



CPT/Inf (2011) 6

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 7 December 2010

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 (2011) 7.

Strasbourg, 22 February 2012

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Copy of the letter transmitting the CPT's report

Dr Almut Wittling-Vogel
Ministerialdirigentin
Federal Government Commissioner
for Human Rights Matters
Federal Ministry of Justice
D – 11015 Berlin

Strasbourg, 19 July 2011

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 German Government drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its visit to Germany from 25 November to 7 December 2010. The report was adopted by the CPT at its 75th meeting, held from 4 to 8 July 2011.

The various recommendations, comments and requests for information formulated by the CPT are listed in Appendix I of the report. 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 response giving 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 response, reactions to the comments formulated in this report as well as replies to the requests for information made.

The Committee would ask, in the event of the response being forwarded in German, that it be accompanied by an English or French translation.

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

Yours sincerely,

Lətif Hüseynov
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 periodic visit to Germany from 25 November to 7 December 2010. It was the Committee's sixth visit to Germany¹.

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

- Timothy DALTON (Head of delegation)
- Yakin ERTÜRK
- Julia KOZMA
- Stefan KRAKOWSKI
- Anna SABATOVA
- Antonius-Maria VAN KALMTHOUT.

They were supported by Michael NEURAUTER, Head of Division, and Stephanie MEGIES of the CPT's Secretariat and assisted by:

- Veronica PIMENOFF, psychiatrist, Head of Department of Helsinki University Psychiatric Hospital, Finland (expert)
- Angela Esther DRÖSSER (interpreter)
- Silvia Anna SCHREIBER (interpreter).

¹ The CPT has previously carried out four periodic visits (in 1991, 1996, 2000 and 2005) and one ad hoc visit (in 1998) to Germany. The reports on these visits and the responses of the German authorities are available on the CPT's website: <http://www.cpt.coe.int/en/states/deu.htm>

B. Establishments visited

3. The delegation visited the following places of detention:

Baden-Württemberg

- Freiburg North Police Station (*Polizeirevier*), Bertoldstrasse 43a
- Stuttgart Police Headquarters (*Polizeipräsidium*), Hahnemannstrasse 1
- Freiburg Prison (Unit for preventive detention)
- Schwäbisch Gmünd Prison for women (including the detached unit for male prisoners in Ellwangen)

Bavaria

- Munich-Perlach Police Station 24 (*Polizeiinspektion*), Adenauerring 31
- Munich-Stadelheim Prison (Unit for male immigration detainees and detached unit for women)

Berlin

- Federal Police Station (*Bundespolizeiinspektion*), Central Railway Station, Europaplatz 1
- District Police Headquarters 3 (*Polizeidirektion 3*), Section 34, Alt-Moabit 145
- Berlin Juvenile Detention Centre (*Jugendarrestanstalt*)

North-Rhine Westphalia

- Düsseldorf Airport Federal Police Station (*Bundespolizeiinspektion*), transit zone
- Cologne Police Headquarters (*Polizeipräsidium*), Walter-Pauli Ring 2 - 4
- Cologne-Center Police Station (*Polizeiinspektion*), Stolkgasse 47
- Cologne Prison (Units for juveniles and young adults and high-security unit)
- Herford Juvenile Prison
- Rheine Forensic Psychiatric Clinic

Saxony

- Leipzig Police Headquarters (*Polizeidirektion*), Dimitroffstrasse 1
- Leipzig Prison

Saxony-Anhalt

- Burg Prison (Unit for preventive detention).

C. Consultations held by the delegation and co-operation

4. The delegation had fruitful consultations with Ms Sabine Leutheusser-Schnarrenberger, Federal Minister of Justice, Ms Birgit Grundmann, State Secretary of the Federal Ministry of Justice, Mr Jürgen Martens, Minister of Justice of Saxony, Mr Wilfried Bernhardt, State Secretary of Justice of Saxony, Ms Brigitte Mandt, State Secretary of Justice of North Rhine-Westphalia, and Mr Michael Steindorfner, Permanent Representative of the Minister of Justice of Baden-Württemberg, as well as with senior officials from the Federal Ministries of Justice and the Interior and various *Länder* ministries.

It also met the Heads of the Federal Agency for the Prevention of Torture and the Joint *Länder* Commission for the Prevention of Torture, both of which form part of the National Preventive Mechanism (NPM) established under the Optional Protocol to the United Nations Convention against Torture (OPCAT), as well as representatives of the Medical Chamber of Berlin.

Moreover, the delegation held meetings with representatives of the German Institute of Human Rights and non-governmental organisations active in areas of concern to the CPT.

A list of the federal and *Länder* authorities as well as non-governmental organisations and persons met by the delegation is set out in Appendix II to this report.

5. As regards the co-operation received throughout the visit, the reception at the establishments visited, including those which had not been notified in advance, was generally very good and all staff met by the delegation made a genuine effort to be helpful and cooperative.

The CPT also wishes to express its appreciation for the assistance provided before and during the visit by its liaison officer, Ms Almut Wittling-Vogel, Federal Government Commissioner for Human Rights Matters, and her Deputy, Mr Hans-Jörg Behrens, from the Federal Ministry of Justice.

6. However, in contrast to previous visits to Germany, serious difficulties arose regarding access to personal and medical files of persons deprived of their liberty in most of the establishments visited. This was the result of instructions issued by *Länder* authorities prior to the CPT's visit, which required the explicit consent of every individual inmate or patient for the access of delegation members to his or her personal and medical files. The management of the establishments visited could see for themselves that the net effect of this was that the delegation's work was slowed down considerably, and that only a limited number of files could be consulted, to the point where the delegation was not satisfied that it was in a position to provide a full assessment of certain issues routinely examined by the CPT in the course of its visits.

The *Länder* authorities justified the need to obtain specific inmate consent in all cases by reference to data protection legislation and medical secrecy provisions in Germany. The CPT fully acknowledges the importance of data protection and medical secrecy in the context of the protection of individual rights. However, the CPT considers it anomalous – and indeed most inappropriate – that the interpretation put upon the relevant provisions of German law has had the effect of rendering another issue at the core of the protection of fundamental rights – the prevention of torture and other forms of ill-treatment – subordinate to that of data protection.

7. It should first be recalled that Article 8, paragraph 2 (d), of the Convention obliges Parties to provide the Committee with "information available to [them] which is necessary for the Committee to carry out its task". Immediate access to all relevant records is essential for the CPT so that assessments or judgments can be made as to whether interviews with particular prisoners should be prioritised. A medical record indicating for example that the inmate concerned could have been the victim of an assault naturally implies that an interview with that person should be arranged. It goes without saying that a visiting delegation has no possibility of quickly identifying such cases if no medical record can be seen without the advance consent of the individual to whom the record relates.

Further, it is the Committee's experience that anyone who has been ill-treated may be reluctant to report it for fear of reprisals or other negative consequences. Giving consent to access to medical records can be perceived as a risk as this fact will be known to prison staff and administration. In such cases prisoners may feel under pressure to deny access to the medical record – with the result that a delegation will not have access to files of outmost importance to its work.

More generally, an examination of medical records enables visiting delegations to assess in a thorough manner the quality of the health care service in a particular establishment of deprivation of liberty. Without general access to medical data, the making of such an assessment will often not be possible.

8. It is true that Article 8, paragraph 2 (d), of the Convention adds that "[i]n seeking such information, the Committee shall have regard to applicable rules of national law and professional ethics". However, it was certainly not the intention of the authors of the Convention that data protection and medical secrecy provisions should be allowed to seriously frustrate the effectiveness of the work of the CPT.

According to the Explanatory Report to the Convention, it is envisaged that possible difficulties in obtaining access to information under Article 8, paragraph 2 (d) "will be resolved in the spirit of mutual understanding and co-operation upon which the Convention is founded". The Committee is convinced that if the issue of access to personal and medical files is approached in this spirit, it will be possible for practical and reasonable solutions to be found, to the satisfaction of all parties involved.

The CPT recommends that the federal and all *Länder* authorities review the question of access to personal and medical files for the Committee's visiting delegations, in the light of the above remarks.

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* *

9. At the end of its visit, the delegation met representatives of the federal and *Länder* authorities in order to acquaint them with the main facts found during the visit. On this occasion, the delegation expressed concern with regard to a number of shortcomings observed by the delegation related to the use of means of restraint and, more specifically, to the fixation (*Fixierung*) of detained persons. By letter of 11 March 2011, the German authorities informed the Committee of measures taken in reply to the delegation's preliminary observations. This information will be considered later in the report.

D. Development of a National Preventive Mechanism

10. Germany ratified the Optional Protocol to the United Nations Convention against Torture (OPCAT) on 4 December 2008 and set up a National Preventive Mechanism (NPM), the National Agency for the Prevention of Torture.

The National Agency consists of two bodies, the Federal Agency for the Prevention of Torture, which has the power to visit places of deprivation of liberty under federal jurisdiction (Federal Police, Defence Forces and Customs) and the Joint Commission of the *Länder*, which is entitled to visit all establishments under the authority of the *Länder* (i.e. police establishments, detention centres for foreigners, prisons, psychiatric hospitals and social welfare establishments).

11. The CPT attaches great importance to the setting up of independent and properly resourced national preventive mechanisms which possess the necessary expertise, as provided for by the OPCAT. Such bodies are capable of making a crucial contribution to combating torture and other forms of ill-treatment.

During the visit, the CPT was informed about the resources in terms of staff and budget of the National Agency for the Prevention of Torture. The Agency has five members working on a voluntary basis and 3.5 posts for permanent staff in its Secretariat. The total budget of the National Agency is 300,000 Euros per year (100,000 Euros for the Federal Agency, 200,000 Euros for the Joint Commission of the *Länder*).

The Committee seriously doubts whether such limited resources will enable the NPM to carry out its work effectively throughout the whole of Germany. **The CPT would like to receive the German authorities' comments on this point.**

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Police establishments

1. Preliminary remarks

12. In the course of the visit, the CPT's delegation visited two establishments of the Federal Police in Berlin and North Rhine-Westphalia and seven establishments of the *Länder* police services in Baden-Württemberg, Bavaria, Berlin, North Rhine-Westphalia and Saxony.

