

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 25 November to 2 December 2013

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 (2014) 24.

Strasbourg, 24 July 2014

TABLE OF CONTENTS

Copy of the letter transmitting the CPT's report	3
I. INTRODUCTION	4
A. Dates of the visit and composition of the delegation.....	4
B. Context of the visit and establishments visited	4
C. Consultations held by the delegation and co-operation encountered	5
II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED.....	6
A. Preventive detention (<i>Sicherungsverwahrung</i>).....	6
1. Preliminary remarks	6
2. Ill-treatment.....	8
3. Situation of male inmates in preventive detention in Baden-Württemberg and Rhineland-Palatinate	8
4. Situation of the only female inmate in preventive detention (Hessen)	14
5. Health care	15
6. Other issues	16
B. Use of special security measures in prison establishments	19
C. The use of surgical castration in the context of treatment of sex offenders	23
Appendix:	
List of the federal and <i>Länder</i> authorities and other bodies met by the delegation	24

Copy of the letter transmitting the CPT's report

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Federal Government Commissioner
for Human Rights Matters
Federal Ministry of Justice and
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Strasbourg, 18 March 2014

Dear Ms Wittling-Vogel,

In pursuance of Article 10, paragraph 1, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, I enclose herewith the report to the Government of 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 25 November to 2 December 2013. The report was adopted by the CPT at its 83rd meeting, held from 3 to 7 March 2014.

The recommendations formulated by the CPT are set out in paragraphs 19, 31, 35-38, 40, 42, 44, 45, 48 and 51 of the visit report. The CPT requests the German authorities to provide **within three months** a response giving a full account of the action taken to implement them. The Committee trusts that it will also be possible for the German authorities to provide replies to the comments and requests for information set out in paragraphs 6, 7, 15, 16, 21, 23-25, 29, 30, 32, 39, 42, 43 and 46.

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

Yours sincerely,

Lətif Hüseyinov
President of the European Committee
for the Prevention of Torture and Inhuman
or Degrading Treatment or Punishment

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 25 November to 2 December 2013. The visit was one which appeared to the Committee “to be required in the circumstances” (cf. Article 7, paragraph 1, of the Convention).¹

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

- Antonius-Maria VAN KALMTHOUT, Head of delegation
- Georg HØYER
- Jari PIRJOLA.

They were supported by Michael NEURAUTER, Head of Division in the CPT’s Secretariat, and assisted by an expert, Veronica PIMENOFF, psychiatrist, former Head of Department of the Helsinki University Psychiatric Hospital (Finland), and two interpreters, Angela DRÖSSER and Silvia SCHREIBER.

B. Context of the visit and establishments visited

3. The main objective of the visit was to examine the treatment and conditions of detention of persons held in preventive detention (*Sicherungsverwahrung*). For this purpose, the delegation visited the following prisons:

- Diez Prison (Rhineland-Palatinate)
- Frankfurt Prison III for Women (Hessen)
- Freiburg Prison (Baden-Württemberg)
- Hohenasperg Socio-therapeutic Institution (*Sozialtherapeutische Anstalt* – Baden-Württemberg)

Another objective of the visit was to review the procedures for the imposition of special security measures and, in particular, the use of mechanical restraint (*Fixierung*) and the placement of agitated and/or violent inmates in a specially secured room (*besonders gesicherter Haftraum*). These issues were examined in detail in all the above-mentioned prisons and during targeted visits to Berlin-Tegel Prison and Berlin-Plötzensee and Hohenasperg Prison Hospitals.

Moreover, during its meetings with senior officials of the Federal Ministry of Justice, the delegation also discussed the issue of surgical castration of sex offenders and the action taken by the German authorities in the light of the remarks and recommendation made by the Committee on this matter in the report on the 2010 visit (see paragraphs 49 to 51).

¹ All reports on the CPT’s previous visits to Germany and the related Government responses have been made public and are available on the CPT’s website: www.cpt.coe.int

C. Consultations held by the delegation and co-operation encountered

4. The delegation had fruitful consultations with Mr Jochen HARTLOFF, Minister of Justice and Consumer Protection of Rhineland-Palatinate, and Ms Bettina LIMPERG, Permanent Representative of the Minister of Justice of Baden-Württemberg, as well as with senior officials of the Federal Ministry of Justice and the Ministries of Justice of Baden-Württemberg and Rhineland-Palatinate. In addition, the delegation met Mr Rainer DOPP, Head of the Joint *Länder* Commission of the National Agency for the Prevention of Torture (the National Preventive Mechanism established under the Optional Protocol to the United Nations Convention against Torture).

A list of all the federal and *Länder* authorities and other bodies met by the delegation is set out in the Appendix to this report.

5. The co-operation received by the delegation during the visit from the relevant authorities was excellent at all levels. In particular, in all the establishments visited, every possible effort was made by the management and staff to facilitate the delegation's work, and the delegation was able to interview inmates in private and was granted access to all the documents it wished to consult.

6. However, the CPT must come back once again to the issue of access to personal and medical files of detained persons. During the periodic visit carried out in 2010, the CPT's delegation had encountered serious difficulties in this regard in various establishments due to instructions issued by *Länder* authorities which required the explicit consent of every individual inmate in order for his/her personal and medical file to be accessed by a delegation member. As a result, the effectiveness of the work of the visiting delegation had been considerably hampered.²

On the occasion of the 2013 visit, steps had been taken by the management in various establishments prior to the delegation's arrival to ask all inmates concerned whether they agreed to the delegation having access to their personal and medical files. Thus, it was possible in most cases to consult relevant files without major difficulty.

However, the CPT must stress that the circumstances of this visit were somewhat special insofar as the visit focused on a small number of detained persons and most of the establishments concerned had been notified well in advance. It is clear that the pragmatic solution found during this visit cannot be considered for use as a model on future visits. At the meetings with representatives of the Federal Ministry of Justice at the beginning and end of the visit, the delegation emphasised that unrestricted access to the personal and medical files of detained persons in all States Parties was essential in order for the CPT to effectively carry out its work in line with the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

The CPT acknowledges the efforts made by the Federal Ministry of Justice to find a suitable long-term solution, in consultation with all relevant federal and *Länder* authorities, so that CPT visiting delegations will have unrestricted access to the personal and medical files of detained persons in all types of places of detention (i.e. police stations, prisons, detention centres for foreign nationals, psychiatric/social welfare establishments and military detention facilities). **The Committee urges all relevant federal and *Länder* authorities to resolve this issue as a matter of priority, in the light of the remarks made by the Committee in paragraphs 6 and 8 of the report on the 2010 visit.**

² See paragraphs 6 to 8 of the report on the 2010 visit (CPT/Inf (2012) 6).

