, the delegation emphasised that this state of affairs was not acceptable and asked the German authorities to take the necessary measures to maintain the present level of activities. **The CPT would like to be informed of the measures taken.**

iii. Eisenhüttenstadt Detention Centre

63. Eisenhüttenstadt Detention Centre is a newly constructed centre opened in 1998. It is run by the Central Aliens Authority for Asylum Seekers of Brandenburg (*ZABH*), under the authority of the Ministry of the Interior of Brandenburg.

The Centre has a total capacity of 108 places. At the time of the visit, it accommodated 55 foreign nationals (including 13 women). The average length of stay was some five weeks; however, one foreign national had been held for more than six months.

64. The material conditions of all rooms were good in terms of space, ventilation, light (both natural light and artificial lighting), heating and state of cleanliness. The rooms were adequately furnished (table, chairs, cupboards), had a separate sanitary annexe with a lavatory and a washbasin, and were equipped with a satellite TV offering a wide range of programmes in different languages. However, **the CPT suggests that detainees be provided with means for locking their cupboards.**

65. The regime was flexible: foreigners were able to move freely within their unit during the day, had access to a sports room and were allowed one hour outdoor exercise every day. However, there were no other forms of activities available (even reading matter had to be purchased by the detainees from their pocket money). In fact, detainees spent the bulk of the day in a general state of idleness, playing cards or watching TV. The contrast with Büren was striking; the lack of purposeful activities contributed to creating a prison-like atmosphere.

The CPT recommends that measures be taken to offer a better range of activities to persons accommodated in Eisenhüttenstadt.

4. Health care

66. The CPT notes with satisfaction that since its visit to Frankfurt am Main Airport in 1998, certain positive developments have taken place regarding the health care arrangements for asylum seekers accommodated in buildings C182/183, namely the introduction of medical screening for new arrivals and the presence of a general practitioner three times a week.

However, the CPT wishes to stress that asylum seekers should be given a medical examination as soon as they arrive (and not, as at present, within fifteen days). This is particularly important as it enables persons at risk (e.g. those with suicidal tendencies) or with illnesses (e.g. transmissible diseases) to be identified in good time. Furthermore, it would be useful for a qualified nurse to be present on a regular basis, in addition to the regular presence of a general practitioner. As stated in paragraph 30 of the report on the 1998 visit, a nurse could be in charge of distributing medication and carry out other health care tasks under the supervision of a doctor. **The CPT recommends that the German authorities develop these aspects of health care for asylum seekers at Frankfurt am Main Airport.**

67. In its report on the 1998 visit, the CPT also recommended that a psychiatric and psychological service adapted to the needs of persons accommodated in the Transit Buildings be established. This recommendation was not greeted favourably by the German authorities who, in their reply, considered the present system to be adequate. The 2000 visit confirmed that this was not the case. Indeed, the delegation met a number of foreign nationals who had been staying there for prolonged periods and who, although not in need of specialised hospital care, should have been under psychological supervision by qualified persons. **The CPT therefore reiterates its recommendation to establish a psychiatric and psychological service adapted to the needs of persons accommodated in the Transit Buildings.**

68. Medical care at Büren Detention Centre was provided by an adequate team (a full-time general practitioner, two contractual psychiatrists on 40% time, a dentist consulting twice weekly and eight nurses). Furthermore, when necessary, outside consultations or admittance to hospital were arranged. However, consultations with a psychologist were not available in the centre and there had been large-scale reductions in the number of staff qualified to conduct psychosocial activities since mid-2000. This was seen as a problem in all quarters, given the substantial needs in this field of the detainees, many of whom showed signs of post-traumatic stress and/or were in a state of deep anxiety as a result of their detention and their future deportation.

The CPT recommends that the German authorities establish a psychosocial service which is adequately staffed and adapted to the needs of the persons detained in Büren. This measure would, inter alia, make it possible to implement fully the meaningful psychosocial programme for foreign nationals detained in Büren that has been devised by the centre's management.

The CPT wishes in this context to stress the quality of the work done by the nursing staff and the centre's management in caring for persons at risk (persons with suicidal tendencies and drug addicts, for example). The detailed information and instructions given to the staff in this area are particularly praiseworthy.

69. A general practitioner visited Eisenhüttenstadt Detention Centre three times a week and a nurse was present daily. This team can be considered as adequate for the number accommodated at the time of the visit. **However, if the Centre were to operate at its full capacity (108 places), the nursing staff, at least, would have to be increased.** On the other hand, no measure had been taken regarding the psychiatric and psychological care of detainees, who presented characteristics similar to those held in Büren. Nor was there any sign of plans to introduce psychosocial programmes for foreign nationals, as there had been at Büren, or any instructions on how to cope with persons at risk. **The recommendation in paragraph 67 above also applies in this context. The CPT also recommends that steps be taken to develop programmes to provide psychosocial care to detainees and to manage persons at risk.**

70. The delegation noted that, in the context of medical consultations, language barriers between doctors and foreign nationals complicated the anamnesis. The problem mainly occurred at Eisenhüttenstadt and, on occasion, in the case of certain specific languages, at Büren. Further, at Eisenhüttenstadt complaints were heard from some foreign nationals that they had not been given any explanation, in a language understandable to them, about the treatment they had received.

The CPT wishes to emphasise that whenever members of the medical and/or nursing staff are unable to make a proper diagnostic evaluation because of language problems, they should be able to request without delay the services of a qualified interpreter. Further, foreign nationals should be fully informed about the treatment offered to them. **The CPT invites the German authorities to ensure that this is the case at both centres visited.**

5. Other issues

a. discipline and security measures

71. As regards Büren Detention Centre, discipline and security measures are provided for in the Prison Law (*StVollzG*) (cf. paragraphs 14 to 17 of Appendix III to the CPT's report on the 1991 visit). As regards the latter measures, agitated or violent foreigners could be placed in a security cell and, if necessary, subjected to instruments of physical restraint. According to the relevant internal instructions, security measures must be applied for the shortest possible period and the persons concerned closely supervised. Further, a medical doctor has to be called. Recourse to security measures was recorded in detailed protocols; however no specific register of such measures was kept. That said, the delegation found no evidence of excessive use of security measures.

The security cells were spacious and well lit (including access to natural light) and persons placed in them were provided with a mattress and a blanket at night. Further, beds with straps were available if required.

72. As regards Eisenhüttenstadt Detention Centre, the relevant legal provisions are embodied in the Law on the Execution of Detention Pending Removal (*Abschiebehaftvollzugsgesetz*) of Brandenburg and the implementing Order (*Gewahrsamsordnung*), according to which special security measures can be imposed on a violent/agitated foreigner or in case of risk of escape. The measures involve, inter alia, placement in a special security room and the use of coercive measures (*unmittelbarer Zwang*). Withdrawal of outdoor exercise was also applied occasionally by staff as a security measure; **the CPT recommends that an immediate end be put to this practice.**

Recourse to security measures was recorded in the personal file of the detained foreign national concerned but, as at Büren, not in a specific register.

73. Conditions in one of the two security cells at Eisenhüttenstadt (cell No. 2008) were totally unacceptable. This cell was fitted with four metal rings anchored to the floor, in order to secure a person hand and foot while lying prone and spread-eagled. Handcuffs and ankle cuffs were available in the room. As already indicated in paragraph 10 above, the delegation invoked Article 8, paragraph 5, of the Convention requesting the authorities to remove immediately the four metal rings and to ensure that four-point restraint using metal cuffs to immobilise a detainee is never used.

74. By letter of 5 March 2001, the German authorities indicated that the four metal rings had been removed immediately after the CPT's visit and that detained persons placed in that cell were not physically restrained, pending the installation of a padded metal frame for the use of restraining straps.

75. While welcoming the measures taken by the German authorities, the CPT would like to stress that the very design and location of the cell in question renders it unsuitable for the placement of an agitated person (i.e. fitted with metal bars having sharp edges and situated in an out-of-the-way part of the establishment). It wishes to add that the same objections can be raised against the other security cell (No. 2007), even if it was equipped with a mattress in a metal frame padded by soft material.

The CPT considers that other accommodation should be found for persons in a state of agitation, which meets all security requirements and allows continuous and close personal supervision by staff. It is axiomatic that such rooms should not contain objects which could be perceived as intimidating by the person concerned (e.g. sets of handcuffs and ankle cuffs, coiled plastic hose pipe attached to a cold water tap, etc.). **The CPT recommends that the necessary measures be taken to provide adequate rooms for accommodating agitated persons, in the light of the preceding remarks. It also recommends that clear instructions be delivered to the staff at Eisenhüttenstadt 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. Moreover, staff at Eisenhüttenstadt should receive specific training in dealing with agitated detainees.**

76. **The CPT further recommends that - both at Büren and Eisenhüttenstadt - every instance of use of security measures, including type and duration, be recorded in a specific register established for that purpose.**

b. contact with outside world

77. The practice regarding contacts with the outside world for persons staying at the Transit Buildings of Frankfurt am Main Airport was described in paragraph 27 of the report on the 1998 visit. The information gathered during the 2000 visit confirmed that visits can now be received without any restrictions. The CPT welcomes this development.

78. As for the detention centres visited, the situation was also satisfactory, in terms of amount of visit time and visiting facilities. Further, foreign detainees could send and receive letters and had unlimited access to the telephone.

c. staff

79. As already stressed in the reports on the 1991 and 1996 visits, the staff of centres for immigration detainees have a particularly onerous task. Firstly, there will inevitably be communication difficulties caused by language barriers. Secondly, many detained persons will find the fact that they have been deprived of their liberty when they are not suspected of any criminal offence difficult to accept. Thirdly, there is a risk of tension between detainees of different nationalities or ethnic groups.

Consequently, the CPT places a premium upon the supervisory staff in centres for the detention of foreigners being carefully selected and receiving appropriate training. As well as possessing well-developed qualities in the field of interpersonal communication, the staff concerned should be familiarised with the different cultures of the detainees and at least some of them should have relevant language skills. Further, they should be taught to recognise possible symptoms of stress reactions displayed by detained persons (whether post-traumatic or induced by socio-cultural changes) and to take appropriate action.

80. The CPT wishes to highlight the efforts made in this respect at Büren Detention Centre. Great emphasis was put on interpersonal communication skills. Moreover, a number of staff members were fluent in foreign languages and were of foreign origin. Staff were trained in, and received detailed instructions on, how to deal with detainees displaying stress reactions.

The situation was less favourable at Eisenhüttenstadt Detention Centre. Considerable language barriers existed between the staff and detained foreign nationals. However, they only partly explained the rather low commitment of the staff and the limited contacts with detainees. The delegation formed the impression that, in contrast to Büren, the management did not adopt a proactive approach. The staff were clearly lacking guidance on important issues and appeared to confine their activities to warehousing detained foreign nationals.

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

81. During its visit to Frankfurt am Main Airport, the delegation was informed that the Federal Ministry of the Interior had planned to increase in 2001 the number of BGS officers entrusted with the enforcement of removal orders (Inspectorate 4). **The CPT would like to receive further information on this matter.**

d. inspection procedures

82. As regards inspection procedures, **the CPT would like to know whether, under the relevant regional legislations of North Rhine-Westphalia and Brandenburg, there is a system of visits of detention centres for foreigners, similar to the one established in Berlin** (cf. paragraph 71 of the report on the 1996 visit).

6. Safeguards

83. In its report on the 1998 visit (cf. paragraphs 39 to 42), the CPT has already dealt with certain fundamental safeguards to be offered to foreign nationals subject to the airport procedure, namely, to be able to notify, from the very outset of their detention, a person of their choice of their situation and to have access to a lawyer and a doctor.

As regards, more particularly, the right of access to a lawyer, the CPT welcomes the fact that, at present, in compliance with the recommendation made in paragraph 42 of the report on the 1998 visit, asylum seekers were allowed to contact a lawyer, prior to their first hearing with the Federal Agency for the Recognition of Foreign Refugees (hereinafter *Bundesamt*), and to have him/her present during the hearing with the *Bundesamt*. Further, as announced in 1998, asylum seekers had access to the lawyers' network set up on the basis of a contract between the *Bundesamt* and the Frankfurt am Main Lawyers Association.