13. After the CPT's 2005 visit, the legislative framework governing the deprivation of liberty of persons by the police has undergone important changes. In particular, the Code of Criminal Procedure (*Strafprozessordnung - StPO*) has been amended, with a view to reinforcing certain fundamental safeguards of criminal suspects deprived of their liberty by the police (see Section 3 below).

That said, the general provisions regarding the legal grounds for the deprivation of liberty by the police and the maximum duration of police custody remain unchanged. 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 apprehension². Further, 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 provided for in Section 163c of the StPO and of six to twelve hours in the Law on the Federal Police and respective police laws of the *Länder* visited.

According to the Law on the Federal Police and respective police laws of the *Länder*, persons can be detained (with judicial authorisation) in police establishments for longer periods, ranging from four days to two weeks for certain public security and order purposes (e.g. for prevention of criminal or administrative offences)³.

Foreign nationals may be detained (with judicial authorisation) in police establishments, pending their deportation, on the basis of the aliens legislation. In practice, such persons are usually transferred at the earliest opportunity to a designated detention facility for foreign nationals (i.e. a detention centre for foreigners or a special unit in a prison establishment).

² Section 128 StPO; see also Article 104, paragraph 2, of the German Basic Law (*Grundgesetz*).

³ Four days under the Law on the Federal Police; two weeks in Baden-Württemberg and Bavaria.

2. Ill-treatment

14. As was the case in 2005, the delegation heard no allegations of recent physical ill-treatment of persons whilst being held in custody in police establishments. However, as concerns the time of apprehension (*Festnahme*), a few isolated allegations were received from detained persons (including juveniles) that they had been subjected to excessive use of force by police officers (in particular, punches and kicks after the person concerned had been brought under control).

From the information gathered during the 2010 visit, it would appear that persons detained by the police in Germany run relatively little risk of being physically ill-treated. That said, the limitations or restrictions on access to personal and medical records referred to in paragraph 6 mean that the CPT cannot be fully confident that this is the case.

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

15. In order to obtain a nationwide picture of the current situation, **the CPT would like to receive the following information, in respect of the period from 1 January 2009 to the present:**

- (a) the number of complaints of ill-treatment made against federal police officers and officers of the police services of all *Länder* and the number of criminal/disciplinary proceedings which have been instituted as a result;**
- (b) the outcome of the above-mentioned proceedings and an account of any criminal/disciplinary sanctions imposed on police officers in these cases.**

16. An essential means of preventing ill-treatment by the police lies in the diligent examination by the competent authorities of all complaints of such treatment brought before them and, where appropriate, the imposition of a suitable penalty. As a matter of general principle, for an investigation into such complaints to be effective, it is essential that the persons responsible for carrying it out are independent – and also perceived as being independent – of those implicated in the events. Independence cannot be said to apply where the investigators and the police officers who are the subject of the investigation belong to the same service. Ideally, those entrusted with the operational conduct of the investigation should be completely independent of the law enforcement agency implicated. In this context, the CPT notes that some *Länder* have established specialised police units for investigations into allegations of police ill-treatment. **The Committee would like to receive detailed information on the mechanisms for carrying out investigations into allegations of police ill-treatment in each of the *Länder*.**

17. The CPT has repeatedly stated that appropriate safeguards must be in place in order to ensure that officials wearing masks or other equipment that may hamper establishing their identity can be held accountable for their actions (e.g. by means of a clearly visible number on the uniform). In this connection, the CPT welcomes the fact that Berlin, as the first *Land* in Germany, introduced in June 2008 identification badges for police officers of special intervention units, who use masks and uniforms that hamper their identification. Moreover, since 1 January 2011, all police officers in Berlin are obliged to wear identification badges. **The Committee encourages the police authorities of all other *Länder* to follow this example.**

3. Safeguards

18. As regards the fundamental safeguards against ill-treatment, namely the rights of detained persons to notify a close relative or another person of their detention and to have access to a lawyer and a doctor, the CPT welcomes the recent amendments made to the StPO⁴. According to the revised Sections 114b, 114c, paragraph 1, and 127, paragraph 4, of the StPO, the right of notification of custody has been extended to persons who have been provisionally apprehended (*vorläufig festgenommen*), and persons who have been arrested (*verhaftet*) or provisionally apprehended must be informed without delay (*unverzüglich*) of the above-mentioned rights. Further, the StPO now explicitly sets out the right of detained persons to be examined by a doctor of their own choice.

The Committee also welcomes the fact that specific information sheets on the rights of detained persons were available in 46 languages in all the establishments visited⁵; police officers could print out the forms in the required language from the website of the Federal Ministry of Justice. The forms contain a section where the persons are required to sign a statement attesting that they have been informed of their rights and where the date and time of the signature are to be recorded.

19. However, a number of detained persons met by the delegation claimed that they had not been informed of their rights promptly or that their request to contact a lawyer or a family member had been denied by the police. Regrettably, the delegation was not in a position to assess the veracity of those allegations, nor to gain a more comprehensive picture regarding the implementation in practice of the above-mentioned safeguards. The reason for this is that, in most police establishments visited, the relevant information was only kept in electronic form and data in the database of the *Länder* police service was reportedly no longer accessible (even to a senior police officer) once an individual file had been completed by the police officer in charge of the investigation (so-called *Sachbearbeiter*). Existing paper files usually only contained information on the dates/times of arrival and release (or transfer to another establishment).

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

⁴ In force since 1 January 2010.

⁵ The federal and *Länder* police authorities have jointly developed standardised information sheets for arrested persons, persons who have been provisionally apprehended and persons who have been deprived of their liberty for identification purposes.

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

20. Section 114b, paragraph 2, of the StPO stipulates that a detained person may contact a family member or another trusted person “insofar as the purpose of the investigation is not jeopardised”. In practice, the decision on whether to grant or delay the exercise of the right of notification of custody was taken by the investigating criminal police officer.

The Committee acknowledges that the right of notification may be subject to certain exceptions designed to protect the legitimate interests of the investigation. However, any such exceptions should be clearly defined – in this respect, the current wording of Section 114b, paragraph 2, StPO is certainly too vague – and applied for as short a time as possible. Further, appropriate safeguards should be in place (e.g. any delay to be recorded in writing together with the reasons, and to require the express approval of a senior police officer unconnected with the case at hand or a prosecutor). **The Committee reiterates its recommendation that the relevant legal provisions be amended so as to reflect these precepts and that the practice in all police establishments be revised accordingly.**

21. The CPT wishes to recall that the possibility for detained persons to effectively benefit from access to a lawyer as from the outset of deprivation of liberty is a fundamental safeguard against ill-treatment. In particular, the presence of a lawyer during police questioning will facilitate not only the prevention of any form of ill-treatment (including undue psychological pressure) but also the countering of unfounded allegations of ill-treatment.

Whilst acknowledging that detained persons have the right to contact (*befragen*) a lawyer at any time – including prior to any police questioning – the CPT remains concerned by the fact that detained persons are not entitled to have a lawyer present during police questioning, but only when being questioned by a public prosecutor or a judge. The argument advanced by the German authorities in their responses to previous visit reports, that detained persons were not obliged to give a statement to a police officer and thus could always make the presence of a lawyer a precondition to the acceptance to give a statement, is not convincing given the vulnerability of persons undergoing police questioning. And it is noteworthy that it transpired from the interviews with detained persons and consultations with police officers that only in rare cases was a lawyer present during police questioning.

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

22. The CPT must stress that the exercise of the right of access to a lawyer can only be considered to be an effective safeguard against ill-treatment if persons in police custody who are not in the position to pay for a lawyer benefit from a fully-fledged system of legal aid. If this is not the case, the right of access to a lawyer will remain, in many cases, purely theoretical.

In this regard, the Committee notes that emergency counselling services (*anwaltschaftliche Notdienste*) are available around the clock free of charge by telephone throughout Germany, while expenses for visits by a lawyer from the emergency service usually have to be paid by the detained person him/herself.

However, the information gathered during the visit would suggest that detained persons were often not informed of the existence of such counselling services. The recently introduced information sheets on the rights of detained persons (see paragraph 18) do not contain any information in this regard.

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

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

24. The delegation paid particular attention to the safeguards applied to juveniles who are suspected of having committed a criminal offence. It would appear that parents (or other relatives) were usually informed without delay when their child had been taken into custody (in accordance with the relevant legal provisions⁶).

That said, several juveniles met by the delegation claimed that they had not been allowed to contact a lawyer. The CPT is also very concerned about the fact that many juveniles (some as young as 14 years of age) had been subjected to police questioning and requested to sign statements without the benefit of the presence of either a trusted person or a lawyer, despite the specific recommendation made by the Committee in the report on the 2005 visit. Such a state of affairs is not acceptable. The Committee must stress once again that in order to effectively protect this particularly vulnerable age group, the onus should not be placed on the juvenile to request the presence of either a trusted person or a lawyer. Such a presence should be obligatory⁷.

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

⁶ See Section 67, paragraph 1, of the Law on Juvenile Justice; Section 41, paragraph 2, of the Law on the Federal Police; Section 19, paragraph 2, of the Police Law of Bavaria; Section 37, paragraph 2, of the Police Law of North Rhine-Westphalia, Section 22, paragraph 5, of the Police Law of Saxony; Section 2.6 of the Regulations on Police Custody of Baden-Württemberg (dated 16 August 2010).

⁷ Cf. also Recommendation Rec(2003)20 of the Committee of Ministers of the Council of Europe concerning new ways of dealing with juvenile delinquency and the role of juvenile justice.

25. As was the case during previous visits, the delegation received no complaints from detained persons regarding access to a doctor during police custody (see also paragraph 18 concerning the right of detained persons to be examined by a doctor of their own choice).

4. Conditions of detention

26. In all police establishments visited, persons detained by the police were usually held in custody for only a relatively short period of time before being released or transferred to another custodial facility. Most detained persons were transferred from local police stations to central specialised detention units (*zentrale Gewahrsamseinrichtungen*) within a few hours. Although, according to the *Länder* police laws, persons may, under certain circumstances, be held in custody for more than 48 hours, no such cases were observed by the delegation.