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Preventive detention (*Sicherungsverwahrung*)

1. Preliminary remarks

7. The CPT had already examined the situation of persons subject to preventive detention (*Sicherungsverwahrung*) during the 2005 and 2010 periodic visits to Germany.³ At the time of the 2010 visit, the whole system of preventive detention was undergoing a complete overhaul, in the light of several judgments by the European Court of Human Rights and the Federal Constitutional Court.⁴

On 4 May 2011, the Federal Constitutional Court delivered a judgment,⁵ in which various relevant provisions of the Criminal Code on the imposition and duration of preventive detention were declared to be incompatible with the fundamental right to liberty of persons in preventive detention. It found that these provisions did not satisfy the constitutional requirement to establish a differentiation between preventive detention and detention for serving a term of imprisonment (so-called *Abstandsgebot*). All German *Länder* as competent legislative powers were required to introduce new legal provisions which fully complied with the German Basic Law. The deadline set by the Federal Constitutional Court for the completion of this legislative process was 31 May 2013.

On 5 December 2012, amendments to the relevant provisions of the Criminal Code were introduced by the federal Parliament (*Bundestag*) with the adoption of the Law on the Implementation of the *Abstandsgebot* in the context of Preventive Detention, which entered into force on 1 June 2013. According to the new provisions of the Criminal Code (in particular, Section 66c), the following precepts must be adhered to:

- there must be a differentiation between the execution of a prison sentence and preventive detention (*Abstandsgebot*), and the detention regime must be aligned as far as possible with life in the outside world;
- inmates must as a rule be held separately from prisoners (*Trennungsgebot*); exceptions are allowed for the benefit of the inmates concerned (e.g. for treatment purposes);⁶
- persons in preventive detention must be offered an individualised treatment programme (*Betreuung*) which is based on a comprehensive needs assessment (*Behandlungsuntersuchung*) and a regularly updated execution plan (*Vollzugsplan*);
- the goal of the treatment programme must be to foster the willingness of inmates to engage themselves and to reduce their dangerousness to society so that they can be (conditionally) released as soon as possible;

³ The primary aim of the potentially indefinite placement in preventive detention of criminally fully responsible offenders is the protection of the public. Placement orders are executed upon completion of a prison sentence. The criteria and procedures for placement in preventive detention, as well as for the review process, are set out in Sections 66 *et seq.* of the Criminal Code.

⁴ For further details, see paragraphs 100 to 104 of CPT/Inf (2012) 6.

⁵ Under references: Preventive Detention I (2 BvR 2365/09, 2 BvR 740/10) and Preventive Detention II (2 BvR 2333/08, 2 BvR 1152/10, 2 BvR 571/10).

⁶ See also paragraph 21.

- the execution of preventive detention must focus on therapeutic needs and promote individual liberty, participation and motivation (*therapiegerichteter, freiheitsorientierter, mitwirkungs- und motivationsfördernder Vollzug*);
- as a rule, treatment programmes shall include progressive relaxation of the regime and temporary leave (*Lockerungen*).⁷

In addition, the intervals in which preventive detention orders must be reviewed by a court have been reduced from two years to one year, and to nine months if the preventive detention has continued for more than ten years (new Section 67e of the Criminal Code).

Moreover, as regards sentenced prisoners who have been (conditionally) earmarked for preventive detention in their sentence (*angeordnete oder vorbehaltene Sicherungsverwahrung*), the relevant prison authorities are under a legal obligation to provide specific treatment measures to inmates while they are serving their sentence, with a view to rendering subsequent preventive detention as far as possible unnecessary (new Section 66c, paragraph 2, of the Criminal Code).

The CPT would like to be informed of the number of sentenced prisoners in Baden-Württemberg and Rhineland-Palatinate who are currently earmarked for preventive detention and of the specific treatment measures which are being provided to them.

8. On the basis of the above-mentioned federal legal framework, the modalities of the execution of preventive detention have been regulated in more detail by specific laws at *Länder* level. In Baden-Württemberg, a new law on preventive detention was adopted on 14 November 2012 as an amendment (new Book V) to the existing Law on the Execution of Sentences. Special laws on the execution of preventive detention were adopted in Hessen and Rhineland-Palatinate on 5 March and 8 May 2013 respectively. All three laws entered into force on 1 June 2013.

It is particularly noteworthy that, according to the above-mentioned *Länder* laws, persons in preventive detention who do not (yet) qualify for relaxation of the regime are entitled to at least four supervised periods of leave for part of a day (*Ausführungen*) every year (see paragraphs 23 and 29). Such mandatory periods of leave were not provided for by any law at the time of the 2010 visit.

9. Shortly after the 2010 visit, the (federal) Law on the Treatment and Placement of Violent Offenders Suffering from a Mental Disorder (*Therapieunterbringungsgesetz – ThUG*) was enacted, which provides for a new involuntary placement procedure of a civil nature in order to keep in detention persons who would have to be released from preventive detention in the light of the case-law of the European Court of Human Rights.

⁷ According to the relevant legal provisions, *Lockerungen* comprise the temporary stay outside the prison during part of the day whilst unsupervised (*Ausgang*) or under an escort (*Begleitausgang*), temporary leave for a period not exceeding two weeks (*Freistellung aus der Unterbringung*), regular work outside the prison whilst unsupervised (*Freigang*) or under an escort (*Außenbeschäftigung*).

On 8 August 2013, the Federal Constitutional Court declared the ThUG constitutional provided that it was interpreted strictly. In particular, detention under the ThUG will only be lawful if the concrete facts suggest that there is a high degree of risk that the person concerned will commit crimes of the highest gravity. Following this decision, all remaining cases of detention under the ThUG were re-assessed by the relevant authorities and persons concerned were progressively released. At the time of the visit, only one person in the country was still being subjected to a detention order under the ThUG.⁸ The delegation was informed that the aforementioned person was also expected to be released at some stage and that thereafter the ThUG would *de facto* become obsolete.

10. The purpose of the 2013 visit was to review the implementation in practice of the new system of preventive detention and the action taken by the relevant authorities in this connection since the 2010 visit. To this end, the delegation focused on the situation of persons in preventive detention in Baden-Württemberg and Rhineland-Palatinate, as well as in Hessen which accommodated the only woman being held in preventive detention in Germany. For the first time, the delegation also visited a socio-therapeutic institution (in Hohenasperg) where a number of persons in preventive detention were also being held.

2. Ill-treatment

11. The CPT is pleased to note that its delegation received no allegations and found no other evidence of physical ill-treatment or verbal abuse of inmates by staff or of inter-inmate violence in any of the establishments visited.

3. Situation of male inmates in preventive detention in Baden-Württemberg and Rhineland-Palatinate

12. As already indicated, the delegation carried out targeted visits to the units for preventive detention at Diez and Freiburg Prisons as well as to the Socio-therapeutic Institution in Hohenasperg.

Diez Prison has a newly-constructed separate four-storey detention block for preventive detention which was partially opened in May 2013 and officially entered into service on 28 October 2013. With an official capacity of 64 places, the unit was accommodating 40 inmates at the time of the visit.⁹ In addition, two inmates were being held in the establishment's socio-therapeutic department and four in the open unit (*Freigängerabteilung*), which was located outside the prison perimeter. Diez Prison is the only establishment for preventive detention in Rhineland-Palatinate¹⁰ and also accommodates all the persons subject to prevention detention from Saarland (on the basis of a special agreement) and, exceptionally, inmates from other *Länder*.