Further, asylum seekers were systematically assisted, if necessary, by interpreters both during the initial interview with the BGS and the subsequent hearing with the *Bundesamt*. By contrast, some of the immigration detainees subject to a forcible transfer (*Durchschiebung*) claimed that when interviewed at the BGS Inspectorates, they had not been able to understand the contents of forms they were obliged to sign, since no translation/interpretation had been provided. **The CPT would like to receive the comments of the German authorities on the latter issue.**

84. The procedure under the Aliens Act and the Asylum Procedure Law was already addressed in the CPT's previous reports. In both detention centres visited, the practice was in accordance with the legal requirements. Foreign detainees were informed about their situation and rights in various languages, had unlimited access to a lawyer and could be assisted by interpreters. Moreover, at Büren Detention Centre a free legal counselling service was provided by the authorities. **The CPT would like to receive information concerning immigration detainees' access to free legal counselling in the Land of Brandenburg as well as in the other Federal Länder.**

85. In paragraphs 43 to 46 of the report on the 1998 visit, the CPT addressed in detail the question of suitable guarantees against persons being removed to countries where they run a risk of torture or ill-treatment.

The CPT noted with interest the information provided by the German authorities in their response to the report on the 1998 visit (cf. pages 39 to 45 of document CPT/Inf (99) 10). In particular, the German authorities stated that in principle no monitoring was being carried out once a foreign national had been removed to his country of origin but that the respective German diplomatic mission would investigate and follow-up any allegations of ill-treatment in the country of origin brought to its attention. Moreover, it was possible for requests for monitoring a foreign national's return to be made to the Foreign Office by the competent aliens authority, the Federal Border Police or the *Bundesamt*.

Between the 1998 and the 2000 visits, the question of monitoring or following-up the removal from Germany of a specific foreign national gave rise to an exchange of letters between the CPT and the German authorities. The latter confirmed that "if it is alleged that the deported person was tortured after being deported, the Federal Foreign Office will always go into the matter. Only in a small number of cases was it confirmed that there were indications pointing to maltreatment".

In this context, **the CPT would like 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.**

C. Halle Juvenile Prison

1. Preliminary remarks

86. Halle Juvenile Prison is the only institution for young male sentenced and remand prisoners in Saxony-Anhalt. It was opened in 1971 and is in the process of being restructured as two facilities – a prison for adult males and a socio-therapeutic facility for sex offenders and seriously violent prisoners. Work is underway on a new young offender institution in Rassnitz, some twenty kilometres from Halle (to be opened in May 2002). **The CPT would like to receive further information on the new juvenile prison in Rassnitz.**

Halle Juvenile Prison has a capacity of 454 (including 26 places in an open 'house' located immediately outside the prison wall). At the time of the visit, the establishment was overcrowded, accommodating 524 prisoners, 69 of whom were held on remand. The average age was 20, though nine inmates were aged 14 to 15.

87. The CPT notes that, since its last periodic visit in 1996, Germany has been confronted with the problem of prison overcrowding in most of the Federal Länder. According to statistical data supplied by the German authorities in their letter of 12 April 2001, both the official capacity of the prison estate and the actual number of inmates have increased in recent years. After a peak in 1999 (capacity of 75,102 places with 80,610 inmates) the rate of overcrowding decreased in 2000 (capacity of 76,495 places with 79,507 inmates). Between 1996 and 2000, the number of sentenced juveniles and young adults (under 21) significantly increased nation-wide from 4,544 to 6,439. In Saxony-Anhalt, the population of young sentenced prisoners more than doubled (from 183 to 401) during the same period.

In their letter of 12 April 2001, the German authorities informed the CPT of the measures taken at both Federal and Länder level to combat overcrowding in prison establishments. Most of the Federal Länder are striving to increase prison capacity by constructing additional facilities while at the same time pursuing the implementation of alternative measures, in order to reduce the prison population. The latter measures include crime prevention, community service as a penal sanction, suspended sentences and judicial mediation. Further, certain Federal Länder (e.g. Saxony-Anhalt) accommodate an increasing number of young remand detainees in homes for juveniles.

The CPT recommends that the German authorities actively pursue the implementation of the above-mentioned measure to combat overcrowding in prison establishments.

2. Ill-treatment

88. The CPT's delegation received hardly any allegations of deliberate physical ill-treatment of inmates by prison staff at Halle Prison.

89. However, the CPT has serious concerns about the action taken vis-à-vis an inmate who had attempted suicide in the Reception Unit on 1 December 2000. He had been placed in a security cell and secured hand and foot to his bed from 20h45 of the same day until the morning of 3 December 2000. During that period, he was regularly observed by custodial staff from outside the cell, and occasionally visited by a psychologist.

The appropriate manner in which to manage a suicidal prisoner will vary according to the particular circumstances of each case. However, it is hard to imagine a measure less likely to have a positive effect on a suicidal person's state of mind than to subject him to four point metal restraint for a continuous period of 36 hours including two nights. The fact that he was left almost entirely alone through this period could only have exacerbated the situation.

The CPT recommends that immediate steps be taken to ensure that such an approach is no longer used at Halle Prison vis-à-vis suicidal inmates.

90. More generally, the CPT is concerned to note that Section 88 of the Prison Law (*StVollzG*) still makes provision for the application of instruments of restraint for a period of days at a time. The CPT must reiterate the view already expressed in paragraph 162 of the report on the 1996 visit that the continuous application of instruments of restraint for a period of days can never be justified. **It recommends that Section 88 *StVollzG* be amended accordingly.**

Further, **the CPT recommends that every instance of resort to instruments of restraint be recorded in a specific register established for that purpose. The entry should include 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.**

91. Numerous allegations were heard of frequent and severe threats and acts of violence between inmates (e.g. verbal assault, fights, extortion, coercive sexual acts and initiation ceremonies such as being made to hold on to hot water pipes), most frequently in the Reception Unit and the Special Unit (*Vollzugsabteilung 2/1*). Moreover, all foreign prisoners interviewed expressed fear of becoming a victim of violence by inmates identified with neo-nazi and extreme rightist attitudes.

92. Particular reference should be made in this context to the situation of those inmates who had been convicted of sex offences, who alleged that they had been continually exposed to violence or hostility from fellow inmates. Because of their fear of other inmates, they did not even dare to leave their cells to take outdoor exercise. They also claimed that they could not count on the vigilance of prison officers.

93. It appeared that the problem of inter-prisoner intimidation/violence was mainly tackled by reporting incidents to the police, in order to initiate criminal proceedings against the suspected perpetrator(s), in addition to the imposition of disciplinary measures. Between 1 January and 30 November 2000, a total of 115 such cases had been reported to the police. A small number of these cases had been settled by mediation; of the remainder, up to the date of the CPT's visit, not a single one had led to proceedings.

The delegation was struck by the low staffing levels at night. After 16h00, only one prison officer was allocated to each of the Houses accommodating prisoners on three floors. Such a state of affairs appeared to be even more problematic in respect of House No. 1, where some of the most vulnerable prisoners were accommodated in the Reception Unit and the Special Unit (VA 2/1). The situation was further exacerbated by the fact that none of the cells in House No. 1 were fitted with a call system (cf. paragraph 98).

94. The CPT wishes once again to emphasise that the duty of care which is owed by the prison administration to prisoners in their charge includes the responsibility to protect them from other prisoners who might wish to cause them harm. This responsibility cannot be confined solely to reporting incidents to the police; prison authorities must act in a proactive manner to prevent violence by inmates against other inmates.

Addressing the phenomenon of inter-prisoner violence and intimidation requires that prison staff be alert to signs of trouble and both resolved and properly trained to intervene when necessary. The existence of positive relations between staff and prisoners, based on the notions of secure custody and care, is a decisive factor in this context; this will depend in large measure on staff possessing appropriate interpersonal communication skills. It is also obvious that an effective strategy to tackle inter-prisoner intimidation/violence should seek to ensure that prison staff are placed in a position to exercise their authority in an appropriate manner. Consequently, the level of staffing must be sufficient (including at nighttime) to enable prison officers to supervise adequately the activities of prisoners and support each other effectively in the exercise of their tasks. Both initial and ongoing training programmes for staff of all grades must address the issue of managing inter-prisoner violence.

The CPT recommends that the German authorities develop and implement a comprehensive strategy 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.

95. Finally, the proper recording of incidents in prisons is essential for efficient prison management and adequate supervision. Without such recording, it will be impossible to analyse accurately the overall situation and to draw the appropriate conclusions. No system of incident recording existed at Halle; **the CPT recommends that such a system be introduced at Halle Juvenile Prison.**

3. Special Unit (*Vollzugsabteilung 2/1*)

96. Inmates who disturbed internal order and security, or who for other reasons were not considered fit for group activities, were placed in the Special Unit (VA 2/1) in House No. 1, which offered the worst material conditions of the whole establishment (cf. paragraph 98). At the time of the visit, there were 11 inmates in the unit. According to the internal educational concept (dated 10 September 2000), all inmates placed in that unit were subject to a three-level educational programme. During level 1, prisoners were confined to their cells until they had proved their willingness to take part in their treatment programme and to contribute to the achievement of the objective of their imprisonment (*dass sie an der Gestaltung ihrer Behandlung und an der Erreichung des Vollzugszieles mitwirken wollen*). Throughout the whole period spent at level 1, they were locked in their cells alone or in pairs (except for one hour of daily outdoor exercise), the only activities being reading or listening to the radio. Inmates were denied access to any purposeful out-of-cell activities. No contacts with other inmates were allowed, except with two house workers who happened to be skinheads, one with visible nazi tattoos. Moreover, contacts with prison officers were kept to the bare minimum. Placement at level 1 usually lasted four weeks; however, the delegation met one inmate who had been kept under a level 1 regime since June 2000.

Upon admission to level 2, inmates were allowed to have limited contact with other inmates and to have access to certain out-of-cell activities (e.g. TV, sport). Placement at level 2 usually lasted four weeks, unless inmates demonstrated through misconduct that a sustainable change of their behaviour had not taken place. In the latter case, they were downgraded to level 1, with a view to re-starting the entire educational programme.

Inmates upgraded to level 3 were granted access to additional group activities. If they were able to prove their willingness to integrate themselves into the social structure of a prison unit, the evaluation panel (*Einstufungs- und Verlegungskonferenz*) approved their transfer (usually after four weeks) to another division.

To summarise, the regime of inmates at level 1 was akin to a solitary/cellular confinement regime offering no purposeful activities. Moreover, the CPT is far from convinced that the limited regime activities offered at levels 2 and 3 (e.g. no educational programmes) were indeed conducive to the achievement of the inherent objectives of the educational concept (i.e. to reintegrate inmates with behavioural disorders in a given prison unit).

97. All forms of solitary confinement without appropriate mental and physical stimulation are likely, in the long-term, to have damaging effects, resulting in changes in social and mental faculties. Such a risk is even greater in the case of juveniles and young adults. **The CPT recommends that the German authorities review the above-mentioned regimes in the Special Unit (VA 2/1) to ensure that all inmates benefit from purposeful activities and appropriate human contact. The CPT would also like to be informed of the safeguards which apply to inmates placed in that unit (i.e. are they informed in writing of the reasons for their placement; are they given an opportunity to express their views; have they an effective possibility to appeal to a relevant authority against their placement in the Special Unit?).**

4. Conditions of detention

a. material conditions

98. The CPT welcomes the renovations carried out over the last few years, which have considerably improved the material conditions of the majority of the houses at Halle Prison.

All renovated parts were of a good standard. Living space per person was satisfactory (e.g. up to 13 m² for a single cell, 25 m² for a three-person cell). Cells were well lit, ventilated and adequately furnished. By contrast, House No. 1, accommodating the Reception Unit and the Special Unit (VA 2/1), had not yet been renovated and offered extremely poor material conditions. Further, the delegation was concerned to note that none of the cells was fitted with a call system. **The CPT recommends that the German authorities give a high priority to the refurbishment of House No. 1 and install a call system in all cells.**

b. regime activities

99. The establishment possessed a number of well-equipped workshops (e.g. electrical engineering, metal-working, painting, construction engineering, farming, joinery, etc.), some of which offered vocational training and externally recognised apprenticeship opportunities. As regards educational and training activities, the establishment provided for a variety of courses with an option to acquire externally recognised diplomas for secondary school and/or middle school. Further, the in- and outdoor sports facilities available were of a good standard.