27. Material conditions in all the police establishments visited were, on the whole, adequate for short-term custody. The delegation gained a particularly favourable impression of the conditions of detention in the Central Sobering-up Facility (*Zentrale Ausnüchterungseinheit*) at Stuttgart Police Headquarters, where all detained persons were provided with mattresses⁸.

That said, despite the specific recommendation repeatedly made by the CPT since its first visit to Germany in 1991, at Cologne Police Headquarters mattresses were not provided to detainees in the sobering-up cells, and no mattress was provided to any detained person held in custody overnight at Leipzig Police Headquarters and Freiburg North Police Station. Such a state of affairs is not acceptable. **The CPT once again calls upon the police authorities of Baden-Württemberg and North Rhine-Westphalia, and, where appropriate, of other Länder, to take immediate steps to implement the long-standing recommendation that all persons held overnight in police custody be provided with a clean mattress.**

28. At Düsseldorf International Airport, the delegation observed that persons who were refused entry into German territory (and who had not submitted an asylum application⁹) sometimes had to wait for several days until the next available flight. The persons concerned were allowed to move freely within the transit zone and were given food vouchers by the relevant airline company, but were not provided with sleeping facilities during the night. One person met by the delegation had already been compelled to sleep for three nights on the benches of a fast-food restaurant.

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

⁸ The mattresses were acid- and fire-proof and washable.

⁹ Foreign nationals who had applied for asylum were accommodated in a specific facility outside the terminal, and those who were suspected of having committed a criminal offence were taken directly to a police detention facility.

5. Other issues

29. The CPT welcomes the fact that, according to information received during and after the visit, fixation (*Fixierung*) was not practised by the Federal Police and the police service of Saxony.

That said, four-point *Fixierung* of agitated and/or violent detained persons was still being used in police establishments in various other *Länder*. By way of example, *Cologne Police Headquarters* had five special security cells, each equipped with a concrete platform (covered with a mattress) and two metal bars (*Griffmulden*) embedded on both sides into the platform, to which detained persons could be shackled with hand- and ankle-cuffs. At the time of the delegation's visit to the establishment, a detained person was subjected to such restraint (under permanent and direct supervision by staff – so-called *Sitzwache*¹⁰).

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

¹⁰ According to Section 27, paragraph 2, of Regulation on Police Custody (*Polizeigewahrsamsordnung*) of North Rhine-Westphalia, the presence of a *Sitzwache* is mandatory whenever a person is subjected to four-point *Fixierung*.

B. Detention of foreign nationals under aliens legislation

1. Preliminary remarks

30. In the course of the visit, the delegation paid particular attention to the situation of foreign nationals detained under aliens legislation in prisons. For this purpose, it carried out a targeted visit to Munich-Stadelheim Prison (including to the detached unit for women) and also examined the conditions under which immigration detainees were being held at Leipzig and Schwäbisch Gmünd Prisons.

31. *Munich-Stadelheim Prison* is one of the largest prisons in Germany with a population of some 1,450 inmates. The establishment has a separate unit for male immigration detainees (capacity: 35 places), which was accommodating 30 inmates¹¹ at the time of the visit. In addition, three female immigration detainees were being accommodated, together with other female prisoners, in the detached unit for women (located some 300 metres outside the premises of the main establishment), and one male juvenile immigration detainee was being held in the detached unit for juveniles (the latter unit was not visited by the delegation).

Leipzig Prison had no special unit for detention pending deportation. At the time of the visit, six immigration detainees were being held in the establishment (together with prisoners serving short-term sentences).

Schwäbisch Gmünd Prison has a separate unit for female immigration detainees, with an official capacity of eight places. At the time of the visit, the unit was accommodating two women.

32. The legal framework governing detention pending deportation remained by and large unchanged since the 2005 visit¹². In the context of an expulsion procedure, a foreign national may be detained as a preparatory measure (pending the decision on whether to expel him/her – *Vorbereitungshaft*), for a maximum period of six weeks, and/or as a preventive measure (to ensure the enforcement of an expulsion order – *Sicherungshaft*) for up to six months. In the latter case, the detention period may be extended to a total of 18 months¹³ if the deportation is being obstructed by the foreign national concerned. Detention orders must always be issued by a judge.

¹¹ One of the foreign nationals was held, at his own request, in an adjacent unit for remand prisoners.

¹² See, in particular, Section 62 of the federal Aliens Act (Act on the Residence, Gainful Activities and Integration of Foreigners in the Federal Territory - *Aufenthaltsgesetz*).

¹³ Including periods spent in preparatory detention.

33. Before setting out the delegation's findings regarding the establishments visited, the CPT would like to raise some issues of a more general nature.

The Committee wishes to stress once again that a prison is by definition not an appropriate place in which to detain someone who is neither suspected nor convicted of a criminal offence. Regrettably, there are no specific detention centres for foreigners outside the prison system in Baden-Württemberg, Bavaria and Saxony, and hardly any progress has apparently been made in various other *Länder* since the CPT's visit in 2005 to set up such establishments.

It is of all the more concern that, in those *Länder* where immigration detainees are still being held in prisons (including Baden-Württemberg, Bavaria and Saxony), no specific regulations governing detention pending deportation exist. As a result, immigration detainees continue to be subjected to the same rules and restrictions as sentenced or even remand prisoners.

Such a state of affairs is not acceptable. In the CPT's view, conditions of detention of immigration detainees should reflect the nature of their deprivation of liberty, with limited restrictions in place. For example, detainees should have every opportunity to remain in meaningful contact with the outside world (including frequent possibilities to make telephone calls and receive visits) and should be restricted in their freedom of movement within the detention facility as little as possible (cf. also paragraphs 38 to 41).

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

Further, the Committee reiterates its recommendation that the authorities of Baden-Württemberg, Bavaria and Saxony take the necessary measures to ensure that immigration detainees are accommodated in centres specifically designed for that purpose, meeting the criteria set out by the Committee in its 7th and 19th General Reports¹⁴. Such measures should also be taken by the authorities of all other *Länder* which have not yet set up detention centres for foreigners.

34. Finally, the CPT has serious reservations regarding the detention of irregular migrants who are minors in prisons or detention centres for foreigners. In this connection, it is noteworthy that, according to the General Administrative Rules related to the Aliens Act¹⁵, minors below the age of 16 years shall, as a rule (*grundsätzlich*), not be held in detention pending deportation. **In the CPT's view, the same approach should be followed in respect of all minors (i.e. up to the age of 18 years).**

¹⁴ Cf. CPT/Inf (97) 10, paragraph 29, and CPT/Inf (2009) 27, paragraph 79.

¹⁵ *Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz* (issued on 26 October 2009).

2. Ill-treatment

35. The delegation received no allegations and found no other evidence of ill-treatment of immigration detainees by prison officers at Leipzig, Munich-Stadelheim and Schwäbisch Gmünd Prisons. Overall, the atmosphere in the respective units appeared to be quite relaxed.

3. Conditions of detention

36. At Munich-Stadelheim Prison, material conditions in the unit for women were generally of a good standard (in terms of living space, access to natural light and ventilation). All cells and communal areas were pleasantly decorated and did not create a carceral atmosphere. Further, female foreign nationals could take a daily shower.

In contrast, material conditions in the unit for male adult immigration detainees were rather poor. Both the state of repair and the level of hygiene left a lot to be desired in most of the cells. Further, in several cells, toilets were not adequately partitioned. On a positive note, foreign nationals were regularly provided personal hygiene products free of charge (as well as cleaning materials), and access to a shower was usually granted twice a week (and after sports activities). **The CPT recommends that material conditions in the unit for male immigration detainees at Stadelheim Prison be improved, in the light of the above remarks.**

37. Material conditions in the units for immigration detainees at Leipzig and Schwäbisch Gmünd Prisons were the same as for the rest of the prisoner accommodation. In this regard, reference is made to the remarks made in paragraphs 61 and 63.

38. As regards the regime, the delegation was informed by the prison authorities that, at Munich-Stadelheim Prison, cell doors were usually kept open (so-called *Aufschluss*) in the unit for immigration detainees between 5 ½ and 8 ¾ hours during weekdays, and three hours per day at weekends (in addition to three hours of temporary lock-up together with fellow inmates in another cell – so-called *Umschluss*). In addition, immigration detainees were said to be regularly offered various recreational activities (including painting, football, fitness, and an additional hour of outdoor sports).

That said, the information gathered during the visit suggested that there was a striking gap between theory and practice. The delegation interviewed virtually all of the immigration detainees who without exception claimed that, at best, they could spend some four hours per day outside their cells during the week and some two hours per day at weekends. Further, they stated that organised activities were limited to outdoor exercise for one or two hours per day, one hour of painting per week (organised by an NGO) and sports activities (twice a week for 1 ½ hours). Periods of lock-up in other cells (*Umschluss*) were reportedly limited to one hour per day. During out-of-cell time, foreign nationals had also access to a communal room. However, as the delegation could see for itself, the room was only rudimentarily equipped (with a television set, a table and a couple of chairs), and no board games were provided. Foreign nationals could in principle rent television sets for in-cell use, but many of them did not have the financial means to pay for it (17 €/month). Moreover, a number of foreign nationals appeared to be unaware of the fact that books in various foreign languages could be borrowed from the prison library.

39. The regime offered to female immigration detainees both at the detached unit for women of Munich-Stadelheim Prison and Schwäbisch Gmünd Prison and to male immigration detainees at Leipzig Prison was more favourable. During the week, they could usually spend some five hours per day outside their cells and participate, together with other prisoners, in various organised activities (e.g. handicrafts, painting, sports, etc.), while, at weekends, out-of-cell time amounted to three to 3 ½ hours per day. Outdoor exercise was granted every day for at least one hour. That said, daily periods of out-of-cell time should be further extended in order to render the situation satisfactory.