⁸ The person concerned was not met by the delegation.

⁹ The youngest inmate was 34 and the oldest 73 years old (the average age being 53 years). On average, inmates had spent a total of 13.4 years in detention (imprisonment and preventive detention). The shortest period spent in preventive detention was four years and the longest 33 years.

¹⁰ At the time of the visit, one person was being held in the Socio-therapeutic Institution in Ludwigsburg, which was not visited by the delegation.

At **Freiburg Prison**, the reconstruction of a new detention unit for preventive detention was completed in April 2013. It comprises 63 single rooms located on four floors of a building which was completely separated from the rest of the prison. Each floor constituted a separate living unit (*Wohngruppe*) with 15 or 16 rooms respectively. At the time of the visit, the establishment was holding 58 inmates¹¹ of whom four were being temporarily accommodated in the establishment's infirmary, one in the high-security unit (III/1) in the main building, two in the detached open unit in Emmendingen and one in the Hohenasperg Prison Hospital.

The **Hohenasperg Socio-therapeutic Institution** is a specialised prison establishment for inmates who have committed violent and/or sexual offences and is the only establishment of its kind in Baden-Württemberg.¹² At the time of the visit, the institution was operating at full capacity (52 places), holding seven inmates in preventive detention, eleven sentenced prisoners who were earmarked for preventive detention (*vorgemerkte oder vorbehaltene Sicherungsverwahrung*) and 34 other sentenced prisoners (including eight who were accommodated in the open unit). As opposed to sentenced prisoners, persons in preventive detention can only be admitted to a socio-therapeutic institution on a voluntary basis (see, in this regard, paragraph 21).

13. With a view to ensuring a differentiation between the execution of a prison sentence and preventive detention (*Abstandsgebot*), inmates were offered the following rights at Diez and Freiburg Prisons, in accordance with the relevant legal provisions:

- accommodation in a single room within a living unit (*Wohngruppe*);¹³
- more living space per inmate (at least 15 m², including the sanitary annexe, at Diez Prison¹⁴; at least 14 m², not counting the sanitary annexe, as opposed to 9 m² at Freiburg Prison¹⁵);
- right to have one's own furniture (including refrigerator) and bedclothes;
- right to wear one's own clothes;
- right to keep more personal belongings in the cell;¹⁶
- right to have a larger television set;
- right to keep pets (such as birds or fish) in the cell;
- right to prepare meals oneself (*Selbstverpflegung*) and to receive a special allowance for that purpose;
- no obligation to work;
- right to receive higher wages for work and a larger amount of pocket money;
- access to the open air in principle all day (however, fixed hours scheduled at Freiburg);
- longer periods during which cell doors remain unlocked (*Aufschluss*);¹⁷

¹¹ Between 30 and 71 years.

¹² Apart from a small socio-therapeutic unit which is attached to Offenburg Prison.

¹³ In Baden-Württemberg, *Wohngruppenvollzug* is not provided for by law as concerns adult prisoners, and in Rhineland-Palatinate, it is only "possible" according to the law.

¹⁴ See Section 11, paragraph 1, of the Law on the Execution of Preventive Detention of Rhineland-Palatinate.

¹⁵ According to Section 7 of Book I (General Provisions) of the Law on the Execution of Sentences of Baden-Württemberg, the minimum net minimum living space (i.e. without a sanitary annexe) for persons in preventive detention must be at least double the net minimum living space for prisoners in multi-occupancy cells (7 m²). The minimum living space for prisoners in single cells is 9 m².

¹⁶ E.g., at Freiburg Prison, inmates can keep 30 instead of 20 DVDs in their cell.

¹⁷ At Freiburg Prison, from 6.45 a.m. until 10.10 p.m. from Monday to Friday and from 8.05 a.m. until 10.10 p.m. at weekends.

- right to receive parcels;¹⁸
- right to make telephone calls;¹⁹
- extended visit entitlements (short-term visits of at least ten hours per month; in addition, possibility to have unsupervised visits of several hours (so-called *Langzeitbesuche*).²⁰

14. As regards conditions of detention, the delegation was particularly impressed by the newly-constructed unit for preventive detention at Diez Prison. All accommodation rooms were spacious (measuring some 18 m² including the sanitary annexe) and well-equipped (including with a toilet, shower and kitchenette). On each floor there was a specially equipped room for impaired or disabled inmates. In addition, there were various association and activity rooms (including a fitness room).

It is also praiseworthy that, during the day, inmates could move freely within the building in which the unit is located and could go outside into the open air²¹ or to another detention unit whenever they wished (throughout the day and, except at weekends, also in the evening).

15. At Freiburg Prison, material conditions were generally good in the new unit for preventive detention. All the rooms were in a very good state of repair, spacious (some 14 m² without counting the sanitary annexe) and well-equipped (one room was designed and specially equipped for an impaired/disabled inmate). On every floor, there was a large living/dining room (measuring some 50 m² and equipped with tables, chairs, a sofa, a television set, a refrigerator and plants), a kitchen and a laundry room. In addition, the detention unit comprised a large workshop, a computer room and an art therapy room.

That said, it is somewhat regrettable that the entire detention unit remained rather prison-like and that the freedom of movement of inmates within the establishment and access to the outdoor exercise yard was more restricted than at Diez Prison (in particular, at weekends). Movements between units (*Stationsbesuche*) were only possible in the evening (from 7.15 to 9.30 p.m.) and not at all on Thursdays. In addition, the outdoor exercise yard was only accessible during certain hours, according to a fixed schedule,²² and movements between the detention unit and the yard were strictly regulated. At weekends, outdoor exercise was limited to 1 ½ hours in the morning and two hours in the afternoon.

In this regard, the CPT wishes to recall that, according to the relevant legal provisions,²³ persons in preventive detention are in principle entitled to have unrestricted and unlimited access to the open air outside night lock-up periods. **The CPT encourages the authorities of Baden-Württemberg to review the existing arrangements for outdoor exercise and related security measures at Freiburg Prison accordingly.**

¹⁸ Six parcels per year at Freiburg Prison (according to Section 31, paragraph 1, of Book V of the Law on the Execution of Sentences of Baden-Württemberg). The Law on the Execution of Preventive Detention of Rhineland-Palatinate does not contain an upper limit in this regard.

¹⁹ According to the relevant legal provisions, prisoners “may” be allowed to make telephone calls.

²⁰ See also paragraphs 22 and 29.

²¹ The delegation was informed that every inmate would soon receive a special electronic badge for that purpose.

²² 2½ hours in the morning, two hours at noon and one hour in the afternoon. During the summer, the yard was also accessible for three hours in the early evening.

²³ See Section 21, paragraph 2, of Book V of the Law on the Execution of Sentences of Baden-Württemberg.