However, the CPT is concerned to note that almost 40% of all sentenced prisoners and more than 70% of those on remand were not engaged in any activities. This state of affairs is not acceptable. It is all the more worrying in view of the increasing number of inmates who are illiterate or only have rudimentary school education. Although a lack of purposeful activity is detrimental for any prisoner, it is especially harmful for juveniles, who have a particular need for physical activity and intellectual stimulation. **The CPT recommends that the German authorities give a high priority to increasing the number of inmates involved in activity programmes (e.g. education, sport, vocational training, recreation and other purposeful activities) at Halle Juvenile Prison.**

5. Health care

a. staff and facilities

100. At the time of the visit, the full-time health care staff at Halle included a general practitioner, a dentist, five nurses (including one dental nurse) and five psychologists. Specialists (e.g. a surgeon, an ophthalmologist, an ear, nose and throat specialist and a general practitioner trained in psychiatry) visited the establishment on a part-time basis. However, there was no health care staff present at night, a state of affairs all the more of concern given that the establishment had an infirmary with four cells.

In view of the current occupancy rate (see paragraph 86 above), such a staffing level can hardly be considered sufficient, in particular as regards nursing staff and the provision of psychiatric care. Concerning the latter, the delegation observed that many inmates in need of psychiatric care were not receiving the necessary attention. **The CPT recommends that the health care staff be reinforced, in the light of the preceding remarks. Further, someone competent to provide first aid should always be present on the prison premises, preferably someone with a recognised nursing qualification.**

101. In detention facilities for juveniles it is particularly important that the health care service offered to juveniles constitutes an integrated part of a multidisciplinary (medico-psycho-social) programme of care. This implies inter alia that there should be close co-ordination between the work of an establishment's health care team (doctors, nurses, psychologists, etc.) and that of other professionals (including social workers and teachers) who have regular contact with inmates. The goal should be to ensure that the health care delivered to juveniles deprived of their liberty forms part of a seamless web of support and therapy.

The delegation observed that there was a considerable lack of co-operation between various services at Halle, a state of affairs confirmed by interviews with members of different categories of staff. **The CPT would like to receive the German authorities' comments on this issue. Further, it 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.**

102. The health care facilities (including an operating theatre and a laboratory) were of a high standard.

b. suicide prevention

103. The delegation noted that the establishment had been confronted with a number of suicide attempts and self-injuries. According to an internal survey, most of the suicide attempts and self-injuries took place in the Reception Unit and the Special Unit (VA 2/1). During the period May to November 2000, 21 incidents were recorded, of which eight were categorised as suicide threats, five as suicide attempts, and eight as acts of self-mutilation.

104. It emerged that there was no comprehensive strategy for suicide prevention and counselling after suicide attempts. In this context, reference has to be made to the case described above (see paragraph 89), where the only response to the suicide attempt of a young inmate was the use of physical restraint, some contacts with the psychologist and, subsequently, placement in the Special Unit.

105. Medical screening on arrival and the reception process as a whole have an important role to play in this context; performed properly, they could identify at least certain of those at risk and relieve some of the anxiety and emotional stress experienced by all newly-arrived prisoners. Further, all prison staff, whatever their particular job, should be on the lookout for (which implies being trained in recognising) indications of risk of suicide. In this connection it should be noted that the periods immediately before and after trial and, in some cases, the pre-release period, involve an increased risk of suicide.

A person identified as a suicide risk should, for as long as necessary, be kept under a special observation scheme with appropriate psychological support. Further, such persons should not have easy access to means of harming themselves. Steps should also be taken to ensure a proper flow of information – both within a given establishment and, as appropriate, between establishments (and more specifically between their respective health care services) – about persons who have been identified as potentially at risk.

The CPT recommends that a suicide prevention policy be developed and implemented without delay at Halle Prison, taking into account the above remarks.

c. management of drug-related problems

106. The delegation's attention was drawn to the fact that the number of newly arrived drug addicts as well as the scale of drug abuse within the prison establishment had significantly increased in recent years. Strikingly, an established external drug counselling service had been discontinued for budgetary reasons in 2000. The delegation was informed about plans to set up an internal drug counselling service with one of the social workers and three nurses instead. For the time being, emphasis was put on rigorous security measures as well as judicial and disciplinary sanctions. Programmes dealing with drug abusers were limited to a few days detoxification scheme upon arrival (for about one third of the entire prison population).

107. The presence in prison of inmates with drug-related problems gives rise to a number of particular difficulties for the prison authorities. These include health and security issues, as well as the choice of forms of assistance which are to be offered to the prisoners concerned.

It should also be stressed at the outset that, if any achievement in the treatment of prisoners' drug-addiction is to be long lasting, it is necessary to identify the reasons at the origin of the drug problem and to tackle them with appropriate counselling and support.

108. As far as treatment programmes are concerned, the CPT recognises that providing assistance to persons who have drug-related problems is far from being a straightforward matter, particularly in a prison setting; there is no simple or single answer as regards the approach to be followed.

Nevertheless, admission to prison may provide an opportunity to address a person's drug-related problems. It is clear that prisoners need to be provided with an environment which permits and encourages them to lead a healthy or healthier lifestyle. This requires suitable screening, assessment and allocation of prisoners upon admission; it also calls for the provision of information to prisoners about health-related matters and the support and treatment options available to those who have drug problems.

It is crucial that the foundations be laid for continuing progress to be made by inmates who participate in drug-treatment programmes.

109. Prison health care services have a key role to play in this context. Those services should be resourced and equipped to handle all medical aspects of the treatment of inmates with drug-related problems, inter alia as regards substitution and detoxification programmes including the treatment of withdrawal symptoms. Further, they should pay close attention to co-morbidity and other problems associated with the taking of drugs (deterioration of the health of persons who take drugs; risk of disease transmission; treatment of specific conditions with a higher prevalence in the case of drug abusers, including psychiatric disorders; general hygiene questions). The health care services should also be involved in the coordination of the psycho-socio-educational services offered to such persons.

Consequently, the health care and psycho-socio-educational services of establishments accommodating significant numbers of prisoners with drug-related problems should be adequately staffed with a closely knit inter-disciplinary team of persons having appropriate expertise and training; due regard should also be had to the contribution which can be made in this context by prison officers. Moreover, contacts and cooperation between prison services and persons working in community-based institutions providing care, assistance and support to persons with drug problems should be fostered. This is particularly important in the context of the preparation for release and the coordination of treatment after release.

The CPT recommends that the German authorities develop a comprehensive strategy for the management of drug-related problems (prevention and treatment), in the light of the above remarks.

6. Other issues

a. discipline

110. According to the relevant legal provisions (Sections 103 et seq. *StVollzG*; Sections 68 and 71 of the Regulations on Custodial Remand (*Untersuchungshaftvollzugsordnung - UVollzO*); Section 87 of the General Administrative Regulations on the Imprisonment of Young Offenders (*Bundeseinheitliche Verwaltungsvorschriften zum Jugendstrafvollzug - VVJug*); Section 115, paragraph 2, of the Law on Juvenile Justice (*Jugendgerichtsgesetz - JGG*)), the following disciplinary measures could be imposed on juvenile prisoners (both sentenced and on remand): deprivation of outdoor exercise for a period not exceeding one week (only for remand prisoners over 21); deprivation of reading material for a period not exceeding two weeks (also during cellular confinement); limitation of contacts with outside world (including with relatives) to urgent matters for a period not exceeding three months; cellular confinement for a period not exceeding two weeks.

111. As for the forfeiture of outdoor exercise, in their letter of 12 April 2001, the German authorities informed the CPT that the relevant provision for sentenced prisoners (Section 103, paragraph 1, alinea 6, *StVollzG*) had been repealed and that all Federal Länder had ceased to apply the corresponding provision for remand prisoners (Section 68, paragraph 1, alinea 7, *UVollzO*). Further, the German authorities indicated that the latter provision had not been maintained in the draft Law on Custodial Remand. The CPT notes this development with satisfaction. Indeed, all prisoners without exception should be offered at least one hour of outdoor exercise every day; this is widely regarded as a basic requirement.

Moreover, the CPT welcomes the fact that the sanctions of deprivation of reading material and limitation of contacts with the outside world were not applied in Halle; **it invites the German authorities to explore the possibility of abolishing these sanctions in respect of juvenile prisoners.** Further, **it recommends that immediate steps be taken to ensure that any prisoner subject to the sanction of cellular confinement is allowed access to reading matter.**

b. contact with the outside world

112. The CPT attaches considerable importance to the maintenance of good contact with the outside world for all persons deprived of their liberty. The guiding principle should be to promote contact with the outside world; any restrictions on such contacts should be based exclusively on security concerns of an appreciable nature or considerations linked to available resources. The active promotion of such contacts can be especially beneficial for juveniles deprived of their liberty, many of whom may have behavioural problems related to emotional deprivation or a lack of social skills.

113. Sentenced prisoners were entitled to a one-hour visit and those on remand to two half-an-hour visits (in practice two one-hour visits) every month. All visits took place in open conditions and the visiting areas were of a good standard.

In the Committee's view, a visit entitlement of one hour per month is scarcely sufficient to allow inmates to maintain good relationships with their families and friends. **It invites the German authorities to explore the possibility of increasing the visit entitlements.**

114. As far as access to telephone is concerned, sentenced prisoners were only granted access to a telephone "in well-founded cases" (cf. Section 10 of the institution's Internal Rules for Sentenced Prisoners) and remand prisoners only "in urgent matters that cannot be delayed" for a maximum of five minutes per week (cf. Section 7 of the Internal Rules for Remand Prisoners).

The CPT recommends that inmates at Halle Juvenile Prison be offered regular access to a telephone. This is all the more important in the case of prisoners who do not receive regular visits from members of their families, because they live a long way from the prison.

115. More generally, the CPT notes with interest that, in the framework of the preparation of the Law on Custodial Remand, it is planned to extend the access to telephone for remand prisoners. **It would like to receive further information on this issue.**

c. complaints and inspection procedures

116. The complaints and inspection procedures which exist in the German prison system were summarised in paragraphs 162 to 166 of the report on the 1991 visit. Concerning inspection procedures, particular emphasis was placed by the CPT on the role of the Penal Institution Advisory Council, which constitutes a very important safeguard for prisoners. The CPT made a certain number of recommendations with a view to enhancing their effectiveness.

The delegation which carried out the 2000 visit noted that the Advisory Council competent for Halle Juvenile Prison was not in a position to fully accomplish its task due to the fact that two of the three Council seats were vacant. The sole member appointed could only devote three hours per month to visit the establishment. **The CPT trusts that steps will be taken to fill the vacancies as soon as possible.**

d. legal protection of young offenders

117. In Germany there is no specific legislation governing the imprisonment of young offenders. The provisions applicable are to be found in a variety of federal laws and regional administrative regulations, some of the latter not even being legally binding. From various sides, the current situation was qualified as a source of legal uncertainty and undue complexity. **The CPT would like to receive the German authorities' views on this matter.**

D. Psychiatric establishments

1. Preliminary remarks

118. The delegation visited two psychiatric clinics: the Forensic Psychiatric Clinic in Straubing (Bavaria) and the Nordbaden Psychiatric Centre in Wiesloch (Baden-Württemberg). The visit to the latter centre was organised at short notice because of information received during the visit concerning the treatment of certain patients in the establishment's high security Forensic Psychiatric Department. The delegation also went to the Forensic Psychiatric Department of Brandenburg an der Havel Regional Hospital in order to examine the treatment of a patient subjected to reinforced security measures.