40. Pending the setting-up of special detention facilities for foreigners, **the CPT recommends that steps be taken at Leipzig, Munich-Stadelheim and Schwäbisch Gmünd Prisons and, where appropriate, in other establishments in other *Länder* in Germany to ensure that an open-door regime is implemented for all immigration detainees throughout the day.**

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

4. Contacts with the outside world

41. At Leipzig and Schwäbisch Gmünd Prisons, adult foreign nationals could receive three one-hour visits per month and had access to the telephone several times a week.

In contrast, severe restrictions were imposed on immigration detainees at Munich-Stadelheim Prison regarding visits and access to the telephone. In accordance with the minimum entitlement provided for in the Bavarian prison legislation, foreign nationals could only receive one one-hour visit per month. In addition, they were usually allowed to make only one telephone call per month¹⁶. During the end-of-visit talks, the delegation had already expressed its concern about this unacceptable state of affairs.

By letter of 11 March 2011, the German authorities informed the CPT that the management of Stadelheim Prison had decided to increase the visit entitlement of immigration detainees from one hour to four hours per month and to offer immigration detainees a telephone call free of charge upon admission to the establishment (in addition to a free call prior to deportation). The CPT welcomes these initiatives. That said, it is a matter of concern that immigration detainees can apparently still make only one telephone call per month (at their own expense), in contrast to various detention centres for foreigners in Germany where foreign nationals have unrestricted access to the telephone.

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

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

¹⁶ The information sheet which is provided to foreign nationals upon their admission stipulates that "telephone calls are allowed only in urgent exceptional cases and at your own expense".

5. Health care

42. The delegation gained a very favourable impression of the health-care services at Munich-Stadelheim Prison¹⁷ (as regards Leipzig and Schwäbisch Gmünd Prisons, see paragraphs 72 to 78). All immigration detainees benefited from comprehensive medical screening, performed within 24 hours of admission (including X-rays and tests for HIV and hepatitis on a voluntary basis), and were provided with written information (in various languages) about the prevention of transmissible diseases (including Aids and hepatitis). Moreover, during medical examinations, interpretation was provided by professional interpreters or fellow inmates (with the express consent of both prisoners concerned). It is also noteworthy that foreign nationals routinely underwent a medical check-up whenever they returned to the prison following a failed deportation attempt.

43. That said, it is a matter of concern that, according to staff of Munich-Stadelheim Prison, prisoners as well as immigration detainees who were transferred to outside hospitals were frequently attached to their hospital bed (in addition to being placed under the surveillance of the escort staff). In addition, prison officers reportedly remained routinely present in the room during medical consultations in an outside establishment.

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

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

6. Staff

44. The CPT has repeatedly stressed that staff dealing with 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 attaches considerable importance to the supervisory staff in such centres being carefully selected and receiving appropriate training. They should possess well-developed qualities in the field of interpersonal communication, the staff concerned should be sensitive to and respectful of cultural diversity and at least some of them should have relevant language skills.

As far as the delegation could ascertain, prison officers working in the units for immigration detainees at Leipzig, Munich-Stadelheim and Schwäbisch Gmünd Prison had received very little specialised training in dealing with this particular category of inmate. **The CPT encourages the authorities of all *Länder* to provide specialised training to staff working in direct contact with immigration detainees. It would also be desirable for designated members of staff to receive language training in the most frequently spoken foreign languages.**

¹⁷ The medical unit of Stadelheim Prison also comprised an infirmary (capacity: 80 beds). The establishment employed an equivalent of 6.5 doctors' posts (general practitioners, a psychiatrist, and a specialist in internal medicine), and nursing staff were present around the clock.

7. Information and assistance to foreign nationals

45. At Munich-Stadelheim Prison, immigration detainees were provided, upon their arrival, with a summary of the house rules and an information sheet setting out the rights of immigration detainees (including legal remedies against the detention order). Both documents were available in more than 20 languages.

In contrast, no relevant information was provided in writing to newly-admitted immigration detainees at Leipzig and Schwäbisch Gmünd Prisons. Not surprisingly, in both establishments, most immigration detainees interviewed by the delegation complained about the lack of information regarding their legal status and the procedures being applied to them.

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

46. The CPT welcomes the fact that regular visits were carried out to Leipzig Prison by the Refugee Council of Saxony (once a week) and to Stadelheim Prison by Amnesty International (once a week) and the Jesuit Refugee Service (twice a week), in order to provide legal and social assistance to immigration detainees.

In order to obtain a nationwide picture of the situation, **the Committee would like to receive detailed information on the arrangements made in all German *Länder* to provide legal counselling to immigration detainees.**

C. Prisons

1. Preliminary remarks

47. The delegation visited Herford Juvenile Prison, Leipzig Prison (including the Prison Hospital) and Schwäbisch Gmünd Prison for women (including the detached unit for male prisoners at Ellwangen). In addition, it carried out a targeted visit to Cologne Prison, in order to interview remand prisoners (in the units for juveniles and young adults and the high-security unit). The delegation also visited the Units for Preventive Detention at Burg and Freiburg Prisons¹⁸ and examined the conditions under which immigration detainees were being held at Munich-Stadelheim Prison¹⁹.

48. *Herford Juvenile Prison*, located near Bielefeld, is one of four closed juvenile prisons in North Rhine-Westphalia, accommodating juveniles and young adults aged from 14 to 24 (both sentenced and remand). Originally built in the 1880s as an adult prison with a radial design, the buildings had been completely modernised in 2006. With a capacity of 355 places, the establishment was accommodating 320 male juveniles and young adults at the time of the visit (270 sentenced and 50 on remand).

Leipzig Prison is located on the grounds of a former prison hospital on the outskirts of Leipzig. The five-storey detention block in the shape of an “H” was built in the 1990s and initially used only for prisoners serving short-term sentences. Since 2001, the prison has also accommodated male juveniles and adults on remand (on Levels 1-3). In addition, male foreign nationals are held in the prison under aliens legislation²⁰. With an official capacity of 397 places²¹, the prison was accommodating 406 male inmates (including 155 adults and six juveniles on remand and six immigration detainees) at the time of the visit.

In addition, Leipzig Prison comprises a prison hospital (opened in 1913), which is organisationally separated from the rest of the establishment. The hospital accommodates male and female prisoners (both sentenced and on remand) from the entire *Land* of Saxony; occasionally, it also receives prisoners from other neighbouring *Länder* (Thüringen, Saxony-Anhalt). The official capacity is 70 beds, with a somatic section of 28 beds (Ward 6) and a psychiatric section of 42 beds (Wards 7 and 8). At the time of the visit, the hospital was accommodating 52 patients (including seven women).

Schwäbisch Gmünd Prison is located on the premises of a former monastery (constructed in the 13th century) and was opened in 1808. Over the years, it underwent extensive refurbishment, and additional buildings were constructed. The prison serves as the only prison in Baden-Württemberg for female prisoners who are serving long-term sentences, are held in preventive detention or are detained under aliens legislation, and it also has a mother and child unit²². In addition, there are three detached units for male prisoners in Ellwangen (short-term sentences and remand, closed regime), Heidenheim (short-term sentences, semi-open regime) and Kapfenburg (short-term sentences, open regime). The last two units were not visited by the delegation.

¹⁸ See Section D.

¹⁹ See Section B.

²⁰ See Section B.

²¹ In addition, the prison had an open section (capacity: 49 places), which was not visited by the delegation.

²² At the time of the visit, the unit was accommodating seven mothers and eleven children (up to the age of three).

At the time of the visit, the main establishment in Schwäbisch-Gmünd (capacity: 350 places) was accommodating 275 adult women (222 sentenced²³, 50 on remand, one in preventive detention and two immigration detainees) and 23 juveniles/young adults (including three on remand). At Ellwangen, there were 33 male adult prisoners (including 15 on remand).

Cologne Prison was built in the 1960s and is the largest closed prison in North-Rhine Westphalia (comprising 17 buildings linked by passageways). At the time of the visit, the establishment was accommodating a total of 1,107 prisoners (male and female, remand and sentenced); the units for juveniles and young adults were holding 100 male and 20 female inmates on remand, while the high-security unit (capacity: 28 places) was accommodating 20 adult prisoners (both sentenced and on remand).

49. The CPT welcomes the fact that the overall prison population in Germany has significantly decreased during the last decade, from 79,507 in 2000 to 70,103 inmates in 2010, while, at the same time, the official capacity of German prisons has been increased from 76,495 to 77,995 places²⁴. The reduction in the overall prison population is mainly the result of a sharp decrease in remand detention from 18,300 inmates in 2000 to 10,781 inmates in 2010²⁵.

That said, it remained the case that in a number of *Länder* (including North Rhine-Westphalia), cells designed for single occupancy were on occasion used for holding two prisoners; some of the prisoners concerned had won court cases against the prison authorities and obtained financial compensation. The Committee also notes with interest a recent judgment of the Federal Constitutional Court²⁶, in which the Court stated that the execution of a prison sentence must be deferred or prisoners be released, if the conditions of detention faced by the person concerned do not comply with the principle of human dignity²⁷.

50. After the CPT's 2005 visit, the legislative framework governing the execution of sentences underwent significant changes. Legislative powers concerning the execution of all forms of imprisonment (including remand detention) were devolved to the *Länder* on 1 September 2006. This has led to a significant legislative activity in the *Länder*, but most of the adopted laws have largely identical texts as they are based on former federal legislation and common draft laws agreed between the *Länder*.

²³ 16 women were serving a life sentence.

²⁴ *Statistisches Bundesamt* on 31 August 2010.

²⁵ *Statistisches Bundesamt* on 1 November 2010. A critical discourse on the use of pretrial detention, repercussions of German reunification and a mix of other factors have contributed to this trend (for further details see the study concerning Germany in "Pre-trial Detention in the European Union", Nijmegen 2009, van Kalmthout, Knapen and Morgenstern (eds.), p. 401 and following)

²⁶ Judgment of 9 March 2011 (1 BvR 409/09).

²⁷ In this case, the Federal Constitutional Court decided that holding a prisoner together with another prisoner in a cell of 8m², which was designed for single occupancy and had an in-cell toilet without a full partition, violated the principle of human dignity.