16. At the Hohenasperg Socio-therapeutic Institution, the delegation received many complaints from inmates about the generally cramped conditions and the lack of privacy in the establishment and, more specifically, about the fact that they were obliged to share a room with two or three fellow-inmates. The Director herself acknowledged that, from a therapeutic standpoint, it would be far preferable to accommodate all the inmates in single rooms. During the meeting with the Permanent Representative of the Minister of Justice of Baden-Württemberg, the delegation was informed that (medium-term) plans existed to relocate the entire socio-therapeutic institution to Stuttgart-Stammheim. **The CPT would like to receive updated information on this matter.**

17. As regards the regime and treatment measures (*Behandlungsmassnahmen*), the delegation was informed that, at Freiburg Prison, all inmates were offered work, individual counselling sessions with a psychologist and a range of recreational activities.

In addition, a number of group therapies were provided, including a treatment programme for sex offenders (10 participants, duration 1½ years), social competence training (6 participants, duration six to seven months), art therapy (5 participants), drama and movement therapy (5 participants) and a programme for control of addiction (9 participants).

Out of a total of 58 inmates, 48 participated in individual counselling sessions, including 13 who were also involved in one of the above-mentioned group therapies and eleven who were involved in two treatment groups. Seven inmates refused to take part in any therapy, two were new arrivals and not assigned yet to a treatment programme and one was apparently not capable of participating in any treatment programme (due to brain damage).

The team of specialised staff comprised three psychologists and four social workers (one on each floor). The delegation was informed that, based on the staff/inmate ratio applied in socio-therapeutic institutions, the unit for preventive detention would need at least six full-time psychologists. Moreover, contrary to the plans which existed at the time of the 2010 visit, only some of the additional specialist staff recruited by the prison administration after the aforementioned visit have been allocated to Freiburg Prison. The head of the psychology service indicated that, due to the limited staff resources, it was not possible to organise individual therapy on a weekly basis (as was provided for in the general therapeutic concept), that it was not possible to reach out to those who were lacking any motivation and were unwilling to engage themselves in therapeutic measures and that it was not possible to organise milieu therapy in an effective manner.

18. The situation appeared to be even more worrying at Diez Prison. Although a comprehensive and detailed concept for the treatment of persons in preventive detention had been prepared by the prison administration of Rhineland-Palatinate in May 2013, the visit revealed a striking discrepancy between theory and practice. Out of 40 inmates, only 24 were receiving individual therapy and only eight were participating in group therapy.²⁴ It is also regrettable that no efforts had thus far been made by the prison administration to organise group sessions for art, music or drama therapy which may be particularly beneficial for those inmates who are unwilling or unable to participate in any other group therapy programme. Moreover, the delegation noted that attempts had to a large extent failed to motivate inmates to take part in weekly meetings in the living unit, which were organised by staff as part of the ongoing milieu therapy.

²⁴ 25 inmates were working; one was following a distance-learning programme and one was enrolled in a local schooling programme.

19. The CPT acknowledges that the implementation of the new legislation governing preventive detention was still at an early stage and that it may take some time until all the planned measures are fully implemented in practice.

However, there can be no doubt that the existing resources for treatment measures for persons in preventive detention in Baden-Württemberg and Rhineland-Palatinate were insufficient to meet the requirements of the relevant federal and *Länder* legislation, namely to have a system of programmes focused on therapeutic needs and promoting individual liberty and motivation (*therapiegerichtet, freiheitsorientiert* and *motivationsfördernd*). Both at Diez and Freiburg Prisons, the delegation observed that a significant number of inmates were not at all motivated to engage themselves in any kind of therapeutic or recreational activity, remained idle in their rooms and refused to go into the open air for months on end.

The Committee recommends that the relevant authorities of Baden-Württemberg and Rhineland-Palatinate redouble their efforts to further develop individual and group treatment measures which are offered to persons in preventive detention at Freiburg and Diez Prisons and increase the number of specialist staff accordingly.

20. The delegation gained a favourable impression of the therapeutic measures offered to inmates at the Hohenasperg Socio-therapeutic Institution and the socio-therapeutic department at Diez Prison, which accommodated inmates in preventive detention who were considered to be suitable to undergo an intensive therapeutic programme for violent and/or sex offenders.²⁵

At Hohenasperg, all inmates followed an eight-week orientation phase (upon completion of a diagnostic assessment in the socio-therapeutic unit at Offenburg Prison). Depending on their profile and needs, inmates were subsequently allocated to one of five living units, each of which comprised between six and twelve inmates. All inmates were offered a comprehensive treatment programme which lasted on average three years. As a rule, every inmate participated, on a weekly basis, in a one-hour session of individual psychotherapy and one or more group therapy sessions (in addition to ongoing milieu therapy in the living group). Among other things, the following programmes were offered: a treatment programme for sex offenders (BPS), a treatment programme for violent offenders (BPG), movement therapy, a social skills programme (GSK), an addiction group, occupational therapy and art therapy. In addition, inmates could participate in an industrial or carpentry workshop and had access to a range of sports and recreational activities (such as football, volleyball, fistball, handicrafts, yoga, etc.). At least twice a year, a comprehensive assessment was carried out in respect of every inmate to review the diagnosis and progress made.

21. In accordance with the relevant legal provisions, the principle of segregation (*Trennungsgebot*) of inmates in preventive detention from prisoners does not apply in a socio-therapeutic institution/department.

Further, in order to benefit from the special treatment programmes offered in this type of establishment, persons in preventive detention had to waive most of the privileges which their legal status entailed.²⁶ The consent of the inmate concerned was sought in writing at Diez Prison and orally at the Hohenasperg Socio-therapeutic Institution.

²⁵ Inmates who, for whatever reason, fail to follow an ongoing treatment programme will normally be returned to the unit for preventive detention at Diez and Freiburg Prison respectively.

²⁶ In practice, only very few privileges deriving from preventive detention were maintained (e.g. higher wages for work or a larger amount of pocket money).

In the CPT's view, it goes without saying that, for treatment in a socio-therapeutic institution/department of persons in preventive detention to be effective, the principle of segregation cannot be applied²⁷ and that certain adjustments may be required as regards the implementation in practice of the *Abstandsgebot*. However, requiring persons in preventive detention to give a blanket waiver regarding most of their rights otherwise provided for by law in order to benefit from a specialised treatment programme appears to be disproportionate. These rights should only be restricted, with the informed consent of the person concerned, insofar as it is strictly necessary for the creation of a therapeutic environment and the effective provision of treatment measures. **The CPT would like to receive the comments of the relevant federal and *Länder* authorities on this matter.**

22. As regards contact with the outside world, the situation of persons in preventive detention is significantly more favourable than that of prisoners. According to the relevant legal provisions, inmates are entitled to have unrestricted access to the telephone and to receive short-term visits of at least ten hours per month as well as unsupervised visits of several hours (*Langzeitbesuche*).²⁸ As far as the delegation could ascertain, the aforementioned requirements were being effectively implemented at Diez and Freiburg Prisons.

23. The CPT appreciates the efforts made by the management of Diez and Freiburg Prisons to grant a relaxation of the regime and temporary leave (*Lockerungen*) for inmates and to organise mandatory periods of supervised prison leave (*Ausführungen*)²⁹ for those who have not (yet) qualified for *Lockerungen*.³⁰ The Committee also acknowledges the fact the organisation of *Ausführungen* ties up considerable staff resources.