119. Straubing Forensic Psychiatric Clinic, which was opened in 1990, is a secondary referral hospital for male patients transferred from other psychiatric establishments and considered to be problematic patients (for example, patients who are highly likely to attempt to escape and present a danger to the public; patients who may be violent and aggressive towards staff or other patients). Most of these patients were subjected to a judicial placement under either Article 63 of the Criminal Code (*StGB*), because they were found to be criminally irresponsible or to have limited responsibility, or Article 64 *StGB* (patients who have committed an offence under the influence of alcohol or intoxicating substances and who may commit other offences in similar circumstances). A few patients were being held in preventive detention (*Sicherungsverwahrung*) under Article 66 *StGB* (persistent offenders who were considered to be dangerous or a threat to the public) and a number were undergoing psychiatric examination under Article 126 of the Code of Criminal Procedure (*StPO*).

At the time of the visit, Straubing Clinic was operating at full capacity (136 patients). Although in principle designed for adult patients only, four of the clinic's patients were under twenty years of age, one of them being fifteen. This situation was apparently due to the fact that plans to create a clinic reserved for young people had been abandoned. While noting that these minors were receiving proper care, **the CPT is nonetheless of the opinion that minors should be cared for in special units/institutions.**

120. Nordbaden Psychiatric Centre in Wiesloch is a vast complex of about 1,000 places, including the largest forensic psychiatric department in the Land with 240 places. The latter includes a high security forensic psychiatric section, which was the focus of the visit. Opened in 1974, this section is located inside a security perimeter and comprises four units (Units 13 to 16) with a capacity of 90 beds. At the time of the visit, 105 male patients were placed there, most of them under Article 63 *StGB*. A small number were undergoing psychiatric assessment. Although the establishment is, in principle, a first referral centre, the high security Forensic Psychiatric Section can also admit patients transferred from other forensic psychiatric departments for very aggressive behaviour.

The delegation also briefly visited Unit 12 of the Centre, which is part of the Forensic Psychiatric Section but lies outside the security perimeter. This unit of 25 places operates as an admission unit for women and a rehabilitation unit for patients of both sexes. At the time of the visit, its occupancy rate was 110%.

A general psychiatric admission unit (Unit 33), which likewise had a capacity of 25 and included five patients placed there involuntarily under the Law on the Civil Placement of Persons Suffering from Mental Disorders (*Unterbringungsgesetz*) of Baden-Württemberg, was also visited by the delegation. Accommodating 32 patients, it was also somewhat over its capacity.

121. As stated above, the forensic psychiatric units visited in Wiesloch were operating above capacity. The medical and nursing staff to whom the delegation spoke indicated that this situation meant that in some areas, it was no longer possible to meet the required standards of hospitalisation and therapeutic conditions. The delegation's observations *in situ* largely confirmed this view. The overcrowding of the units responsible for the most difficult patients put the centre under great pressure, contributing to the situations criticised below. **The CPT would like to be informed of the measures taken or envisaged by the German authorities to remedy this situation.**

2. Deliberate ill-treatment

122. At Straubing Forensic Psychiatric Clinic, the delegation heard no allegations, and gathered no other evidence, of deliberate ill-treatment by the health care or security staff. The CPT would like to emphasise the positive impression its delegation formed of the nursing staff's attitude towards the patients and of their professionalism. A similar positive remark can be made concerning the security staff employed in this establishment.

As regards the Forensic Psychiatric Department of Brandenburg an der Havel Regional Hospital, the delegation heard no allegations of ill-treatment by the health care staff. Necessary arrangements had been made to ensure that the patient met by the delegation, who was subjected to reinforced security measures, received a treatment which was consistent with the inherent dignity of the human person. However, the Head of the Forensic Psychiatric Department stated that he was increasingly confronted with staffing problems, in order to maintain the level of appropriate care of the patient concerned. **The CPT trusts that the German authorities will take the necessary steps to ensure that this patient continues to receive, throughout his stay at Brandenburg an der Havel Forensic Psychiatric Department, appropriate care.**

123. The delegation heard no allegations of ill-treatment of patients by health care staff at the closed psychiatric Unit 33 of Nordbaden Psychiatric Centre in Wiesloch. However, at the Forensic Psychiatric Section in Wiesloch, the delegation received allegations from patients in Units 13 and 16, claiming that some members of the male nursing staff occasionally treated them brutally (for example, by shoving them to make them enter their rooms more quickly, or punching them). The delegation itself noticed that certain members of the nursing staff did not address patients in an appropriate manner; they shouted orders at patients or answered them in an exasperated manner. **The CPT 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.**

124. The Committee is also very much concerned by the recourse to seclusion in "strongrooms" (*festes Zimmer*) observed at the Forensic Psychiatric Section in Wiesloch. This matter will be dealt with in the following section.

3. Means of restraint

125. In any psychiatric establishment, the restraint of agitated and/or violent patients may on occasion be necessary. However, this is an area of particular concern to the CPT given the potential for abuse and ill-treatment.

126. In the clinics visited, the physical restraint of such patients (seclusion, use of instruments of physical restraint) was governed by a detailed protocol setting out clear guidelines. In particular, any such measure had to be either expressly ordered by a doctor or immediately brought to a doctor's attention for approval. Furthermore, all the establishments used specific forms to record the exact circumstances under which physical restraint was used.

127. As regards seclusion, the CPT's delegation observed that at Brandenburg an der Havel Regional Hospital, Unit 33 of Nordbaden Psychiatric Centre in Wiesloch and Straubing Forensic Psychiatric Clinic, this measure was used appropriately and corresponded with the state of health of the patients concerned. The CPT was pleased to note that in the latter establishment, the tendency over the last three years had been to reduce resort to this measure. However, **the CPT invites the German authorities to verify that all patients placed in seclusion at Straubing, whose state of health so permits, are offered one hour of outdoor exercise every day.**

128. In contrast, at the *Forensic Psychiatric Section in Wiesloch*, the conditions in which certain patients were secluded for prolonged periods (up to several months) amounted, in the CPT's opinion, to inhuman and degrading treatment. These patients were placed in "strongrooms" containing only a mattress and a completely open WC. The patients had no personal belongings and were dressed in stiff shirts (*festes Hemd*) which covered their trunk with no underwear, and were barefooted. In the rooms, the only horizontal surface other than the floor was a small area immediately adjacent to the lavatory bowl. As a result, patients either sat on the floor to eat their bowl of food or put the latter on that surface. They were not allowed any activities to pass the time, not even reading. A number of patients were not authorised to go out into the fresh air, and others were subjected to severe security measures (hand-cuffed and/or leg-shackled, cf. paragraphs 134 to 136 below) each time they were taken out of the room.

As stated in the introduction to this report (cf. paragraph 10), at the end of the visit, the delegation made an immediate observation, pursuant to Article 8, paragraph 5, of the Convention, requesting the German authorities to cease immediately to apply this regime, which had no medical justification and was of a punitive nature.

129. By letter of 5 March 2001, the German authorities informed the CPT about the measures taken following this observation. As regards the recourse to seclusion in "strongrooms", the authorities indicated that resort to this measure would only be had in cases where it was necessary, with strict medical indication, to isolate particularly aggressive patients for their own protection or in order to protect other patients or staff. These instructions would be reviewed daily.

The CPT trusts that this measure is, indeed, now only taken exclusively for medical reasons and for the shortest possible period. In this connection, **the CPT would like to receive, in respect of 2001, information on the number of patients placed in seclusion, the period of time spent in seclusion in each case and the reasons for resorting to this measure.**

130. In their above-mentioned letter, the German authorities also indicated that one of the "strongrooms" had been experimentally fitted with a bed, an armchair and a table/armrest in foam rubber and a new stainless steel W.C. The room had been repainted with a view to creating a more pleasant atmosphere and the floor had been renovated. It was also stated that following the CPT's visit, the patients were offered reading material. Furthermore, the wearing of stiff shirts was subject to stricter control and the acquisition of alternative clothing (tracksuits) was being considered. Each patient was authorised outdoor exercise of thirty minutes a day and security measures would only be applied in special cases.

The Land's Minister for Social Affairs was currently holding discussions with the management of the Forensic Psychiatric Section in order to find alternative solutions.

131. The CPT notes with interest the measures already taken by the German authorities. It sees no reason why these improvements should not be extended to all such rooms in the Forensic Psychiatric Section (within or outside the security perimeter) without delay. Furthermore, the use of less stigmatising clothing should be considered a priority. In the meantime, steps should be taken to ensure that the patients can cover the intimate parts of their bodies properly. If it were possible to provide decent seclusion conditions that respected human dignity in the other clinics visited, dealing with similar types of patients, it should also be possible to provide such conditions in the Forensic Psychiatric Section in Wiesloch.

The CPT would also like to stress once more that every patient placed in seclusion, whose state of health so permits, should be offered one hour of outdoor exercise every day in conditions which enable him/her to benefit fully from it (cf. paragraphs 134 to 136 below).

Consequently, **the CPT recommends that the German authorities:**

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

The CPT would also like to be informed of the results of the discussions being held between the Land's health authorities and the management of the Forensic Psychiatric Section.

132. As regards instruments of physical restraint, the delegation was able to ascertain that generally speaking, in the establishments visited, they were only used when strictly necessary and for the shortest possible period. However, it also noted that such instruments (with four or five fixation points) were occasionally used on patients in these establishments for prolonged periods ranging from three days to one week.

The CPT must emphasise that applying instruments of physical restraint to patients for a period of days at a time cannot have any therapeutic justification and, in its view, amounts to ill-treatment. **It recommends that the use of instruments of physical restraint in psychiatric establishments be reviewed in the light of the preceding remarks.**

133. As stated in paragraph 126 above, the use of physical restraint was recorded in detail on *ad hoc* forms which were then added to the files of the patients concerned. **The CPT recommends that, in addition, a specific register be established in psychiatric establishments for this purpose.** This will greatly facilitate both the management of such incidents and the oversight of the extent of their occurrence.

In the light of other observations made in the Forensic Psychiatric Section in Wiesloch, **the CPT recommends that the medical and nursing staff be reminded of their obligation to fill in thoroughly the relevant forms each time resort is had to physical restraint.**

4. Handcuffing patients

134. In Straubing Forensic Psychiatric Clinic, it appeared that patients who had been newly admitted to the Admission Unit (A1) were usually handcuffed during outdoor exercise for the first three days following their arrival. This measure was applied by the security staff. At the Forensic Psychiatric Section in Wiesloch, patients who had committed acts of aggression against members of staff, other patients or against themselves (in practice, mainly patients placed in seclusion) were systematically handcuffed during outdoor exercise, or even each time they left their room. In one case, a patient was required to be handcuffed whilst taking a shower. Decisions to apply such measures were taken by the nursing staff and approved by a doctor. In certain cases, the nursing instructions resulted in the patients concerned taking exercise in the security perimeter escorted by two nurses, with hands cuffed behind their backs and legs shackled. Furthermore, a study of the patients' files showed that such measures were also applied for prolonged periods to patients considered to present a risk of escape or a potential threat.

135. The CPT wishes to stress that handcuffing patients can never be part of a therapeutic programme. Therefore, such a measure cannot – and should not - be within the competence of medical or nursing staff.

Routinely handcuffing patients in a secured environment, as practised in Units 13 to 16 of the Forensic Psychiatric Section in Wiesloch, is unacceptable. If the health care staff considers that a given patient or patients require measures of increased attention to guarantee their own security or to protect other patients/staff members, other solutions can and should be found.

Further, in the CPT's view, there is no justification for systematically handcuffing newly arrived patients, as was the case at Straubing.

136. The CPT recommends that steps be taken to review practice at the Forensic Psychiatric Section in Wiesloch and at Straubing Forensic Psychiatric Clinic, in the light of the above remarks.

5. Staff

137. Straubing Forensic Psychiatric Clinic had adequately staffed medical and nursing teams (11 full-time posts for psychiatrists, plus consultants, and 114 posts for nurses), taking into account the number of posts allocated, among others, to the staff in charge of therapeutic and rehabilitative activities (14.5 medico-technical posts, including psychologists, socio-therapists and physiotherapists, and 16 posts for ergotherapists, educators and teachers). Further, security functions were assumed by a team of 30 persons. However, the current staffing tables showed that certain posts were vacant.