Since 2006, five²⁸ out of the 16 *Länder* have adopted new legislation on *execution of sentences* while the other *Länder* – pending the adoption of legislation – continue to apply the former federal Law on Execution of Sentences (*Strafvollzugsgesetz*). Regarding the *execution of remand detention*, which in the past was regulated only by a federal administrative regulation (and not by law), the majority of the *Länder*²⁹ have adopted separate laws (*Untersuchungshaftvollzugsgesetze* - UVollzG). Further, new legislation has been enacted in all *Länder* governing the imprisonment of juvenile offenders (*Jugendstrafvollzugsgesetze* - JStVollzG), which previously had not been regulated specifically by law, a situation found to be unconstitutional by the Federal Constitutional Court in 2006³⁰.

2. Ill-treatment

51. The delegation heard no allegations of physical ill-treatment of prisoners by staff in any of the prisons visited. The delegation gained the impression that relations between inmates and staff were, on the whole, relaxed and of a constructive nature in all the prisons visited.

52. However, the delegation received several allegations of inter-prisoner violence or intimidation, mainly from juveniles at Cologne, Herford and Leipzig Prisons (beatings, threats and extortion).

In general, the delegation gained the impression that efforts were being made by staff in the above-mentioned establishments to prevent incidents of inter-prisoner violence and to react in a prompt and proportionate manner whenever such instances occurred.

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

3. Conditions of detention of juveniles in the prisons visited

53. In accordance with the new *Länder* laws³¹, which include an obligatory use of single cells for juveniles with a view to reducing the risk of inter-prisoner violence, juveniles were as a rule accommodated in individual cells. Only exceptionally could juveniles be accommodated together, for example, for their own protection or for educational reasons. In all the establishments visited, no more than two juveniles were allowed in a cell and those under 18 were not allowed to share a cell with a young adult.

54. Material conditions of detention were of a very high standard at *Herford Juvenile Prison* and in the juvenile unit of *Schwäbisch Gmünd Prison* and were on the whole adequate in the juvenile units of *Cologne* and *Leipzig Prisons*.

²⁸ Bavaria, Baden-Württemberg, Hamburg, Hessen, Lower Saxony.

²⁹ Only Bavaria and Schleswig Holstein have not yet adopted new laws.

³⁰ Judgment of 31 May 2006; see also CPT/Inf (2007)18, paragraph 154.

³¹ See Section 25, paragraph 1, of the JStVollzG of North Rhine-Westphalia and Saxony.

Cells were generally of adequate size and in a reasonably good state of repair, had good access to natural light and ventilation, and were well-equipped (including an intercom system). It should also be noted that, at Herford, Leipzig and Schwäbisch Gmünd Prisons, the sanitary annexes (WC and wash-basin) were fully partitioned.

However, at Cologne Prison, the in-cell toilets were not partitioned, a deficiency which was compounded by the fact that some of the cells were accommodating two juveniles. **The CPT recommends that the sanitary facilities in the cells of the juvenile unit at Cologne Prison be fully partitioned.**

55. The delegation gained a particularly favourable impression of the regime offered to juveniles and young adults at *Schwäbisch Gmünd Prison*, where virtually all of them were offered work, vocational training or education (secondary school, computing, etc.). In addition, various recreational activities were organised (e.g. sports, handicrafts, cooking, gardening, discussion groups), so that all inmates could spend the whole day outside their cells (including at weekends).

56. As regards activities provided during the week, the situation was generally satisfactory at *Herford Juvenile Prison*. The great majority of inmates worked in the prison workshops (bakery, electrical works, heating installation, carpentry or gardening) or within the establishment (maintenance, cleaning), or participated in vocational training (painting, construction or cooking) or education (e.g. German classes). During the evening³², all the juveniles could participate until 10 p.m. in various sports and recreational activities (theatre, music, video projects, cooking, etc.) or could visit other inmates in their cells (*Umschluss*).

57. The CPT also welcomes the efforts made by the management of *Cologne Prison* to organise out-of-cell activities for juvenile remand prisoners. The majority of them were engaged in vocational training (e.g. metalwork and carpentry workshops, or hairdressing for females) or education (e.g. secondary schooling, German classes, IT skills). During leisure time, juveniles could participate in recreational or sports activities for up to six hours a week or associate with other inmates on the wings (*Aufschluss*) or in their cells (*Umschluss*) until the lock-up time of 9 p.m.

58. At *Leipzig Prison*, the few juvenile remand prisoners held in the establishment were offered a range of educational and sports activities for a significant part of the day during the week. However, it is a matter of concern that juveniles were usually locked up in their cells on weekdays from 3 p.m. until the following morning. **The CPT recommends that the authorities of Saxony develop the regime for juveniles at Leipzig Prison so as to ensure that such prisoners enjoy out-of-cell activities throughout the day during the week, until the early evening.**

³² There is a legal obligation to offer juvenile remand and sentenced detainees sufficient sports activities of a minimum of three hours a week and generally to provide sufficient recreational activities, in particular at weekends, public holidays and during the early evening hours (Sections 54 and 55, paragraph 1, of the JStVollzG of North Rhine-Westphalia and Section 53 of the UVollzG of North Rhine-Westphalia).

59. At weekends, daily out-of-cell activities were limited for juveniles at Cologne, Herford and Leipzig Prisons to one hour of outdoor exercise and one additional hour of sports activities (at Cologne and Herford only). That said, up to three juveniles could associate in their cells (*Umschluss*) for periods of two to five hours in the three establishments visited. **The CPT recommends that immediate steps be taken at Cologne, Herford and Leipzig Prisons to provide juvenile prisoners with increased out-of-cell time during weekends.**

60. A special regime was applied at *Herford Juvenile Prison* to juveniles transferred to the “treatment” unit for non-co-operative and violent inmates (Block A 1). The unit, which had 26 single cells, was accommodating eleven inmates at the time of the visit. All juveniles in that unit were subject to a three-level “educational programme” similar to the one already described in previous visit reports³³. A transfer conference took decisions regarding placement in the unit, possible relaxations of the regime and the return to a unit with an ordinary regime; inmates could express their views in writing to the members of the weekly transfer conference (or be heard in person if they were illiterate).

Such a graduated approach can be beneficial in situations of non-compliance to encourage young inmates to abide by the norms of living within a group and pursue constructive paths of self-development. However, the delegation found the strict lock-up regime in Level 1 highly restrictive; juveniles were confined to their cells except for an hour of individual outdoor exercise daily, and they were not allowed to work or participate in any common leisure-time activities. Moreover, television, radio or CD players were withdrawn and in-cell activities were limited to reading. Despite the management’s efforts to increase contacts with educators or social-therapy staff during the period in question, this regime was akin to one of solitary cellular confinement, offering no purposeful activities.

The CPT is particularly concerned about the placement of juveniles in conditions resembling solitary confinement, as it is a measure which can compromise their physical and/or mental well-being. In contrast to disciplinary arrest, which for juveniles was limited by law to a maximum of two weeks³⁴, and in practice was never imposed for more than a few days (see paragraph 80), the regime in Level 1 was in principle of unlimited duration and was frequently applied for up to four weeks.

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

³³ CPT/Inf (2003) 20, paragraph 96, and CPT/Inf (2007)18, paragraph 118.

³⁴ See Section 93, paragraph 3 No. 6, of the JStVollzG of North Rhine-Westphalia.

4. Conditions of detention of adult female prisoners at Schwäbisch Gmünd Prison

61. At Schwäbisch Gmünd Prison, material conditions of detention were generally of a good standard (in terms of state of repair, living space³⁵, access to natural light and equipment), and the delegation was informed that those parts which had not yet been renovated would be refurbished very soon. Further, the delegation gained a very positive impression of the living conditions in the establishment's mother and child unit.

That said, the delegation received some complaints from prisoners that they could not always benefit from outdoor exercise in the winter, due to a lack of appropriate footwear. Further, the outdoor exercise yards offered little protection against inclement weather. **The CPT recommends that steps be taken to remedy these shortcomings.**

62. As regards the regime, it is praiseworthy that all sentenced prisoners were offered work, vocational training or educational activities. The establishment had several workshops (e.g. tailoring, laundry, painting, carpentry), and a number of prisoners were employed in the kitchen or as cleaners.

The situation was clearly less favourable for remand prisoners, who had only very limited possibilities to work or participate in vocational training or education. Although arrangements had been made by the management of the prison to ensure that all remand prisoners were offered at least three hours of recreational activities per day (in addition to daily outdoor exercise), such as sports, music, handicrafts, knitting, meditation, etc., additional steps are needed to render the situation satisfactory.

The delegation was informed that a new building for workshops would be constructed in the near future, which would also allow more remand prisoners to participate. The CPT welcomes this initiative and **encourages the authorities of Baden-Württemberg to pursue their efforts to develop the programme of activities for female remand prisoners at Schwäbisch Gmünd Prison. The longer the period for which remand prisoners are detained, the more developed should be the activities which are offered to them.**

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

63. Material conditions of detention were on the whole adequate at Leipzig Prison and the detached unit of Schwäbisch Gmünd Prison at Ellwangen. Cells were of a sufficient size, in a reasonably good state of repair, well equipped and had good access to natural light and ventilation.

³⁵

Most prisoners were accommodated in single cells and the remainder in double or four-bed cells.

64. As regards the regime, the CPT welcomes the fact that, according to the information received from the management at Leipzig Prison, the great majority of sentenced prisoners serving a sentence of more than three months were offered work in the prison's workshops or as house workers; others could participate in vocational training programmes (cooking, IT, electronics) or educational activities (for example, literacy classes). Further, they could engage in sports or association activities with other inmates until lock-up time at 7.30 p.m.

In contrast, only a small number of remand prisoners and those serving short sentences (of up to three months) were offered work as house workers or could participate in IT or electronics classes. Apart from one hour of outdoor exercise per day, the vast majority of them were offered only limited out-of-cell activities, such as occasional access to the very well equipped gym and sports facilities or creative activities. The daily association time of two to three hours³⁶, when prisoners could move freely around their wing and play table tennis, darts or card games, is not a satisfactory substitute for a daily programme of activities.