The CPT trusts that the relevant authorities of Baden-Württemberg and Rhineland-Palatinate will take the necessary measures to ensure that:

- ***Lockerungen* are progressively developed as an integral part of the individual detention plan with a view to preparing inmates for their release, including by involving inmates in the preparation of the measure and by organising individual feedback with the person concerned;**
- ***Ausführungen* are arranged for inmates who do not qualify for a *Lockerung* in such a way that they are meaningful and enjoyable (in particular, for those inmates who do not appear to have any chance of being released in the foreseeable future).**

²⁷ The whole treatment programme is based on the concept that inmates are accommodated in living units and participate in milieu therapy and various other group therapies.

²⁸ By contrast, in Baden-Württemberg, adult prisoners are only entitled to a minimum of one one-hour visit per month (in practice, several hours) and *Langzeitbesuche* are only provided for by law for young inmates who have children; in addition, prisoners are not formally entitled to make telephone calls (although they were usually allowed to do so). The Law on the Execution of Sentences of Rhineland-Palatinate stipulates that adult prisoners are entitled to short-term visits for a total of at least two hours per month and that they *may* be allowed to receive *Langzeitbesuche* and make telephone calls.

²⁹ During *Ausführungen*, inmates were frequently subjected to special security measures (such as handcuffing).

³⁰ Following the introduction of the system of mandatory *Ausführungen*, some inmates had had their first opportunity to spend several hours outside the prison since the beginning of their imprisonment more than 20 or even 30 years before.

Further, **the Committee would like to receive updated information on the number of inmates at Diez and Freiburg Prisons who have thus far not benefited from any *Lockerung* and of the number of *Ausführungen* which have been organised for them.**

24. At Diez Prison, every floor was equipped with a telephone booth so that inmates could make telephone calls on a confidential basis.

In contrast, at Freiburg Prison, telephones were only available in the corridor of each living unit, and a number of inmates complained about the fact that they were often not able to make telephone calls without being overheard by fellow-inmates or staff. **Steps should be taken to remedy this shortcoming.**

25. Both at Diez and Freiburg Prisons, the delegation was informed that the relevant prison administration was considering the creation of restricted Internet access for persons in preventive detention. **The CPT welcomes this initiative and would like to receive updated information on this matter.**

4. Situation of the only female inmate in preventive detention (Hessen)

26. As already indicated in paragraph 10, only one woman was being held in preventive detention in Germany at the time of the visit.³¹ After her preventive detention had become effective in October 2012, she was transferred from another prison where she had served her sentence to Frankfurt Prison III for Women.

27. Material conditions in the newly-constructed unit for preventive detention were generally very good (see, however, paragraph 28). It comprised five spacious two-room suites³² (with adjacent sanitary facilities) as well as a kitchen, a large dining room and a television room for common use by inmates held in the unit.

28. Pending the construction of the new unit for preventive detention, the woman concerned had initially been accommodated together with sentenced prisoners for seven months. Following her placement in the unit for preventive detention, arrangements were made by the management (in accordance with the relevant legislation³³) to transfer a female prisoner on a voluntary basis to the same unit in order to avoid the woman in preventive detention being left on her own.

However, due to tensions which arose between the two inmates, this arrangement was discontinued after some five months, and the female prisoner was taken back to her previous detention unit. For various reasons, further attempts to transfer another female prisoner to the unit for preventive detention have apparently failed. As a consequence, the woman in preventive detention remained *de facto* subjected to a solitary-confinement-type regime (apart from the time in which she worked in a sewing workshop).

³¹ Shortly after the beginning of the visit, a second woman in preventive detention, who had been met by the delegation during the 2010 visit at Schwäbisch Gmünd Prison (Baden-Württemberg), had been released.

³² According to Section 67, paragraph 4, of the Law on the Execution of Preventive Detention of Hessen, every person in preventive detention must be offered at least 18 m² of living space (including the sanitary annexe).

³³ Section 68, paragraph 5, of the Law on the Execution of Preventive Detention of Hessen.

The situation was further exacerbated by the fact that the unit for preventive detention did not have its own outdoor exercise yard, and the woman in preventive detention categorically refused to take outdoor exercise together with prisoners as she constantly felt intimidated and threatened by many of them. Apparently, she had hardly ever been outside since her arrival at the prison.

The above-mentioned issues were discussed by the delegation with the prison director who affirmed to the delegation that a separate outdoor exercise yard for the unit for preventive detention would be created by the summer of 2014. Further, steps would be taken to arrange for group therapy for the woman.³⁴

29. As regards contact with the outside world, the woman in preventive detention was allowed to send and receive letters, receive short- and long-term visits and make telephone calls (as provided for by law). In addition, periods of escorted leave (*Ausführungen*) were being organised on a regular basis.

Notwithstanding this, the woman complained about the fact that, due to the lack of appropriate facilities, she was not able to make telephone calls in private and that outgoing letters were being read by members of staff. **The CPT would like to receive the comments of the authorities of Hessen on this matter.**

5. Health care

30. The delegation did not carry out a full assessment of the health-care services in the establishments.

Nevertheless, the visit revealed a number of shortcomings which give rise to particular concern. In particular, the CPT must stress that, bearing in mind the size of the prison (some 600 inmates), it is totally insufficient for a doctor to be present for only two days per week at Diez Prison.³⁵ This issue was raised during the visit with the Minister of Justice of Rhineland-Palatinate who affirmed to the delegation that every possible effort would be made to find a solution to this problem in the near future.

The CPT would like to receive confirmation that a doctor is now present at Diez Prison on a full-time basis.

31. Further, at Freiburg Prison, the delegation observed that inmates wishing to see the doctor had to submit a written request by filling in a form which contained a special section dealing with the “reasons” for the request. This form was usually handed over to custodial staff openly.

The CPT recommends that appropriate steps be taken by the relevant authorities of Baden-Württemberg to ensure that inmates at Freiburg Prison are able to have access to the establishment’s health-care service on a confidential basis, for example, by means of a message in a sealed envelope.

³⁴ At the time of the visit, the woman was only receiving individual therapy in the form of regular talks with a psychologist.

³⁵ In contrast, Freiburg Prison (with a capacity of 640 places) had one full-time doctor as well as one doctor working part-time (50%) exclusively for persons in preventive detention.

32. At Freiburg Prison, the delegation met one inmate who was suffering from a learning disability and was diagnosed with an acute psychotic disorder and a personality disorder. In recent months, he had repeatedly refused to take prescribed medication and, on several occasions, he had refused to talk to the psychiatrist and also refused to be transferred to the psychiatric ward of the Hohenasperg Prison Hospital. In addition, he had caused several incidents in the prison and had repeatedly been placed in a specially secured room (*besonders gesicherter Haftraum* – BGH). Shortly before the visit, court proceedings had been initiated with a view to transferring him to a psychiatric hospital and providing medical treatment on an involuntary basis.