The CPT recommends that steps be taken to fill the vacant posts, especially those for nursing staff. This would, as a matter of priority, allow reinforcement of nursing staff presence in the admissions and emergency care unit (A1), where staffing levels were low (seven nurses compared with 10 to 16 in the other units).

138. The Forensic Psychiatric Section in Wiesloch had some 234 posts, of which 18 were for psychiatrists, 163 for nurses and some 38 for staff qualified in therapeutic and rehabilitative activities (psychologists, ergotherapists, physiotherapists, social workers, etc.). This implied for each of the units (Units 13 to 16), whose capacity varied from 20 to 25 beds, between 2 and 3.75 posts for doctors/psychologists and between 17 and 18.5 posts for nurses, to which were to be added an adequate number of other health care staff qualified in treatment activities. In practice, however, these units were also affected by vacancies in certain posts, notably for nursing staff (in the whole section, some 8 posts were vacant).

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

139. The approach of the health care staff in Units 13 and 16 of the Forensic Psychiatric Section in Wiesloch is a source of concern for the CPT. The delegation observed a marked confusion between the therapeutic role and security considerations. Doctors and nurses concentrated on patients' criminal records and dangerousness, to the detriment of a genuine interest in establishing a therapeutic relationship with the patients. Furthermore, the lines of responsibility within the therapeutic teams were muddled: the delegation was given conflicting information by different members of the therapeutic teams regarding the assessment of the conditions of patients and their treatment. This observation was confirmed by an examination of a number of patients' files: the medical notes were sketchy, barely understandable and not regularly updated. In contrast to Straubing Forensic Psychiatric Clinic, the therapeutic teams seemed to operate without any clearly defined guidelines or supervision by a senior doctor.

This situation obviously compromised the treatment objectives for patients.

The CPT 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. Further, it recommends that the functioning of the therapeutic teams be reviewed, in the light of the remarks made above.

6. Patients' living conditions

140. Living conditions at Straubing Forensic Psychiatric Clinic can be described as excellent. From an architectural point of view, the Clinic was designed from a therapeutic perspective with a view to creating material conditions conducive to the treatment and welfare of patients; in other words, to create a positive therapeutic environment. The patients' living units (ten units of 14 beds in individual rooms), recreation areas, the sports and therapeutic infrastructures were modern, comfortable, very pleasantly decorated and convivial. The outside surroundings were bucolic and well landscaped and maintained.

141. This was not the case in Units 13 to 16 within the security perimeter in the Forensic Psychiatric Section in Wiesloch. Although basic material conditions were adequate, the living units were austere and prison-like. The overall atmosphere was oppressive. Furthermore, in some parts, the living units showed signs of neglect, particularly in terms of cleanliness. In short, the material conditions were by no means conducive to a positive therapeutic environment. The contrast with the two other units visited was striking, especially with general psychiatric Unit 33, where the material conditions of stay were excellent.

The CPT recommends that the material living conditions in Units 13 to 16 of the Forensic Psychiatric Section in Wiesloch be improved without delay, in the light of the above remarks.

7. Treatment

142. The treatment available at Straubing Forensic Psychiatric Clinic was based on an individual approach, implying the drawing up of a treatment plan for each patient by a therapeutic team with the active participation of the patients concerned. Many of the patients met expressed their satisfaction at being involved in their treatment planning.

The programmes offered a wide range of rehabilitative and therapeutic activities (different forms of individual psychotherapy and group therapy, cognitive therapy, ergotherapy, art therapy, sports, etc.). More particularly, it should be mentioned that almost all of the patients benefited from ergotherapeutic activities in excellent workshops. Furthermore, the patients were given the opportunity of following three-year vocational training courses leading to the award of a diploma, and various educational courses (secondary education courses leading to end-of-school diplomas, literacy classes and computer training). The patients also had access to sports infrastructures of a high standard, including a swimming pool.

To sum up, all the fundamental components of effective psychosocial rehabilitative treatment were present. The CPT welcomes this situation.

143. The senior staff of the Forensic Psychiatric Section in Wiesloch also advocated treatment that drew on all the psychiatric and clinical/psychological methods (pharmacotherapy, different forms of psychotherapy, ergotherapy, work therapy, music therapy, teaching, sports, leisure activities, etc.) founded on individual treatment protocols. However, the department's ambitions were not really reflected in practice. As stated above, this was largely the result of the priority given by the staff to security considerations.

Less than half of the patients had access to meaningful treatment and rehabilitation activities. The attention paid to them was essentially limited to observations of their behaviour in order to determine how far they could move up the various scales entitling them to greater freedom of movement. Furthermore, the patients were not always allowed one hour of outdoor exercise per day.

The CPT 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. Furthermore, the recommendation, set out in paragraph 131 above, concerning outdoor exercise applies equally here.

144. Regarding pharmacotherapy, the delegation found no indication of overmedication at Straubing Forensic Psychiatric Clinic. Patients were also properly informed about the medicines being administered and their effects. The situation at Units 13 to 16 of the Forensic Psychiatric Section in Wiesloch was, however, questionable. The delegation's doctors noted that, in several cases, patients were receiving very high doses of neuroleptics and showed marked signs of psychomotor retardation. Three of them had definitive side effects with extrapyramidal symptoms not controlled by anti-parkinsonian medication. Furthermore, patients were not always given adequate information concerning the medicines prescribed for them.

In the light of the above, the CPT 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.

8. Safeguards in the context of involuntary placement

145. On account of their vulnerability, the mentally ill and mentally handicapped warrant much attention in order to prevent any form of conduct - or avoid any omission - contrary to their well-being. It follows that the procedure by which involuntary placement is decided should offer guarantees of independence and impartiality, as well as of objective medical expertise. Further, involuntary placement should cease as soon as it is no longer required by the patient's mental state. Consequently, the need for such a placement must be regularly reviewed.

146. The procedure for placements decided on by a judicial authority in accordance with the provisions of the Criminal Code reflects these requirements. The Law on the Civil Placement of Persons (*Unterbringungsgesetz-UBG*) of Baden-Württemberg also meets these criteria. In particular, the decisions concerning placement and renewal are taken by a judicial authority on the basis of medical opinion and are valid for a specified period.

147. As indicated in the preliminary remarks, the institutions in Straubing and Wiesloch receive patients transferred from other establishments. It appeared that this secondary referral transfer has serious consequences for the patients, particularly as regards the possibilities for easing the conditions governing placement and the termination of placement. Such measures can only be envisaged when the patient has been transferred to an establishment with a lower level of security. However, it appeared that the decision to transfer a patient on secondary referral does not involve any formal procedure whereby the patients concerned receive correct information on their transfer, can make their views known and can appeal against the transfer decision.

The CPT perfectly understands that transfers to establishments like Straubing and Wiesloch may have to be carried out urgently in the interests of the patients as well as those of the nursing staff or the general public. However, such measures should be accompanied by guarantees that the patients 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. **The CPT recommends that the German authorities take the necessary steps to ensure that these guarantees are provided.**

148. During placement, the stay of patients is governed by the provisions of the regional Laws on the Civil Placement of Persons Suffering from Mental Disorders in psychiatric establishments. Patients are given a brochure explaining the rules of the units in which they are staying, the opportunities for making internal and external complaints, and their rights to receive visits and to have access to a telephone. In this context, **the CPT invites the German authorities 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.**

149. It is noteworthy that patients could contact a person appointed to represent their interests (*Patientenfürsprecher*). Such a body is very important with a view to preventing ill-treatment. At Straubing, patients were well informed of the existence of a patients' representative. Moreover, the latter exhibited a proactive approach and visited the Clinic on a monthly basis. At Wiesloch, however, the situation was less favourable: many patients of the Forensic Psychiatric Section were not aware of the existence of such a representative and did not know how to contact the latter. **The CPT trusts that this situation will be remedied.**

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.

150. The CPT also attaches considerable importance to psychiatric establishments being visited on a regular basis by an independent outside body (e.g. a judge or supervisory committee) responsible for the inspection of patients' care. This body should be authorised, in particular, to talk privately with patients, receive directly any complaints which they might have and make any recommendations.

Straubing Forensic Psychiatric Clinic is supposed to be monitored by a visiting commission (*Besuchskommission*), whose terms of reference include making unannounced visits. However, the commission has only visited the establishment twice in the last ten years. Obviously, an effective control of the situation of patients cannot be carried out through such infrequent visits. Moreover, the fact that no written report had been drawn up more than two years after the last visit shows all the more clearly the ineffectiveness of this control mechanism. **The CPT would like to receive the German authorities' comments on this matter.**

It would also like to know whether the Forensic Psychiatric Section in Wiesloch is subject to independent monitoring and, if so, the terms of reference of the monitoring body concerned.

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151. In both Bavaria and Baden-Württemberg, the delegation met patients placed in the establishments under the Criminal Code who had requested their transfer to establishments in other Länder nearer their families or homes. The transfer of patients to an institution in the region where they have family and social ties could be conducive to their rehabilitation. The information gathered by the delegation suggests that requests for transfer run up against procedural and financial obstacles. **The CPT would like to receive the German authorities' comments on this issue.**

E. Homes for elderly persons

152. For the first time in any country, a CPT's delegation visited two homes for elderly persons, namely the "*Seniorenpflegeheim*" of the German Red Cross Wedding in Berlin (Gerichtsstrasse) and the "*Altenpflegeheim*" Wichernhaus in Cottbus (Brandenburg), which was run by the Protestant Church (*Landesausschuss für Innere Mission Potsdam*).

Pursuant to Section 1906, paragraph 1, of the Civil Code (*BGB*), a person suffering from a mental disorder or mental handicap can be deprived of his/her liberty in a home (*Unterbringung mit Freiheitsentziehung*) upon request by his/her guardian (*Betreuer*), if the placement is necessary to prevent the person concerned from committing suicide or causing serious self-harm or to ensure a medical examination or treatment. Such a placement is only admissible with the authorisation of the guardianship court (*Vormundschaftsgericht*; cf. Section 1906, paragraph 2, *BGB*).

Moreover, according to Section 1906, paragraph 4, *BGB*, both involuntary and voluntary residents may be subjected to placement-like measures (*unterbringungsähnliche Massnahmen*) with judicial authorisation (cf. also Sections 70 *et seq.* of the Law on Non-contentious Jurisdiction (*Gesetz über die Angelegenheiten der freiwilligen Gerichtsbarkeit*)). Such measures may include, for instance, the use of bed-rails or means of physical restraint or the administration of sedative medication.

153. With a capacity of 125 residents, Wedding is the largest Red Cross home for elderly persons in Berlin. It has a closed section in Unit 3 (*beschützende Wohnstation*) for severely demented persons. All 27 residents in that section had been placed there on the basis of Section 1906, paragraph 1, *BGB*.

Wichernhaus has been serving as a home for elderly persons for about half a century. It has a capacity of 60 residents. There was no closed section at Wichernhaus and it emerged that, at the time of the visit, none of the residents was subjected to any placement-like measures. The CPT is grateful to the German authorities for having nevertheless facilitated the visit to the latter establishment, thereby allowing it to verify the conditions under which persons may be deprived of their liberty by a public authority (cf. Article 2 of the Convention in connection with paragraph 32 of the Explanatory Report).

154. The delegation heard no allegations of deliberate ill-treatment of residents in either home visited. On the contrary, staff members appeared to be committed and devoted to the care and well-being of all residents.

155. Material conditions in Unit 3 at Wedding were good. The rooms of all residents as well as the communal living area were spacious, well lit and ventilated, comfortably furnished and nicely decorated. The equipment and infrastructure (including sanitary facilities) were adapted to the specific needs of patients and their handicaps. Clothing was clean and personal. Residents also had some personal belongings (e.g. pictures on the walls, photos, rugs, etc.). The level of hygiene and cleanliness was all the more commendable, given the fact that the majority of patients in the closed unit had urinary and faecal incontinence.