During the visit, the delegation was informed about plans to construct a new building for workshops in order to extend work opportunities at Leipzig Prison. **The CPT would like to receive more detailed information about these plans. It recommends that the authorities of Saxony improve the programme of activities, including work and vocational training opportunities, for prisoners at Leipzig Prison; the aim should be to ensure that all prisoners, including those on remand or serving short sentences, are able to spend a reasonable part of the day outside their cells engaged in purposeful activities of a varied nature (work; vocational training; education; sport; recreation/association).**

65. *Ellwangen Prison* had one workshop for sorting and packing of various items, where twelve prisoners³⁷ could work, and one multi-purpose room with some basic fitness equipment which was accessible to a maximum of eight prisoners twice a week for about 1½ hours. Moreover, all sentenced prisoners could usually spend four hours per day outside their cells in the evening during weekdays (and six hours per day at weekends in the late afternoon and evening), in addition to daily outdoor exercise of one hour.

However, it is a matter of serious concern that hardly any out-of-cell activities were offered to those prisoners who did not work (apart from one hour of outdoor exercise per day). As a result, remand prisoners usually remained locked up in their cells for most of the day³⁸ (and for 23 hours per day at weekends). **The CPT recommends that the authorities of Baden-Württemberg take immediate steps to increase out-of-cell activities for remand prisoners at Ellwangen Prison.**

6. Health care

66. The delegation examined the medical services at Herford Juvenile Prison, Leipzig Prison (including the Prison Hospital) and Schwäbisch Gmünd Prison, while at Cologne Prison and the detached unit of Schwäbisch Gmünd Prison at Ellwangen, it focused mainly on the medical screening upon admission.

³⁶ Two hours on Units 2 and 3; three hours on Unit 4.

³⁷ At the time of the visit, only four sentenced prisoners were fit to work which meant that eight remand prisoners were exceptionally able to attend the workshop.

³⁸ During the week, remand prisoners who did not work could usually join another prisoner in his cell (*Umschluss*) for up to three hours per day.

a. Leipzig Prison Hospital

67. Despite being rather old, the hospital building was in a reasonable state of repair and the material living conditions were on the whole adequate. Patients were accommodated in single- and multi-occupancy rooms (with two to six beds), which were of a reasonable size for the rate of occupancy and had a fully partitioned sanitary annexe. Each ward had a bathroom with showers that patients could access three times per week. The delegation was informed that plans for a new hospital building had been deferred due to lack of funds; **the CPT would like to receive further information on this point.**

68. As regards health-care staff, at the time of the visit, four full-time doctors (general practitioner, anaesthesiologist, surgeon and a specialist in internal medicine) were present on weekdays from 7 a.m. until 3.30 p.m.; after that time, as well as during weekends, there was one duty doctor for the whole hospital (who also covered the rest of Leipzig Prison). In addition, a pool of eleven doctors from the outside provided cover during holidays and night shifts.

Posts for another five full-time doctors, including four posts for psychiatrists, were vacant at the time of the visit. This is a matter of particular concern, given that the majority of inmates in the hospital were psychiatric patients. The delegation was informed that the prison authorities were facing great difficulties in recruiting psychiatrists. At the time of the visit, psychiatric care was provided by three external psychiatrists, with at least one psychiatrist being present Mondays to Fridays during working hours. As an interim measure, the hospital had also increased the number of psychologists; four full-time psychologists were working closely with the psychiatrists in an attempt to provide adequate care for the psychiatric patients. **The CPT recommends that the authorities of Saxony redouble their efforts to fill as soon as possible the vacant posts for psychiatrists at Leipzig Prison Hospital.**

69. The hospital employed three senior nurses and 24 duty nurses, who worked on shifts providing around-the-clock cover. However, after 3.30 p.m., there was usually only one nurse on duty on each of the three wards (these nurses also covered the rest of Leipzig Prison in the event of an emergency). According to staff, this could pose a problem at night, especially on the psychiatric wards, as nurses were in principle not allowed to open a cell door alone in the case of an emergency. Moreover, the delegation was informed that nursing staff were having difficulties coping with their workload, due to the high rate of sick leave amongst the nurses (around 20%).

The CPT wishes to receive the comments of the authorities of Saxony on the above-mentioned issues.

70. The treatment offered to psychiatric patients appeared on the whole to be adequate; in addition to pharmacotherapy, occupational and group therapy were offered to patients, organised by a team of psychologists and occupational therapists.

Moreover, patients benefited from daily outdoor exercise of one hour (and, occasionally, more) and could participate in sports activities several times per week. In addition, they were allowed to move freely on the ward and associate with other patients for one hour per day (*Aufschluss*).

That said, patients remained locked up in their rooms every day from 3.30 p.m. until the following morning, watching TV, listening to the radio, playing board games or reading books. **The CPT encourages the authorities of Saxony to provide a wider range of out-of-room activities to psychiatric patients who stay for prolonged periods at the Prison Hospital.**

71. It is also a matter of concern that patients were on occasion subjected to means of restraint (*Fixierung*) for prolonged periods (in some cases, up to seven days). In this regard, reference is made to the remarks and recommendation made in paragraphs 88 to 93.

b. health care in the other establishments visited

72. At *Herford Juvenile Prison, Leipzig* and *Schwäbisch Gmünd Prisons*, the health-care facilities were, on the whole, of a high standard and do not call for any particular comments.

73. All three of the above-mentioned prisons were adequately staffed as regards general practitioners, with one full-time doctor being present in each prison during working hours on weekdays and remaining on call at night and at weekends.

74. As regards nursing staff, Schwäbisch Gmünd Prison was well staffed with ten nurses providing around-the-clock cover (including at weekends). The situation was less favourable at Leipzig Prison where four nurses worked on a duty roster during weekdays from 6 a.m. to 3.30 p.m.³⁹; for the rest of the time, nurses from the adjacent Prison Hospital were on call (see, however, paragraph 69).

At Herford Juvenile Prison, five nurses provided cover during weekdays from 6 a.m. to 8 p.m., but at night and at weekends no nurse was present.

In all three establishments visited, the delegation observed that prescribed medicines were always prepared (in an individualised form) by the nurses but often distributed by custodial staff.

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

Further, steps should be taken to ensure that someone competent to provide first aid, preferably with a recognised nursing qualification, is always present on the premises of both establishments (including at night).

³⁹ In addition, there was a dental nurse and a nurse who took X-rays.

75. As regards medical screening upon admission, in all the establishments visited, newly-arrived prisoners were usually examined by a nurse and a doctor within 24 hours of their admission. Prisoners were also offered a routine screening for transmissible diseases (such as hepatitis and HIV) and provided with relevant information on the prevention of such diseases.

76. The CPT recalls that prison health-care services can make a significant contribution to the prevention of ill-treatment of detained persons through the systematic recording of injuries and the provision of information to the relevant authorities.

Due to the difficulties encountered in all the establishments visited regarding access to medical files (see paragraph 6), the delegation was not in the position to assess the manner in which injuries displayed by newly-arrived prisoners had been recorded.

However, the delegation was informed by health-care staff that, in the event of signs of ill-treatment being detected upon arrival, prison doctors would document the injuries in the medical file of the prisoner, which could include taking a photograph. Further, after violent incidents within the establishment, prisoners were systematically presented to a health-care staff member who recorded the injuries. As regards the provision of information about cases of possible ill-treatment to the relevant authorities, the delegation was told that the prisoner concerned would be asked to give his/her consent for communication of this information to the prison administration; only in the case of serious danger to life or health was such information communicated to the prison management without the consent of the prisoner concerned.

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

77. In all the prisons visited, the quality of general and specialised health care was on the whole very good, and prisoners could have access to a doctor within a reasonable time. Every prison was visited on a regular basis by a dentist and a psychiatrist as well as other specialists (including a gynaecologist at Schwäbisch Gmünd). All establishments had established good working relationships with external specialists who gave consultations when necessary, and, whenever needed, prisoners were transferred to a prison hospital or general hospital.

78. The confidentiality of medical data was generally well respected. Medical records were only accessible to medical staff, and medical consultations/examinations were as a rule carried out without the presence of prison officers.

That said, in various prisons visited, the delegation observed that prisoners wanting to see the doctor had submitted to custodial staff a written request giving reasons for it. Although prisoners were not required to state a reason for such requests, a number of prisoners apparently believed that they were obliged to do so.

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

7. Other issues

a. staff

79. In all the establishments visited, the delegation observed positive relations between staff and prisoners and a generally relaxed atmosphere.

That said, it became apparent that, in particular at Herford and Leipzig Prisons, staff were working under considerable pressure and that a number of activities depended on staff being prepared to work overtime. Sometimes this was compensated for by time off in lieu, sometimes by payment. At Herford Prison, overtime payments were overdue and, at Leipzig Prison, it had become increasingly difficult to grant time off. Low staffing levels and extended overtime obligations can easily lead to staff burnout and increase the risk of inter-prisoner intimidation and of staff-inmate tension, preclude the emergence of dynamic security and have a negative influence on the quality and level of the activities provided to prisoners. **Steps should be taken by the authorities of North Rhine-Westphalia and Saxony to resolve this problem, not only for the sake of the staff concerned but also because of the negative effects it may have on prisoners.**

b. discipline

80. The CPT notes that resort to severe disciplinary sanctions (such as solitary confinement⁴⁰) was quite rare and usually of short duration in all the establishments visited.

As regards more particularly juvenile prisoners, the imposition of disciplinary sanctions was very rare in all the establishments visited and was to a large extent substituted by “educational measures” provided for by law (i.e. withdrawal of TV or restrictions on association time or sport activities (so-called “*Pop-shop*”), for up to seven days).

81. As regards formal disciplinary measures, it transpired from the consultation of disciplinary registers and files, as well as from interviews with prisoners and staff, that disciplinary procedures were usually carried out in a satisfactory manner in all the establishments visited.