The CPT would like to be informed of the outcome of these proceedings and the action subsequently taken in respect of the above-mentioned inmate.

33. As regards the role of doctors in disciplinary proceedings, reference is made to the remarks and recommendation in paragraph 37.

6. Other issues

34. From the examination of a number of individual files, it transpired that judicial reviews were carried out by the competent court (*Strafvollzugskammer*) within the time-limits provided for by law (see paragraph 7). The court decisions were usually based on the report submitted by the prison management (*Vollzugskonferenz*) and an external expert opinion. During the court proceedings, inmates were entitled to benefit from the service of an *ex officio* lawyer, in the event that they did not have a private lawyer.

35. The CPT notes with interest that, with the adoption of the Regional Law on the Execution of Preventive Detention, disciplinary sanctions have been abolished in the context of preventive detention in Rhineland-Palatinate.

In contrast, the relevant laws of Baden-Württemberg³⁶ and Hessen³⁷ provide for a system of disciplinary sanctions regarding persons in preventive detention which are similar to those applicable to prisoners.

In both *Länder*, the most severe disciplinary sanctions which may be imposed on inmates are “prohibition of movement outside the room” for up to one month and solitary confinement (*Arrest*) for up to four weeks. It is noteworthy that no restrictions can be imposed on inmates regarding contact with the outside world or access to reading material (either as separate sanctions or as corollary sanctions during disciplinary *Arrest*). In the case of disciplinary *Arrest*, inmates are entitled to at least one hour of outdoor exercise per day.

Both at Freiburg Prison and at Frankfurt Prison III, the delegation observed that, since the entry into force of the new *Länder* laws on preventive detention, not one single person in preventive detention had been subjected to the sanctions of prohibition of movement outside the room or disciplinary *Arrest*.

³⁶ Sections 73 to 76 of Book V of the Code on the Execution of Sentences of Baden-Württemberg.

³⁷ Sections 55 and 56 of the Law on the Execution of Preventive Detention of Hessen.

Notwithstanding this favourable situation, the CPT considers that, given the potentially very damaging effects of such sanctions, the maximum period of disciplinary isolation should be no more than 14 days for a given offence, and preferably lower. Further, there should be a prohibition on sequential disciplinary sentences resulting in an uninterrupted period of solitary confinement in excess of the maximum period. Any offences committed by an inmate which it is felt call for more severe sanctions should be dealt with through the criminal justice system.³⁸

The CPT recommends that steps be taken by the relevant authorities in Baden-Württemberg and Hessen and, where appropriate, in other *Länder* where persons are being held in preventive detention, to ensure that the above-mentioned precepts are effectively implemented in practice.

36. At Freiburg Prison, disciplinary procedures were well-documented and appeared to be carried out in accordance with the relevant legal provisions.

That said, it is a matter of concern that inmates usually did not receive a copy of the disciplinary decision and were only informed orally of the possibility to lodge an appeal.

The CPT recommends that steps be taken by the relevant authorities in Baden-Württemberg and, where appropriate, in other *Länder* in order to ensure that persons in preventive detention who are facing disciplinary charges receive a copy of the disciplinary decision, informing them about the reasons for the decision and the avenues for lodging an appeal. The inmates should confirm in writing that they have received a copy of the decision.

37. Further, the CPT continues to have misgivings about the role of prison doctors in the context of disciplinary proceedings.³⁹ Despite the specific recommendation made by Committee after previous visits, the requirement of prison doctors to certify whether inmates are fit to undergo the sanction of disciplinary *Arrest* has been maintained in the new laws governing preventive detention in Baden-Württemberg⁴⁰ and Hessen⁴¹ (as well as in various other *Länder*).

The Committee wishes to stress once again that medical practitioners working in prisons – including in the context of preventive detention – act as the personal doctors of inmates, and obliging prison doctors to certify that inmates are fit to undergo punishment is likely to be detrimental to the doctor-patient relationship that should exist between a prison doctor and inmates.

On the other hand, a prison's health-care service should be very attentive to the situation of inmates during their placement in disciplinary *Arrest* (or that of any other inmates held under conditions of solitary confinement). The prison doctor should be informed of every such placement and should visit the inmate concerned immediately after placement and report to the prison director whenever an inmate's health is being put seriously at risk by being held in solitary confinement. Subsequently, a doctor or qualified nurse should visit on a regular basis, at least once per day, inmates held under conditions of solitary confinement and provide them with prompt medical assistance and treatment as required.⁴²

³⁸ See also the 21st General Report on the CPT's activities (CPT/Inf (2011) 28), paragraph 56 (b).

³⁹ See, most recently, paragraph 84 of CPT/Inf (2012) 6.

⁴⁰ Section 76, paragraph 5, of Book V of the Law on the Execution of Sentences of Baden-Württemberg.

⁴¹ Section 56, paragraph 5, of the Law on the Execution of Preventive Detention of Hessen.

⁴² At present, the relevant legal provisions stipulate that inmates subjected to the sanction of disciplinary *Arrest* shall remain "under medical supervision".

The CPT reiterates its recommendation that existing regulations and practice concerning the role of prison doctors in relation to disciplinary matters be reviewed in all German *Länder*, in the light of the above remarks. In doing so, regard should be had to the comments made by the CPT in its 21st General Report.⁴³

38. At Diez and Freiburg Prisons, a number of inmates met by the delegation stated that they had no trust in the internal complaints procedure since complaints addressed to the management would not be processed in an effective manner. Regrettably, the delegation was not in a position to follow up these allegations since neither establishment kept a centralised record of inmates' complaints.

The CPT recommends that this shortcoming be remedied at Diez and Freiburg Prisons. Further, the Committee would like to receive the comments of the relevant authorities of Baden-Württemberg and Rhineland-Palatinate on the above-mentioned allegations.

39. Finally, the CPT welcomes the fact that, at Freiburg Prison, specific house rules for persons in preventive detention had been prepared in the light of the new legal framework and were provided to inmates. At Diez Prison and Frankfurt Prison III, the delegation was informed by the management that such specific house rules were being prepared and would be finalised soon. **The Committee would like to receive copies of these rules once they have been issued.**

⁴³ See paragraphs 62 and 63 of CPT/Inf (2011) 28.

B. Use of special security measures in prison establishments

40. In all the *Länder* visited, the relevant legislation⁴⁴ governing the execution of sentences and preventive detention contains corresponding provisions regarding the imposition of special security measures (*besondere Sicherungsmassnahmen*). The most severe measures which may be imposed on inmates are solitary confinement in a room/cell (*Absonderung*), placement in a specially secured room (*besonders gesicherter Haftraum* – BGH) and the use of instruments of restraint (*Fesselung* or *Fixierung*).