Bearing in mind that, at any time, elderly persons may be subjected without their consent to a placement-like measure, the CPT should mention that the premises of Wichernhaus, dating from the beginning of the 20th century, did not offer appropriate material conditions for persons aged 70 and over, suffering from physical and psychological disorders (for example, narrow, steep staircases, limited possibilities for observation, etc.). **The CPT would appreciate receiving the German authorities' comments on this matter.**

156. The delegation concentrated on treatment aspects in Unit 3 at Wedding. The level of somatic care provided to residents was of a high standard. However, psychological aspects of care were found to be rather limited, with little attention to emotional problems (such as anxiety, grief, depression, etc.), the interventions focusing only on the symptoms of senile dementia. Further, the delegation felt that much more attention could be devoted to individualised therapeutic plans, taking into account, inter alia, the residents' abilities and capabilities. In addition, care plans and nursing records were incomplete and, in particular, did not provide a coherent record of essential care and therapeutic intervention.

These issues had been dealt with in detail by the Medical Service of the Health Insurance (MDK) after its last quality inspection, carried out from 12 to 13 September 2000, which entailed a number of specific recommendations concerning various aspects of treatment of residents. **The CPT would like to know if those recommendations have meanwhile been implemented. It would also like to be informed of the progress made in the implementation of the plan of the establishment's director for the improvement of Unit 3 (*Konzeption für die Verbesserung der Dementen-Betreuungsstation 3*).**

157. The delegation understood that homes for elderly persons were subjected to various kinds of control procedures under the Law on Homes (*Heimgesetz*) and the Social Code (*Sozialgesetzbuch*). In their letter of 13 March 2001, the German authorities informed the CPT that they were planning to amend the Law on Homes and to enact a Law on Safeguarding the Quality of Care (*Pflegequalitätssicherungsgesetz*), with a view to improving the quality of care and the effectiveness of inspection procedures. In particular, the draft legislation foresees mandatory annual inspections and allows for such inspections to be carried out without prior notice. The CPT welcomes this development and **would like to receive copies of the respective laws, once they have been adopted.**

III. RECAPITULATION AND CONCLUSIONS

A. Police establishments

158. As was the case in 1991 and 1996, the CPT's delegation heard no allegations of physical ill-treatment inflicted by police officers on persons held in police establishments in Germany. However, some allegations were once again heard of the use of excessive force by police officers at the time of apprehension (*Festnahme*); the most common forms of ill-treatment alleged by detained persons were blows and kicks after they had been restrained and placed on the ground.

159. A number of allegations were received of the use of excessive force/ill-treatment of foreign nationals by police officers and *Bundesgrenzschutz* (BGS) officials during the enforcement of removal orders at Frankfurt am Main, Berlin-Schönefeld and Stuttgart Airports. The allegations involved restraining persons with adhesive tape, gagging, blows inflicted with fists, kicks and verbal abuse.

The CPT recognises that it will often be a difficult task to enforce a removal order in respect of a foreign national who is determined to stay on a State's territory. Law enforcement officials may on occasion have to use force in order to effect such a removal. The circumstances may be such that injuries are sustained by the person concerned (and by law enforcement officials) without this being the result of an intention to inflict ill-treatment. However, no more force than is strictly necessary should be used. In this respect, the CPT has welcomed 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, and has recommended that this instruction be made applicable throughout the country to all agencies entrusted with the enforcement of removal orders.

160. Great variations were encountered as regards material conditions in the police establishments visited. A number of establishments visited (in Berlin, Brandenburg, Saxony-Anhalt) offered conditions of a high standard. Other establishments visited offered poor, or even very poor, material conditions of detention; this was particularly the case at all the establishments visited in Frankfurt am Main. The CPT has recommended that the conditions of detention in the police establishments concerned be reviewed. Further, nine years after the CPT's first visit to Germany, the Committee's recommendation that mattresses and blankets be provided to all detainees required to spend the night in police custody had not yet been implemented in all places of detention in Germany; the CPT has called upon the German authorities to comply without further delay with this longstanding recommendation. The Committee has also recommended that persons detained for extended periods in police establishments be offered at least one hour of outdoor exercise per day.

161. As for fundamental safeguards against ill-treatment of persons deprived of their liberty, the CPT was pleased to note that its recommendation that persons in police custody have the right to be examined, if they so wish, by a doctor of their own choice, had been implemented in all Federal Länder.

However, shortcomings remain in respect of two other fundamental safeguards. Firstly, criminal suspects apprehended by the police in case of imminent danger (*Gefahr im Verzug*) still do not have a formal right to inform a close relative or a third party of their choice of their situation until they have been brought before a judge to decide on the imposition of remand detention. Secondly, despite the recommendations made by the CPT over almost a decade, criminal suspects apprehended by the police still do not enjoy the right of access to a lawyer from the very outset of their detention. The CPT has stressed yet again that it is during the period immediately following the deprivation of liberty that the risk of intimidation and ill-treatment is at its greatest; no State is free from the risk of such acts. The Committee has called upon the German authorities to ensure that, throughout Germany, all persons deprived of their liberty by the police, for whatever reason, enjoy both of the above-mentioned rights from the very outset of their custody.

B. Detention of foreign nationals under asylum/aliens legislation

162. The CPT has welcomed the efforts made in a number of Federal Länder to establish special holding centres for foreigners. It has recommended that the German authorities give a high priority to the creation throughout Germany of holding facilities specifically designed for the accommodation of foreign nationals deprived of their liberty under the aliens legislation.

163. The CPT's delegation heard no allegations - and gathered no other evidence - of physical ill-treatment by custodial staff of foreign nationals in the holding facilities at Frankfurt am Main Airport or at Büren and Eisenhüttenstadt Detention Centres.

164. As for conditions of stay, the 2000 visit confirmed that Buildings C182/183 at **Frankfurt am Main Airport** could hardly offer satisfactory living conditions to persons staying there, despite efforts which had been made to improve the situation. The CPT has recommended that the German authorities take, without further delay, the necessary steps to provide appropriate accommodation facilities for foreign nationals subject to the airport procedure at Frankfurt am Main. It has made several recommendations in order to offer, in the meantime, a better range of activities for persons held for prolonged periods in Buildings C182/183 as well as to review the current unsatisfactory arrangements for the provision and distribution of food.

Conditions in the holding facilities of the Frankfurt am Main BGS Inspectorates visited were on the whole adequate.

165. Material conditions of detention at **Büren and Eisenhüttenstadt Detention Centres** can be described as broadly satisfactory. Moreover, at Büren, the delegation gained a very positive impression of the range of activities available to foreign nationals. However, this satisfactory situation seemed to be on the verge of being jeopardised, as a result of budgetary restrictions; at the end of the visit, the delegation asked the German authorities to take the necessary measures to maintain the present level of activities. As regards Eisenhüttenstadt, although the detention regime was flexible, detainees spent the bulk of the day in a general state of idleness, playing cards or watching TV; the lack of purposeful activities contributed to creating a prison-like atmosphere. The CPT has recommended that this state of affairs be remedied.

166. Various measures have been recommended in order to improve the health care provided to foreign nationals in the different holding facilities and detention centres visited; they concern in particular the availability of psychiatric and psychological services.

167. The use of security measures was satisfactory at Büren Detention Centre but gave rise to serious concern at Eisenhüttenstadt. The CPT has recommended that an immediate end be put to the practice at the latter establishment of withdrawing outdoor exercise as a security measure. Moreover, conditions in one of the two security cells at Eisenhüttenstadt were totally unacceptable. The CPT has welcomed the measures taken by the German authorities in response to its delegation's immediate observation on this subject. Nevertheless, it has recommended that other accommodation be found for persons in a state of agitation, which meets all security requirements and allows continuous and close personal supervision by staff.

168. The CPT has highlighted the efforts made in respect of selection and training of staff at Büren Detention Centre. Great emphasis was put on personal intercommunication skills; further, a number of staff were fluent in foreign languages and were of foreign origin. The situation was less favourable at Eisenhüttenstadt Detention Centre, where considerable language barriers existed between the staff and detained foreign nationals. Moreover, staff were clearly missing guidance on important issues and appeared to confine their activities to warehousing foreign nationals. The CPT has recommended that increased attention be given to the selection of staff employed at Eisenhüttenstadt and to enhancing their possibilities for initial and in-service training.

C. Halle Juvenile Prison

169. The CPT's delegation received hardly any allegations of deliberate physical ill-treatment of inmates by prison staff at Halle Juvenile Prison. However, the CPT has expressed serious concerns about the action taken vis-à-vis an inmate who had attempted suicide in the Reception Unit on 1 December 2000. While the appropriate manner in which to manage a suicidal prisoner will vary according to the particular circumstances of each case, it is hard to imagine a measure less likely to have a positive effect on a suicidal person's state of mind than to subject him to four point metal restraint for a continuous period of 36 hours including two nights. The fact that the inmate was left almost entirely alone throughout this period could only have exacerbated the situation. The CPT has recommended that immediate steps be taken to ensure that such an approach is no longer used at Halle Juvenile Prison vis-à-vis suicidal inmates.

Further, the CPT has reiterated its view that the continuous application of instruments of restraint for a period of days at a time can never be justified. It has recommended that the relevant provision of the Prison Law be amended accordingly.

170. Numerous allegations were heard of frequent and severe threats and acts of violence between inmates, most frequently in the Reception Unit and the Special Unit. Moreover, all foreign prisoners interviewed expressed fear of becoming a victim of violence by inmates identified with neo-nazi and extreme rightist attitudes. Particular reference has also to be made to the situation of inmates convicted of sex offences who, because of their fear of other inmates, did not even dare to leave their cells to take outdoor exercise.

The CPT has re-emphasised that the duty of care which is owed by the prison administration to prisoners in their charge includes the responsibility to protect them from other prisoners who might wish to cause them harm. This responsibility cannot be confined solely to reporting incidents to the police; prison authorities must act in a proactive manner to prevent violence by inmates against other inmates. The CPT has recommended that the German authorities develop and implement a comprehensive strategy to address the problem of inter-prisoner violence and intimidation.

171. Concern has also been expressed as regards the regime applied to inmates placed in the Special Unit (VA 2/1), because they had disturbed internal order and security or for other reasons were not considered fit for group activities. These inmates were subjected to a three-level educational programme and the regime of those placed at “level 1” was akin to a solitary/cellular confinement regime offering no purposeful activities. Moreover, the CPT is far from being convinced that the limited regime activities offered at levels 2 and 3 were conducive to the achievement of the objective of reintegrating the inmates concerned in a prison unit. The Committee has recommended that the German authorities review the above-mentioned regimes with a view to ensuring that all inmates benefit from purposeful activities and appropriate human contact.

172. Material conditions in all the renovated parts of Halle Juvenile Prison were of a good standard. By contrast, House No 1, accommodating the Reception Unit and the Special Unit, offered extremely poor material conditions. The CPT has recommended that a high priority be given to the refurbishment of this House. A high priority should also be given to increasing the number of inmates involved in activity programmes; at the time of the visit, almost 40% of all sentenced prisoners and more than 70% of those on remand were not engaged in any activities. Such a state of affairs is not acceptable. Although a lack of purposeful activity is detrimental for any prisoner, it is especially harmful for juveniles, who have a particular need for physical activity and intellectual stimulation.

173. The CPT has also addressed a number of other issues (health care, discipline, contact with the outside world, complaints and inspection procedures, legal protection of young offenders). In particular, the Committee has recommended that the German authorities develop and implement without delay a suicide prevention policy at Halle Juvenile Prison as well as a comprehensive strategy for the management of drug-related problems.

D. Psychiatric establishments

174. At **Straubing Forensic Psychiatric Clinic**, the CPT's delegation heard no allegations of deliberate ill-treatment by health care or security staff. The delegation formed a positive impression of the nursing staff's attitude towards the patients and of their professionalism. A similar positive remark can be made concerning the security staff employed in this establishment.

At the **Nordbaden Psychiatric Centre in Wiesloch**, allegations were received from patients in Units 13 and 16 of the Forensic Psychiatric Section, according to which some members of the male nursing staff occasionally treated them brutally. The delegation itself noticed that certain members of the nursing staff did not address patients in an appropriate manner. The CPT has recommended that the nursing staff of this Section be given the clear message that the ill-treatment of patients is unacceptable and will be dealt with severely.