However, in most of the establishments visited, prisoners subjected to a disciplinary sanction were not systematically provided with a copy of the disciplinary decision and informed in writing of the possibilities of lodging an appeal. **The CPT recommends that the prison authorities of Baden-Württemberg, North Rhine-Westphalia and Saxony take steps to remedy this shortcoming.**

⁴⁰ According to the relevant *Länder* laws on execution of sentences, this measure could be imposed on prisoners for a maximum of four weeks for adults and a maximum of two weeks for juveniles.

82. The CPT welcomes the fact that the disciplinary sanction of deprivation of outdoor exercise in respect of remand prisoners has been formally abolished in all the *Länder* visited, as recommended by the Committee after the 2005 visit⁴¹.

However, it is a matter of concern that, in all the *Länder* visited, prisoners who were subjected to the disciplinary measure of solitary confinement could still be denied access to reading material⁴², despite the specific recommendation repeatedly made after previous visits. **The CPT calls upon the authorities of Baden-Württemberg, North Rhine-Westphalia, Saxony and, where appropriate, of other *Länder* to formally abolish the aforementioned restriction without any further delay.**

83. Further, it is regrettable that the sanction of limitation of contact with the outside world to urgent matters (for up to three months) has been maintained in the new prison legislation in Baden-Württemberg and various other *Länder* for all categories of prisoners, including juveniles. In this connection, the CPT wishes to stress that disciplinary punishment of prisoners should never involve a total prohibition of family contact and that any restrictions on family contact as a punishment should be imposed only when the offence relates to such contact⁴³. **The CPT recommends that the authorities of Baden-Württemberg and all other *Länder* concerned take steps to ensure that these precepts are effectively implemented in practice and that the relevant *Länder* laws are amended accordingly.**

84. In accordance with the relevant regulations, in all the establishments visited, prisoners subject to the sanction of placement in a disciplinary cell were seen prior to their placement by the doctor, whose signature was required to certify whether the prisoner was fit to undergo punishment.

The CPT wishes to stress once again that medical practitioners working in prison act as the personal doctors of prisoners, and ensuring that there is a positive doctor-patient relationship between them is a major factor in safeguarding the health and well-being of prisoners. Obliging prison doctors to certify that prisoners are fit to undergo punishment is scarcely likely to promote that relationship. This point was recognised in the revised European Prison Rules; indeed, the rule in the previous version of the Rules, stipulating that prison doctors must certify that a prisoner is fit to sustain the punishment of disciplinary confinement, has now been removed. On the other hand, a prison's health-care service should be very attentive to the situation of prisoners placed in disciplinary cells (or any other prisoner held under conditions of solitary confinement). In this regard, all disciplinary placements should be immediately brought to the attention of the health-care service. Further, a medical practitioner or a qualified nurse reporting to such a practitioner should visit on a daily basis prisoners held under conditions of solitary confinement⁴⁴.

⁴¹ See paragraph 144 of the document CPT/Inf (2007) 18.

⁴² See Section 104, paragraph 5, of the federal StVollzG and similar provisions in the relevant *Länder* laws.

⁴³ See also Rule 60.4 of the European Prison Rules and Rule 95.6 of the European Rules for juvenile offenders subject to sanctions or measures, as well as the commentaries on these Rules.

⁴⁴ It is noteworthy that, at Schwäbisch Gmünd Prison, prisoners placed in a disciplinary cell were seen by a nurse every day.

The CPT recommends that the role of prison doctors in relation to disciplinary matters be reviewed, in the light of the above remarks. In so doing, regard should be had to the European Prison Rules (in particular, Rule 43.2)⁴⁵ and the comments made by the Committee in its 15th General Report (see paragraph 53 of CPT/Inf (2005) 17).

c. security-related issues

85. In accordance with the relevant regulations, prisoners were on occasion segregated for security reasons (i.e. risk of self-harm or harm to others⁴⁶) in a security cell (*besonders gesicherter Haftraum*) or a plain cell⁴⁷ (so-called *Schlichtzelle*) in all the establishments visited.

Whereas the placement of prisoners in a security cell was systematically recorded in the establishments' register on special security measures, it was often the case that no record was kept of placements of prisoners in a plain cell. **Steps should be taken by the management of all prisons visited to remedy this deficiency.** This will greatly facilitate an oversight into the extent of its occurrence.

86. At Schwäbisch Gmünd Prison, prisoners subject to segregation were always granted daily outdoor exercise. However, at Herford and Leipzig Prisons, several prisoners claimed that during their stay in a security or plain cell, they had not been able to benefit from daily outdoor exercise. In this regard, the CPT must express its concern about the fact that withdrawal of outdoor exercise was maintained in the new *Länder* laws⁴⁸ as a special security measure, despite the specific recommendation made by the Committee after previous visits.

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

87. Further, the CPT has misgivings about the routine practice at Leipzig Prison of removing all the clothes of prisoners placed in security cells and obliging the prisoners to wear paper underwear instead. In the CPT's view, keeping prisoners under such conditions can easily be considered to be degrading for the persons concerned.

⁴⁵ Rule 43.2 reads as follows: "The medical practitioner or a qualified nurse reporting to such a medical practitioner shall pay particular attention to the health of prisoners held under conditions of solitary confinement, shall visit such prisoners daily, and shall provide them with prompt medical assistance and treatment at the request of such prisoners or the prison staff."

⁴⁶ The provisions on special security measures in the new *Länder* laws (including solitary confinement and segregation) are for the most part identical to Section 88 of the former federal StVollzG (cf. paragraphs 14 to 17 Appendix II to the CPT's report on the 1991 visit).

⁴⁷ Plain cells were equipped with vandal-proof furniture but were otherwise similar to ordinary cells.

⁴⁸ See, for example, Book II Section 47, paragraph 2 No. 4, of the JVollzGB Baden-Württemberg, Section 79, paragraph 2 No. 4, of the JStVollzG of North Rhine-Westphalia and Section 71, paragraph 2 No. 4, of the JStVollzG of Saxony.

In contrast, at Cologne Prison, prisoners placed in a security cell were usually allowed to wear a tracksuit and, at Schwäbisch Gmünd Prison, prisoners considered to be at risk of suicide were provided with adequate suicide-proof clothing during their stay in a security cell. **The CPT recommends that these approaches be followed by the management of Leipzig Prison.**

88. In all the prisons visited (save Leipzig Prison), there was at least one security cell in which prisoners could be subjected to means of restraint (*Fixierung*). Overall, *Fixierung* was rarely used in the establishments visited, and, in some of them (e.g. Schwäbisch Gmünd Prison), no such cases had occurred in recent years. At Leipzig Prison, the delegation was informed that, in the entire *Land* of Saxony, *Fixierung* was applied to prisoners exclusively at Leipzig Prison Hospital and then only if there was a medical indication.

That said, CPT has serious misgivings about the fact that prisoners, including juveniles, were occasionally subjected to *Fixierung* for prolonged periods (e.g. up to three days at Herford Prison, and up to five days at Cologne Prison). Further, in several establishments visited, it transpired from the examination of relevant registers and records that *Fixierung* had sometimes continued when the person had already calmed down, and there was no indication of an ongoing security-related risk (i.e. self-harm or harm to others).

89. As regards the equipment used for *Fixierung*, it is a matter of serious concern that in the security cell of Herford Juvenile Prison, six metal rings were anchored to the floor in order to secure inmates in a spread-eagled position with handcuffs (or, alternatively, with straps). Similarly, at Cologne Prison, security cells were fitted with four metal rings anchored to the floor and handcuffs and ankle cuffs were available in the room; at Schwäbisch Gmünd, police-style handcuffs were reportedly available to attach prisoners to a bed frame.

90. In all the establishments visited, every resort to *Fixierung* was immediately brought to the attention of a doctor, who communicated his or her medical observations to the prison management. In addition, health-care staff visited the persons concerned on a daily basis. Moreover, in several establishments visited (Cologne, Munich-Stadelheim and Schwäbisch Gmünd Prisons and Leipzig Prison Hospital), continuous and direct monitoring (*Sitzwache*) was performed by a member of staff; however, this was not always the case at Herford Prison⁴⁹.

91. In all the prisons visited, every resort to *Fixierung* was recorded in the establishments' register on special security measures. However, at Herford and Cologne Prisons, information as to the precise length of the application of *Fixierung* was often not recorded in that register; this information could only be retrieved in a time-consuming manner from various other sources (e.g. the personal files of the prisoners concerned).

92. In their letter of 11 March 2011, the German authorities informed the CPT that the prison authorities of Thüringen had instructed all prisons to use only straps for *Fixierung* and that, in Berlin and Thüringen, all prisons had also been instructed to ensure direct and continuous monitoring (*Sitzwache*) for every person subject to *Fixierung*.

⁴⁹ At Herford, *Sitzwache* was only ensured until such time as the doctor arrived; he decided on whether it could be replaced by CCTV.

93. Whilst acknowledging these measures, **the CPT wishes to stress once again that the aim should be to abandon the resort to *Fixierung* in non-medical settings⁵⁰; it would be desirable for the prison authorities of all *Länder* to follow the approach adopted by the authorities of Saxony.**

Bearing in mind the inherent risks for the persons concerned, the CPT recalls that:

- *Fixierung* should only be used for the shortest possible time (usually minutes rather than hours); it should never be used as a punishment or to compensate for shortages of trained staff. Restraint for periods of days at a time cannot have any justification and would amount to ill-treatment;
- the equipment used for *Fixierung* should be designed to limit harmful effects (for instance, a bed with straps, as was available at Burg, Leipzig and Munich-Stadelheim Prisons); metal rings anchored to the floor should be removed from every security cell;
- prisoners subject to *Fixierung* should always be continuously and directly monitored by a (suitably trained) member of staff (*Sitzwache*); video and audio supervision by technical means cannot replace direct human contact;
- every instance of *Fixierung* should be 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.