In this regard, it is highly regrettable that, despite the specific recommendation repeatedly made by the Committee for almost two decades, the special security measure of “prohibition of outdoor exercise” has not only been maintained in the federal Law on the Execution of Sentences (which is still applicable in certain *Länder*), but has also been introduced in the newly-adopted regional laws governing preventive detention and the execution of sentences (including vis-à-vis juveniles).⁴⁵

As far as the delegation could ascertain, this specific security measure has not been applied in recent times in any of the establishments visited (see, however, paragraph 48). Notwithstanding that, **the CPT once again calls upon the relevant federal and all *Länder* authorities to take the necessary steps to ensure that prohibition of outdoor exercise is abolished from the relevant legislation as a special security measure (in respect of all categories of inmate).**

41. In the course of the visit, the delegation examined the procedures for the imposition of special security measures and, more specifically, the use of *Fixierung* and placement in a BGH in several of the establishments visited. For this purpose, it examined relevant documentation and interviewed inmates who had previously been subjected to such measures.

42. As regards the resort to *Fixierung*, the delegation observed significant improvements compared to the situation found during previous visits to Germany. No instances of *Fixierung* or only very few had occurred in recent years in any of the prisons visited, and whenever such instances did occur it was usually for relatively short periods.

It is noteworthy that in both Baden-Württemberg and Berlin, a policy decision had been taken by the prison administration to transfer agitated and/or violent inmates as soon as possible from prison to the regional prison hospital (in Hohenasperg and Berlin-Plötzensee respectively). Thus, the persons concerned were kept under close supervision by health-care staff.

⁴⁴ Sections 47 to 52 of Book II (remand detention), Sections 67 to 71 of Book III (execution of sentences), Sections 63 to 67 of Book III (juvenile prisoners) and Sections 62 to 64 of Book V (preventive detention) of the Code on the Execution of Sentences of Baden-Württemberg; Section 50 and 51 of the Law on the Execution of Sentences and Sections 50 and 51 of the Law on the Execution of Preventive Detention of Hessen; Sections 88 to 90 of the Law on the Execution of Sentences and Sections 83 to 85 of the Law on the Execution of Preventive Detention of Rhineland-Palatinate; Sections 88 to 91 of the Federal Law on the Execution of Sentences (applicable *inter alia* in Berlin).

⁴⁵ According to the relevant legal provisions, a doctor must be regularly consulted during the implementation of such a measure.

The CPT welcomes the fact that the requirement of ensuring permanent and direct supervision of every person subject to *Fixierung* by a member of staff (so-called *Sitzwache*) had been introduced in the new *Länder* laws governing the execution of sentences and preventive detention. In all the establishments visited, this requirement appeared to be effectively implemented in practice.

In accordance with the relevant legal provisions, the decision to resort to *Fixierung* was always taken by a doctor (in the prison hospitals visited) or a doctor was always called immediately after a decision had been taken by the prison director, with a view to examining the state of health of the person concerned. Moreover, in all the establishments visited, detailed instructions had been issued on the use of special security measures (including *Fixierung*), and all prison officers were reportedly receiving special training on restraint techniques on a regular basis.

Further, in all the establishments visited, instances of *Fixierung* were well-documented in the medical file of the persons concerned (including with the running record of the *Sitzwache*). In addition, comprehensive special registers were kept at Berlin-Tegel and Diez Prisons, as well as at the Hohenasperg Prison Hospital.

That said, at the prison hospital in Berlin-Plötzensee, the recording of instances of *Fixierung* was far from satisfactory. The central register consisted of a compilation of internal reports (*dienstliche Meldungen*), which apparently did not cover all cases of *Fixierung*. In addition, several of the compiled reports were lacking even the most basic information (such as the time of the beginning and the end of the measure or the reasons for applying the measure).

The CPT reiterates its recommendation that steps be taken by the relevant authorities in Berlin and, where appropriate, in other *Länder* to ensure that every instance of *Fixierung* in the prison hospital is recorded in a specific register established for that purpose (for example, the register on special security measures), in addition to the individual's file. The entry should include the times at which the measure began and ended, the circumstances of the case, the reasons for resorting to the measure, the name of the person who ordered or approved it, and an account of any injuries sustained by the person or staff. This will greatly facilitate both the management of such cases and oversight into the extent of their occurrence.

Further, **the Committee encourages the relevant authorities of all *Länder* to abandon the resort to *Fixierung* in prisons.**

43. With the exception of Berlin-Tegel Prison, all establishments visited had a special restraint bed equipped with soft cloth straps, in order to limit harmful effects.

At Tegel Prison, inmates were subjected to *Fixierung*, pending their transfer to the prison hospital, by being shackled with broad metal handcuffs to metal rings on a platform covered with a mattress and the legs being immobilised with leather belts. The prison doctor himself expressed concern about the potentially harmful effects of such restraint devices. The delegation was informed by the management that the prison administration of Berlin had very recently decided to stop the use of handcuffs for the purpose of *Fixierung* and to replace them with soft cloth straps.

The CPT would like to receive confirmation that metal handcuffs (and leather belts) are no longer used for the purpose of *Fixierung* at Berlin-Tegel Prison.

44. At the prison hospital in Berlin-Plötzensee, agitated inmates were subjected to *Fixierung* by being attached with soft cloth straps to a hospital bed in a normal patient's room (without other patients being present).

In contrast, at the prison hospital in Hohenasperg, *Fixierungen* took place in a multi-purpose supervision room (“*interdisziplinärer Überwachungsraum*”), which accommodated up to two patients who were in need of constant supervision for somatic and/or mental health reasons.⁴⁶ In practice, it could happen that an agitated inmate was subjected to *Fixierung* while another patient was being held in the same room in order to be monitored after a surgical intervention. The delegation was told that in the event of two persons of the opposite sex being placed in the room at the same time, a curtain would be used to provide a visual separation between them. It should also be added that the overall conditions in the room were cramped with office equipment and all kinds of medical devices. The doctors met by the delegation themselves expressed concern about this arrangement and the related security risks, for patients and staff alike. At the same time, the view was expressed that most instances of *Fixierung* could be avoided if the hospital had at its disposal a more suitable infrastructure and additional nursing staff.

The CPT recommends that the relevant authorities of Baden-Württemberg review the arrangements for the use of *Fixierung* at the Hohenasperg Prison Hospital, in the light of the above remarks.

45. With the exception of the prison hospital and the socio-therapeutic institution in Hohenasperg, all the prison establishments visited had a number of specialty secured rooms (BGH).

Material conditions in the BGH were on the whole adequate in terms of state of repair and access to natural light and artificial lighting. Every cell was equipped with a foam mattress and a floor-level toilet. It is particularly noteworthy that the two BGH in the unit for preventive detention at Diez Prison were also equipped with furniture made out of foam.

In all the establishments visited, inmates placed in a BGH were usually monitored through CCTV cameras and a call system (interphone). The CPT welcomes the fact that, at the Berlin-Plötzensee Prison Hospital, a member of staff (*Sitzwache*) was in many cases also present in front of the cell.

That said, in one of the two BGH at the Berlin-Plötzensee Prison Hospital, the delegation found metal rings anchored to the floor. Although there were no indications that these rings had recently been used for restraining agitated patients, **the CPT recommends that they be removed.**

46. In all the establishments visited, placements in a BGH were generally well-documented, in accordance with the relevant legal provisions.