175. In any psychiatric establishment, the restraint of agitated and/or violent patients may on occasion be necessary. However, the conditions in which certain patients were secluded in "strongrooms" for prolonged periods (up to several months) at the **Forensic Psychiatric Section in Wiesloch**, amounted in the CPT's opinion to inhuman and degrading treatment. At the end of the visit, the delegation made an immediate observation requesting the German authorities to cease to apply the regime in question, which had no medical justification and was of a punitive nature. The German authorities took positive measures in response to that observation. Nevertheless, the CPT has recommended that the material conditions in all the Section's seclusion rooms be improved, that all patients placed in seclusion be decently clothed and that those whose state of health so permits be offered one hour of outdoor exercise per day, in conditions that enable them to fully benefit from it.

The CPT has also recommended that the use of instruments of physical restraint in psychiatric establishments in Germany be reviewed. In this connection, the Committee has emphasised that applying such instruments to patients for a period of days at a time cannot have any therapeutic justification.

176. Living conditions at **Straubing Forensic Psychiatric Clinic** can be described as excellent; there was a positive therapeutic environment. As regards the **Forensic Psychiatric Section in Wiesloch**, the basic material conditions were adequate in Units 13 to 16. However, the living units were austere and prison-like, and the overall atmosphere oppressive. The CPT has recommended that living conditions in these units be improved without delay.

177. The CPT has welcomed the situation observed at **Straubing Forensic Psychiatric Clinic** in respect of the treatment offered to patients. The senior staff of the **Forensic Psychiatric Section in Wiesloch** also advocated treatment that drew on all the psychiatric and clinical/psychological methods founded on individual treatment programmes. However, this was not really reflected in practice, the priority being given to security considerations. The CPT has recommended that the therapeutic care of patients in that Section be reviewed, in order to ensure that the treatment objectives advocated by the management team are fully applied in practice. The Committee has also called for steps to be taken to ensure that the medical and nursing staff of Units 13 to 16 establish a genuine therapeutic relationship with patients.

E. Homes for elderly persons

178. The CPT's delegation visited two homes for elderly persons, namely the "*Seniorenpflegeheim*" of the German Red Cross Wedding in Berlin and the "*Altenpflegeheim*" Wichernhaus in Cottbus. The delegation heard no allegations of deliberate ill-treatment of residents in these homes. On the contrary, staff members appeared to be committed and devoted to the care and well-being of all residents.

179. Material conditions of Unit 3 at Wedding were good. In contrast, the premises of Wichernhaus did not offer appropriate material conditions for elderly persons aged 70 and above, suffering from physical and psychological disorders.

The CPT's delegation paid particular attention to the treatment provided at the closed section in Unit 3 of Wedding. The level of somatic care was of a high standard. However, psychological aspects of care were found to be rather limited, with little attention paid to emotional problems (such as anxiety, grief, depression, etc.). These issues - as well as other treatment aspects raised in the report - were the subject of a number of specific recommendations by the Medical Service of the Health Insurance after its September 2000 inspection. The CPT has asked to be informed of the implementation of those recommendations.

180. Finally, the Committee has welcomed planned legislative reforms aiming at improving the quality of care and the effectiveness of inspection procedures vis-à-vis homes for elderly persons.

F. Action on the CPT's recommendations, comments and requests for information

181. The various recommendations, comments and requests for information formulated by the CPT are listed in Appendix I.

182. As regards more particularly the CPT's recommendations, having regard to Article 10 of the Convention, the Committee requests the German authorities to provide **within six months** a report providing a full account of action taken to implement them.

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

APPENDIX I

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

A. Police establishments

1. Ill-treatment

recommendations

- 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 to be applied throughout the country to all agencies entrusted with the enforcement of removal orders (paragraph 24).

requests for information

- without further delay, the remainder of the information requested by the CPT's President, by letter dated 23 May 2001, concerning the two persons mentioned in paragraph 16 (paragraph 17);
- the outcome of the investigations initiated in the cases referred to in paragraphs 19 and 20 (paragraph 21);
- the outcome of the criminal and disciplinary investigations made in the cases referred to in paragraphs 12 to 15 of the report on the 1998 visit and in the German authorities' response thereto, as well as in the case of Mr Aamir Ageeb, who died on 28 May 1999 in the course of his removal from Frankfurt am Main Airport (paragraph 21);
- detailed information on agencies other than the BGS and Federal Länder police forces entrusted with the enforcement of removal orders (paragraph 22);
- for 2000 and 2001:
 - 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;
 - an account of disciplinary/criminal sanctions imposed on the grounds of ill-treatment during the enforcement of removal orders (paragraph 22);
- precise information about the device referred to as an "officially authorised head protector" (paragraph 24);
- the selection criteria applied by other agencies than the BGS entrusted in the various Federal Länder with the enforcement of removal orders, as well as information on the training provided to the staff concerned (paragraph 25);

- whether the consent of the person concerned is required in the case of the administration of sedatives, as allowed under the instruction of the Federal Ministry of the Interior dated 15 March 2000 (paragraph 26);
- further developments with regard to the draft Law on Disciplinary Measures, as well as a copy of the latter once adopted (paragraph 27);
- additional information (e.g. composition, powers, tasks, etc.) on the specific bodies created by several Federal Länder outside operational hierarchies of the police and mandated to follow up and investigate any allegations of police misconduct (paragraph 28);
- whether the German authorities are considering the possibility of establishing, on a nationwide level, independent bodies entrusted with visiting police detention facilities (paragraph 28).

2. Conditions of detention

recommendations

- the conditions of detention in the police establishments referred to in paragraphs 29 to 35 to be reviewed, in the light of remarks made in those paragraphs (paragraph 36);
- the German authorities to ensure throughout the country that all persons detained overnight are provided with a clean mattress and blankets (paragraph 36);
- persons detained for extended periods to be offered at least one hour of outdoor exercise per day (paragraph 36);
- in cases where a person in police custody is, or becomes, highly agitated, the police to contact immediately a doctor and act in accordance with his/her opinion (paragraph 37);
- the security cells at Klapperfeldgasse Detention Centre in Frankfurt am Main to be equipped with a mattress and a special register to be kept concerning their use (paragraph 37).

requests for information

- 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 (paragraph 36).

3. Safeguards against ill-treatment

recommendations

- the German authorities to 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, 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 situations in which the exercise of this right could exceptionally be delayed is also required;
 - a right of access to a lawyer as spelt out in paragraphs 39 and 40 (paragraph 41);
- steps to be taken to ensure the regular presence of qualified health care staff at Klapperfeldgasse Detention Centre in Frankfurt am Main (paragraph 43);
- steps to 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 (paragraph 45);
- steps to be taken to discontinue the practice, observed at Munich Police Headquarters, of adding a note to the custody register indicating that a detained person is infected with Hepatitis C, HIV or tuberculosis (paragraph 46);
- the German authorities to reconsider their position as regards the introduction of a code of conduct for police interrogations (paragraph 48).

comments

- the CPT trusts that the measure adopted in a number of Federal Länder of providing detained persons with forms setting out their rights in several languages will be extended to all Federal Länder (paragraph 47).

B. Detention of foreign nationals under asylum/aliens legislation

1. Preliminary remarks

recommendations

- a high priority to 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 legislation (paragraph 51);
- the period during which foreign nationals deprived of their liberty under the aliens legislation are held in ordinary police detention facilities to be kept to the absolute minimum (paragraph 51).

2. Conditions of stay

recommendations

- additional steps to be taken to offer a better range of activities for persons held for prolonged periods in Buildings C182/183 at Frankfurt am Main Airport (paragraph 54);
- the food arrangements at Buildings C182/183 to be reviewed, in order to cater better for the specific dietary habits and needs of detained persons; the timetable for the distribution of food to be reviewed, in the light of the remarks made in paragraph 56 (paragraph 56);
- the necessary steps to be taken without further delay to provide appropriate accommodation facilities for foreign nationals subject to the airport procedure at Frankfurt am Main (paragraph 57);
- measures to be taken to offer a better range of activities to persons accommodated in Eisenhüttenstadt Detention Centre (paragraph 65).

comments

- the German authorities are invited to remedy the shortcoming described in paragraph 54 in the room used for overnight stays of late arrivals in the Transit Buildings at Frankfurt am Main Airport (paragraph 54);
- it would be desirable to fully partition all the toilets in the rooms of Büren Detention Centre (paragraph 61);
- detainees at Eisenhüttenstadt Detention Centre should be provided with means for locking their cupboards (paragraph 64).

requests for information

- whether the German authorities intend to re-establish the twice-weekly play-care services at Buildings C182/183 at Frankfurt am Main Airport (paragraph 54);
- confirmation of the relocation of BGS Inspectorate 3 and full information about the new premises (paragraph 58);
- measures taken to maintain the present level of activities at Büren Detention Centre (paragraph 62).

3. Health care

recommendations

- the German authorities to develop health care for asylum seekers at Frankfurt am Main Airport as regards medical screening upon arrival and the presence of a nurse, in the light of the remarks made in paragraph 66 (paragraph 66);
- a psychiatric and psychological service adapted to the needs of persons detained to be established in the Transit Buildings at Frankfurt am Main Airport and at Eisenhüttenstadt Detention Centre (paragraphs 67 and 69);
- a psychosocial service, adequately staffed and adapted to the needs of the persons detained in Büren Detention Centre, to be established (paragraph 68);
- steps to be taken to develop programmes to provide psychosocial care to detainees and to manage persons at risk at Eisenhüttenstadt Detention Centre (paragraph 69).

comments

- if Eisenhüttenstadt Detention Centre were to operate at its full capacity, at least the nursing staff would have to be increased (paragraph 69);
- the German authorities are invited to ensure that at both Büren and Eisenhüttenstadt Detention Centres, the requirements set out in paragraph 70 are met (paragraph 70).

4. Other issues

recommendations

- an immediate end to be put to the practice of occasionally withdrawing outdoor exercise as a security measure at Eisenhüttenstadt Detention Centre (paragraph 72);
- the necessary measures to be taken to provide adequate rooms for accommodating agitated persons at Eisenhüttenstadt Detention Centre, in the light of the remarks made in paragraph 75 (paragraph 75);

- clear instructions to be delivered to staff at Eisenhüttenstadt Detention Centre that in the event that detainee is or becomes highly agitated, a medical doctor should be contacted immediately and action taken in accordance with the doctor's opinion (paragraph 75);
- staff at Eisenhüttenstadt Detention Centre to receive specific training in dealing with agitated detainees (paragraph 75);
- at Büren and Eisenhüttenstadt Detention Centres, every instance of use of security measures, including type and duration, to be recorded in a specific register established for that purpose (paragraph 76);
- increased attention to be given to the selection of staff employed at Eisenhüttenstadt Detention Centre and to enhancing their possibilities for initial and in-service training (paragraph 80).

requests for information

- 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 (paragraph 81);
- whether, under the relevant regional legislations of North Rhine-Westphalia and Brandenburg, there is a system of visits of detention centres for foreigners, similar to the one established in Berlin (paragraph 82).

5. Safeguards

requests for information

- the comments of the German authorities with regard to the issue raised in paragraph 83 in respect of lack of translation/interpretation for immigration detainees subject to a forcible transfer at Frankfurt am Main Airport (paragraph 83);
- information about immigration detainees' access to free legal counselling in the Land of Brandenburg as well as in the other Federal Länder (paragraph 84);
- information on:
 - 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 (paragraph 85).

C. Halle Juvenile Prison

1. Preliminary remarks

recommendations

- the German authorities to pursue actively the implementation of measures aimed at combating overcrowding in prison establishments (paragraph 87).

requests for information

- further information on the new juvenile prison in Rassnitz (paragraph 86).

2. Ill-treatment

recommendations

- immediate steps to be taken to ensure that the approach described in paragraph 89 is no longer used vis-à-vis suicidal inmates at Halle Juvenile Prison (paragraph 89);
- Section 88 of the Prison Law to be amended in order to ensure that instruments of restraint are not applied to a prisoner for a period of days at a time (paragraph 90);
- every instance of resort to instruments of restraint to be recorded in a specific register established for that purpose. The entry to include 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 (paragraph 90);
- the German authorities to develop and implement a comprehensive strategy to address the problem of inter-prisoner violence and intimidation, in the light of the remarks made in paragraph 94 (paragraph 94);
- immediate steps to be taken to ensure that prisoners convicted of sexual offences are able to take daily outdoor exercise in safety (paragraph 94);
- a system of incident recording to be introduced at Halle Juvenile Prison (paragraph 95).