That said, at Freiburg Prison, placement orders were usually issued by the Director only orally. **Steps should be taken by the relevant authorities of Baden-Württemberg to remedy this shortcoming.**

⁴⁶ The hospital had no seclusion room. The observation room was jointly used by the Departments of Internal Medicine, Surgery and Psychiatry.

47. According to the relevant legislation, inmates placed in a BGH must be seen by a doctor as soon as possible upon placement and thereafter on a daily basis.⁴⁷ In addition, most laws explicitly stipulate that persons placed in a BGH must always be provided with “special care”.

As far as the delegation could ascertain, persons placed in a BGH were always monitored by a doctor (or, at weekends, by a nurse reporting to a doctor) on a daily basis.

48. In most cases, agitated and/or violent inmates had been held in a BGH for less than 24 hours. That said, it is a matter of concern that, despite the specific recommendation made by Committee after previous visits, persons held in a BGH for more than 24 hours were as a general rule still not offered any outdoor exercise.

In their response to the report on the 2010 visit,⁴⁸ the German authorities state that “[i]t must be taken into account that placing inmates in a specially secured cell is tied to strict requirements, and that this measure is taken only in rare cases. In such an event, the fundamental pre-requisite is that the conduct or the psychological state of the prisoner must give rise to the assumption that there is an increased risk of the inmate’s absconding, or a risk of his or her violently attacking others or destroying objects, or a risk of suicide or self-harm. In these cases, it is not unlikely that any time spent outdoors, outside of the specially secured cell, will turn into an incalculable danger; on the other hand, completely shackling such an inmate and guiding them outside is a degrading procedure”.

In the CPT’s view, the arguments put forward by the German authorities are not entirely convincing. The CPT does acknowledge that additional staff and reinforced security measures may be required to arrange for the outdoor exercise of an inmate held in a BGH. That said, the Committee is confident that adequately trained prison officers will normally manage to find solutions which will not amount to a “degrading procedure” for the person concerned.

The CPT calls upon the authorities of all *Länder* to take the necessary steps to ensure that inmates placed in a specially secured room (BGH) for 24 hours or more are as a rule offered at least one hour of outdoor exercise per day.

⁴⁷ In Baden-Württemberg, daily checks must be carried out “as far as possible” and in Hessen “as a rule”.

⁴⁸ See page 43 of CPT/Inf (2012) 7.

C. The use of surgical castration in the context of treatment of sex offenders

49. In the report on the 2010 visit,⁴⁹ the CPT had already expressed its fundamental objections to the use of surgical castration as a means of treatment of sex offenders, since it was a mutilating, irreversible intervention and could not be considered as a medical necessity in the context of the treatment of sex offenders. In the CPT's view, surgical castration of detained sex offenders could be considered as amounting to degrading treatment. Therefore, the Committee recommended that this practice be discontinued in all German *Länder*.⁵⁰

50. By letter of 30 September 2013, the German authorities informed the CPT that a research project had been initiated in order to obtain a more specific overview of the actual application of surgical castration in the country. In this connection, the following statistical data had been collected:

Since 2000, a total of 29 applications had been submitted by individuals to relevant *Länder* expert commissions, of which eleven were accepted. During the period 2010 to 2012, only two out of a total of eight applications were approved.

The German authorities further stated that “[c]ompared with the numbers that were collected for earlier time periods (1970 - 1980: 770 applications, 430 approvals) it is clear that surgical castration – also certainly due to the continued development of anti-androgen medications – by now is practically meaningless”. Against this background, the German authorities indicated that the Federal Government was analysing whether a repeal of the Law on Voluntary Castration should be considered.

51. During the 2013 visit, the issue of surgical castration of sex offenders was raised by the delegation during consultations with representatives of the Federal Ministry of Justice. On this occasion, the delegation was told that discussions were ongoing among the relevant authorities at federal and *Länder* levels on whether to involve the German Ethics Council and on whether to abolish the Law on Voluntary Castration.

Whilst acknowledging that the resort to surgical castration in the context of treatment of sex offenders has drastically diminished in recent years throughout Germany, **the CPT reiterates its recommendation that steps be taken by all relevant federal and *Länder* authorities to put a definitive end to its use and to amend the relevant legal provisions accordingly.**

⁴⁹ For further details, see paragraphs 140 to 145 of CPT/Inf (2012) 6.

⁵⁰ At the time of the 2010 visit, surgical castration was not being applied at all in most of the *Länder*.

APPENDIX

List of the federal and *Länder* authorities and other bodies met by the delegation

A) Federal and *Länder* authorities

Federal Ministry of Justice and Consumer Protection

Mr Alfred BINDELS	<i>Ministerialdirektor</i> , Head of the Department of Constitutional Law, Administrative Law, International Public Law and European Law
Mr Thomas DITTMANN	<i>Ministerialdirektor</i> , Head of the Department of Criminal Law
Dr Bernhard BÖHM	<i>Ministerialdirigent</i> , <i>Unterabteilungsleiter</i> (Criminal Law)
Dr Bernd BÖSERT	<i>Ministerialrat</i> (Criminal Law)
Dr Hans-Jörg BEHRENS	<i>Ministerialrat</i> , <i>Referatsleiter</i> (Office of the Federal Government Commissioner for Human Rights Matters)
Ms Katja BEHR	<i>Regierungsdirektorin</i> , <i>Referatsleiterin</i> (Office of the Federal Government Commissioner for Human Rights Matters)
Dr Denise RENGER	<i>Regierungsdirektorin</i> , <i>Referentin</i> (Human Rights)
Dr Kathrin BRUNOZZI	Judge, <i>Referentin</i> (Human Rights)
Ms Susanne BUNKE	<i>Regierungsdirektorin</i> , <i>Referatsleiterin</i> (Public Health Law)
Mr Georg LÜTTER	<i>Ministerialrat</i> , <i>Referatsleiter</i> (Guardianship Law)
Ms Almuth HAENSCH	Prosecutor, <i>Referentin</i> (Prison Law and Criminology)

Ministry of Justice of Baden-Württemberg

Ms Bettina LIMPERG	<i>Ministerialdirektorin</i> , Head of Administration (<i>Amtschefin</i>) of the Ministry of Justice and Permanent Representative of the Minister of Justice
Mr Ulrich FUTTER	<i>Ministerialdirigent</i> , Head of the Prison Administration

Senate of Justice and Consumer Protection of Berlin

Mr Hans-Arduin POHL	<i>Senatsrat</i> , <i>Referent</i> , Prison Administration
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Ministry of Justice and Consumer Protection of Rhineland-Palatinate

Mr Jochen HARTLOFF	Minister of Justice and Consumer Protection
Mr Gerhard MEIBORG	Head of the Prison Administration

B) National Agency for the Prevention of Torture

Mr Rainer DOPP	Head of the Joint <i>Länder</i> Commission for the Prevention of Torture
Dr Helmut ROOS	Member of the Joint <i>Länder</i> Commission for the Prevention of Torture
Ms Christina HOF	Co-ordinator, Office of the National Agency for the Prevention of Torture