3. Special Unit (*Vollzugsabteilung 2/1*)

recommendations

- the regimes applied in the Special Unit (VA 2/1) of Halle Juvenile Prison to be reviewed in order to ensure that all inmates benefit from purposeful activities and appropriate human contact (paragraph 97).

requests for information

- 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; have they an effective possibility to appeal to a relevant authority against their placement in the Special Unit?) (paragraph 97).

4. Conditions of detention

recommendations

- a high priority to be given to the refurbishment of House No. 1 and the installation of a call system in all cells (paragraph 98);
- a high priority to be given to increasing the number of inmates involved in activity programmes (e.g. education, sport, vocational training, recreation and other purposeful activities) at Halle Juvenile Prison (paragraph 99).

5. Health care

recommendations

- the health care staff at Halle Juvenile Prison to be reinforced, in the light of the remarks made in paragraph 100 (paragraph 100);
- someone competent to provide first aid to be always present on the prison premises, preferably someone with a recognised nursing qualification (paragraph 100);
- the content of the Halle Juvenile Prison's programme of care to be set out in writing and made available to all members of staff who may be called upon to participate in it (paragraph 101);
- a suicide prevention policy to be developed and implemented without delay at Halle Juvenile Prison, taking into account the remarks made in paragraph 105 (paragraph 105);
- a comprehensive strategy to be developed for the management of drug-related problems (prevention and treatment), in the light of the remarks made in paragraph 109 (paragraph 109).

requests for information

- the comments of the German authorities on the considerable lack of co-operation between various services at Halle Juvenile Prison (paragraph 101).

6. Other issues

recommendations

- immediate steps to be taken to ensure that any prisoner subject to the sanction of cellular confinement is allowed access to reading matter (paragraph 111);
- inmates at Halle Juvenile Prison to be offered regular access to a telephone (paragraph 114).

comments

- the German authorities are invited to explore the possibility of abolishing deprivation of reading material and limitation of contacts with the outside world as sanctions in respect of juvenile prisoners (paragraph 111);
- the German authorities are invited to explore the possibility of increasing inmates' visit entitlements (paragraph 113);
- the CPT trusts that steps will be taken to fill as soon as possible the two vacant seats on the Advisory Council competent for Halle Juvenile Prison (paragraph 116).

requests for information

- further information on the extension of access to telephone for remand prisoners, as envisaged in the framework of the preparation of the law on custodial remand (paragraph 115);
- the views of the German authorities on the absence of specific legislation governing the imprisonment of young offenders (paragraph 117).

D. Psychiatric establishments

1. Preliminary remarks

comments

- minors should be cared for in special units/institutions (paragraph 119).

requests for information

- measures taken or envisaged to address the problem of overcrowding in the forensic psychiatric units at Nordbaden Psychiatric Centre in Wiesloch (paragraph 121).

2. Deliberate ill-treatment

recommendations

- nursing staff of the Forensic Psychiatric Section in Wiesloch to be given the clear message that the ill-treatment of patients is unacceptable and will be dealt with severely (paragraph 123).

comments

- the CPT trusts that the German authorities will take the necessary steps to ensure that the patient met by the delegation at Brandenburg an der Havel Forensic Psychiatric Department, continues to receive appropriate care throughout his stay there (paragraph 122).

3. Means of restraint

recommendations

- the renovation of all the "strongrooms" of the Forensic Psychiatric Section in Wiesloch to be undertaken without delay (paragraph 131);
- the German authorities to ensure that all the patients placed in seclusion in the Forensic Psychiatric Section in Wiesloch are decently clothed (paragraph 131);
- all patients - whether in seclusion or not - whose state of health so permits, to be offered one hour of outdoor exercise per day, in conditions that enable them to benefit fully from it (paragraphs 131 and 134);
- the use of instruments of physical restraint in psychiatric establishments to be reviewed, in the light of the remarks made in paragraph 132 (paragraph 132);
- a specific register to be established in psychiatric establishments for the purpose of recording the use of physical restraint (paragraph 133);
- medical and nursing staff of the Forensic Psychiatric Section in Wiesloch to be reminded of their obligation to fill in thoroughly the relevant forms each time resort is had to physical restraint (paragraph 133).

comments

- the German authorities are invited to verify that all patients placed in seclusion at Straubing Forensic Psychiatric Clinic, whose state of health so permits, are offered one hour of outdoor exercise every day (paragraph 127).

requests for information

- as regards the Forensic Psychiatric Section in Wiesloch, in respect of 2001, the number of patients placed in seclusion, the period of time spent in seclusion in each case and the reasons for resorting to this measure (paragraph 129);
- the results of the discussions being held between the health authorities of Baden-Württemberg and the management of the Forensic Psychiatric Section as regards seclusion (paragraph 131).

4. Handcuffing patients

recommendations

- steps to be taken to review the practice of handcuffing patients at the Forensic Psychiatric Section in Wiesloch and at Straubing Forensic Psychiatric Clinic, in the light of the remarks made in paragraph 135 (paragraph 136).

5. Staff

recommendations

- steps to be taken to fill the vacant posts, especially those for nursing staff, at Straubing Forensic Psychiatric Clinic (paragraph 137);
- steps to be taken to fill all vacant post at the Forensic Psychiatric Section in Wiesloch (paragraph 138);
- steps to 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 (paragraph 139);
- the functioning of the therapeutic teams at the above-mentioned Section to be reviewed in the light of the remarks made in paragraph 139 (paragraph 139).

6. Patient's living conditions

recommendations

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

7. Treatment

recommendations

- the therapeutic care of patients in Units 13 to 16 of the Forensic Psychiatric Section in Wiesloch to be reviewed in order to ensure that the treatment objectives advocated by the management team are fully implemented (paragraph 143);
- the administration of medicines in Units 13 to 16 of the Forensic Psychiatric Section in Wiesloch to be reviewed and the necessary steps taken to ensure that patients are fully informed about the medicines they are prescribed and their effects (paragraph 144).

8. Safeguards in the context of involuntary placement

recommendations

- the German authorities to take the necessary steps to ensure that patients subjected to a secondary referral transfer are informed in writing of the reasons for their transfer, are able to express their point of view and to lodge an appeal against the measure with a clearly defined authority (paragraph 147).

comments

- the German authorities are invited to review the practical arrangements in the Straubing and Wiesloch establishments 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 (paragraph 148);
- the CPT trusts that the situation described in paragraph 149 in respect of the patients' representative (*Patientenfürsprecher*) at Wiesloch will be remedied (paragraph 149);
- the German authorities are invited 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 (paragraph 149);

requests for information

- the comments of the German authorities on the functioning of the visiting commission (*Besuchskommission*) in Straubing Forensic Psychiatric Clinic (paragraph 150);
- whether the Forensic Psychiatric Section in Wiesloch is subject to independent monitoring and, if so, the terms of reference of the monitoring body concerned (paragraph 150);
- the comments of the German authorities with regard to the apparent procedural and financial obstacles for patients to be transferred to institutions in other Länder nearer their family or homes (paragraph 151).

E. Homes for elderly persons

requests for information

- the comments of the German authorities with regard to the absence of appropriate material conditions for elderly persons suffering from physical and psychological disorders at Wichernhaus "Altenpflegeheim" (paragraph 155);
- whether the recommendations made after the last quality inspection of the Wedding "Seniorenpflegeheim" by the Medical Service of the Health Insurance have been implemented (paragraph 156);
- the progress made in the implementation of the plan of the establishment's director for the improvement of Unit 3 of the Wedding "Seniorenpflegeheim" (paragraph 156);
- copies of the amended Law on Homes (*Heimgesetz*) and of the Law on Safeguarding the Quality of Care (*Pflegequalitätssicherungsgesetz*), once adopted (paragraph 157).

APPENDIX II

**LIST OF THE NATIONAL AUTHORITIES, OTHER INSTANCES,
NON-GOVERNMENTAL ORGANISATIONS AND PERSONS
WITH WHOM THE DELEGATION HELD CONSULTATIONS**

A. National authorities

1. Federal authorities

Federal Ministry of Justice

Mr Hansjörg GEIGER, Staatssekretär (Secretary of State)
Mr Christian LEHMANN, Ministerialdirigent
Klaus STOLTENBERG, Ministerialdirigent
Ms Gudrun TOLZMANN, Ministerialrätin
Mr Thomas MEYER, Regierungsdirektor
Mr Gerhard SCHOMBURG, Regierungsdirektor
Ms Karin MATUSSEK, Regierungsrätin

Federal Ministry of the Interior

Mr Peter HOLZERN, Polizeidirektor
Mr Ekkehard ANDRIS, Oberregierungsrat

Federal Ministry of Family, Senior Citizens, Women and Youth

Mr Christoph LINZBACH, Referatsleiter
Mr Ralf HARNISCH, Referent

Federal Ministry of Health

Ms Christiane REDEL, Ministerialrätin

2. Länder authorities

Baden-Württemberg

Mr Werner TRAUB, Ministerialrat, Ministry of Social Affairs

Bavaria

Mr Hartmut KOPPENHÖFER, Ministerialdirigent, Ministry of Justice

Mr Winfried BISCHLER, Kriminaldirektor, Ministry of the Interior

Mr Konrad KASPAR, Kriminaloberrat, Ministry of the Interior

Brandenburg

Mr Gustav-Adolf STANGE, Staatssekretär (Secretary of State), Ministry of Justice and European Affairs

Ms Margret SCHLÜTER, Staatssekretärin (Secretary of State), Ministry of Labour, Social Affairs, Health and Women

Mr Peter JONAS, Ministerialrat, Ministry of Justice and European Affairs

Mr Robert MÜNDELEIN, Leitender Regierungsrat, Ministry of Justice and European Affairs

Mr Klaus DEUTSCHLÄNDER, Staatsanwalt (Prosecutor), Ministry of Justice and European Affairs

Mr Uwe PAPKE, Leitender Polizeidirektor, Ministry of the Interior

Mr Rolf EMIG, Referatsleiter, Ministry of Labour, Social Affairs, Health and Women

Ms Bettina BAUMGARDT, Referatsleiterin, Ministry of Labour, Social Affairs, Health and Women

Hessen

Mr Bernd MANTHEI, Inspektor der Bereitschaftspolizei der Länder, Federal Ministry of the Interior

Mr Dirk HUMMEL, Ministerialrat, Ministry of Social Affairs

Nordrhine-Westphalia

Mr Ernst-Hasso RITTER, Staatssekretär (Secretary of State), Ministry of Justice

Mr Erhard STARKE, Ministerialdirigent, Ministry of Justice

Mr Ulrich LEPPER, Ministerialrat, Ministry of the Interior

Mr Julius SIEBERTZ, Ministerialrat, Ministry of Women, Youth, Family and Health

Saxony-Anhalt

Ms Mathilde DIEDRICH, Staatssekretärin (Secretary of State), Ministry of Justice
Mr Ernst P. HARTWIG, Ministerialdirigent, Ministry of Justice
Mr Frank SCHLOTTER, Ministerialdirigent, Ministry of the Interior
Ms Sabine ZAUMSEIL, Ministerialrätin, Ministry of Social Affairs

B. Other instances met at federal level

Mr Otmar KLOIBER, Bundesärztekammer (Federal Medical Association)

C. Non-governmental organisations and persons with whom the delegation held consultations

Bundesverband Psychiatrie-Erfahrener (Federal Association of Former Psychiatric Patients)
Behandlungszentrum für Folteropfer (Centre for the Treatment of Torture Victims) - Berlin
Bundesarbeitsgemeinschaft Kritischer Polizistinnen und Polizisten (Federal Association of Critical Police Officers)
Pro Asyl

Prof. Rolf HIRSCH (Initiative Handeln statt Misshandeln)
Prof. Johannes FEEST (Professor of Criminology, University of Bremen)