For so long as *Fixierung* continues to be used in non-medical settings, **the Committee reiterates its recommendation that steps be taken by the relevant authorities to ensure that the above-mentioned precepts are effectively implemented in all prison establishments in Germany resorting to *Fixierung*.**

d. contacts with the outside world

94. The CPT welcomes the fact that, in all the *Länder* visited, the minimum visit entitlement for *juvenile prisoners* (both sentenced and on remand) was increased after the 2005 visit from one to four hours⁵¹ per month. In practice, this entitlement was often exceeded (for visits from close relatives) in all the establishments visited⁵².

As far as *adult prisoners* were concerned, the most favourable situation was found at Leipzig Prison where all prisoners (both sentenced and on remand) were granted three one-hour visits per month. Likewise, at Schwäbisch Gmünd Prison, sentenced female adult prisoners could usually receive visits for at least three hours per month.

⁵⁰ See paragraph 11 of the report on the 2005 visit (CPT/Inf (2007) 18).

⁵¹ See, for example, Section 30, paragraph 1, of the JStVollzG of North Rhine-Westphalia and Section 47, paragraph 1, of the JStVollzG of Saxony; these provisions concerning sentenced juveniles were applied to juveniles on remand by way of analogy by most prison governors.

⁵² At Herford and Leipzig Prisons, many juveniles benefited from an additional two hours of visits.

That said, the situation was far from satisfactory as regards sentenced prisoners at Cologne Prison and the detached unit of Schwäbisch Gmünd Prison at Ellwangen, as well as remand prisoners in all the establishments visited (save Leipzig); their visit entitlement was usually limited to three visits of 30 minutes per month.

On a positive note, it should be added that in most of the establishments visited, sentenced prisoners were often granted additional visit time and regularly benefited from unsupervised visits.

With a view to safeguarding relations with their families and friends, the CPT considers that all prisoners, whatever their legal status, should be entitled to a visit of at least one hour every week. **The Committee recommends that the prison authorities of all *Länder* take the necessary steps to ensure that this precept is effectively implemented in all prisons.**

95. The situation was generally satisfactory in all the establishments visited regarding sentenced prisoners' access to the telephone. However, sentenced prisoners held in the detached unit of Schwäbisch Gmünd Prison at Ellwangen, as well as most remand prisoners (including juveniles) in all the establishments visited, had very limited access to the telephone and could often make calls only in exceptional circumstances.

The CPT wishes to stress once again that all prisoners, including those on remand, should have access to a telephone. This precept is also set out in the European Prison Rules⁵³. If there is a risk of collusion, particular telephone calls can always be monitored. **The Committee reiterates its recommendation that the authorities of all German *Länder* make the necessary arrangements to ensure that both remand and sentenced prisoners are granted regular and frequent access to the telephone.**

e. prisoners' representation system

96. In all the establishments visited, a system of prisoners' representation was in place (so-called *Gefangenenmitverantwortung*)⁵⁴. Given the prison subcultures which exist in every prison, such a system entails a certain risk of exploitation of prisoners by unofficial "leaders".

That said, the delegation gained the distinct impression that, in all the establishments visited, the system of prisoners' representation functioned properly. Representatives were elected by prisoners according to the relevant legal provisions⁵⁵, and had regular meetings with the prison management to discuss issues of prisoners' interests. It was acknowledged by prison governors that they made an important contribution to the prevention of conflicts and violence within the prison by setting up channels of communication that allow prisoners to voice their comments on prison life and make suggestions for change.

⁵³ Rules 24.1 and 99 of the European Prison Rules as well as the Commentaries on these Rules.

⁵⁴ Cf. also Rule 50 of the European Prison Rules which reads as follows: "Subject to the needs of good order, safety and security, prisoners shall be allowed to discuss matters relating to the general conditions of imprisonment and shall be encouraged to communicate with the prison authorities about these matters".

⁵⁵ Section 160 of the former federal StVollzG and similar provisions in the new *Länder* laws.

f. complaints and inspection procedures

97. Existing judicial and administrative complaints procedures were already described in the CPT's report⁵⁶ on the 1991 visit; they remained by and large unchanged since then.

98. The CPT notes with interest that North Rhine-Westphalia is the first *Land* in Germany to have introduced the office of an independent prison Ombudsman, who can receive complaints from prisoners and visit prisons. Further, the Law on the Execution of Sentences (*Strafvollzugsgesetzbuch* – StVollzGB) of Baden-Württemberg provides for the appointment of parliamentary prison representatives that have the right to visit prisons and speak with prisoners in private. **The Committee would like to receive in respect of all German *Länder* detailed information about independent prison monitoring and complaints bodies.**

⁵⁶ See paragraph 163 of CPT/Inf (93)13.

D. Preventive detention (*Sicherungsverwahrung*)

1. Preliminary remarks

99. The delegation carried out targeted visits to the units for preventive detention⁵⁷ at Freiburg Prison (Baden-Württemberg) and Burg Prison (Saxony-Anhalt); it also examined the conditions under which one woman was being held at Schwäbisch-Gmünd Prison as the establishment's only person in preventive detention at the time of the visit (see paragraph 114).

100. These visits took place at a time when debates were ongoing in various fora in Germany, with a view to reforming the system of preventive detention, following recent judgments of the European Court of Human Rights (ECtHR). In the case of *M. v. Germany*⁵⁸, the ECtHR held that the retrospective extension of the applicant's preventive detention beyond the period of ten years⁵⁹ (which had been the maximum for such detention under the legal provisions applicable at the time of his offence and conviction) constituted a violation of Articles 5 and 7 of the European Convention on Human Rights (ECHR)⁶⁰.

In the above-mentioned judgment, the ECtHR also explicitly shared the concerns the CPT had expressed in the report on the 2005 visit to Germany about the manner in which preventive detention was implemented in practice (in particular, as regards the insufficient differentiation between the execution of a prison sentence and that of a preventive detention order – so-called “*Abstandsgebot*” – and the inadequacy of the psychological care and support provided to the persons concerned). Among other things, the ECtHR concluded that “in view of the indefinite duration of preventive detention, particular endeavours are necessary in order to support these detainees who, as a rule, will be unable to make progress towards release by their own efforts. It finds that there is currently an absence of additional and substantial measures - other than those available to all long-term ordinary prisoners serving their sentence for punitive purposes - to secure the prevention of offences by the persons concerned”⁶¹. Similar remarks were made by the ECtHR in a subsequent judgment (*Grosskopf v. Germany*)⁶².

⁵⁷ The primary aim of the potentially indefinite placement in preventive detention 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 Penal Code.

⁵⁸ Judgment of 17 December 2009 (application no. 19359/04).

⁵⁹ The maximum period of ten years was abolished in 1998 (new Section 67d).

⁶⁰ On 14 April 2011, a similar judgment was delivered by the ECtHR in the case of *Jendrowiak v. Germany* (application no. 30060/04).

⁶¹ See paragraph 129 of the judgment *M. v. Germany*.

⁶² See paragraph 51 of the judgment of 21 October 2010 (application no. 24478/03). In that judgment, the ECtHR ruled that the continued detention of offenders beyond their prison term for the purpose of preventing them from committing further offences was admissible under Article 5 of the ECHR (provided that the preventive detention was ordered by the sentencing court and that a sufficient causal connection remained between the conviction and the preventive detention); cf. also the judgments *Mork v. Germany* (application nos. 31047/04 and 43386/08 – not final) and *Schmitz v. Germany* (application no. 30493/04 – not final), both dated 9 June 2011.

101. In January 2011, the ECtHR delivered another judgment⁶³ (*Haidn v. Germany*), in which it ruled that the retrospective imposition of preventive detention after a person's conviction and prior to the end of a term of imprisonment (so-called *nachträgliche Sicherungsverwahrung*⁶⁴) constituted a violation of Article 5 of the ECHR.

102. In the light of the above-mentioned case-law of the ECtHR, a legal controversy arose within the German judiciary (at all levels) as to whether all other persons whose fixed-term preventive detention had been retrospectively converted into an indefinite one (after the abolition of the maximum period of ten years) and persons who had been retrospectively subjected to a preventive detention order for the first time should be released (despite the fact that they were still considered to present a danger to the general public). In various *Länder*, the competent regional courts responsible for the execution of sentences decided to release such persons with reference to the case-law of the ECtHR (often under certain conditions, such as continuous police surveillance), while other courts rejected the release of the persons concerned, arguing that the ECHR does not take precedence over domestic constitutional law.

103. Shortly after the visit, important legislative changes were adopted by the federal Parliament, which entered into force on 1 January 2011. Firstly, the relevant provisions of the Penal Code (Sections 66 et seq.) were amended, with a view to limiting the scope of preventive detention to crimes against the life, physical integrity, personal freedom or sexual self-determination of a person, and to abolishing the retrospective imposition of preventive detention (in respect of offences committed after 1 January 2011). Secondly, with the adoption of the Law on the Treatment and Placement of Violent Offenders Suffering from a Mental Disorder (*Therapieunterbringungsgesetz – ThUG*), a new involuntary placement procedure of a civil nature was introduced in order to keep in detention persons who may or will be released from preventive detention in the light of the case-law of the ECtHR. The law also applies to persons who have already been released from preventive detention for the same reasons.

According to Section 1 of the ThUG, persons may be placed in a suitable closed institution (*geeignete geschlossene Einrichtung*) if they suffer from a mental disorder (*psychische Störung*), if a comprehensive assessment of their personality, past life and living conditions indicates a high probability that, due to their mental disorder, they will endanger the life or seriously infringe upon the physical integrity, personal freedom or sexual self-determination of a person, and if such placement is necessary to protect the general public. Placement orders must be issued by the competent regional civil court. The law also provides for important procedural safeguards. In particular, the persons concerned must always be represented by a lawyer and be heard in person by the court, the court must always request two expert opinions (including one from a psychiatrist/doctor with experience in the field of psychiatry who is independent of the establishment in which the person concerned is held), and placement orders can be challenged before the appeal court. The duration of placement is limited to renewable periods of 18 months. For every extension, a new placement procedure must be carried out.

⁶³ Judgment of 13 January 2011 (application no. 6587/04).

⁶⁴ See Section 66b of the Penal Code.

104. On 4 May 2011, the Federal Constitutional Court delivered a judgment⁶⁵ on the issue of preventive detention. With reference to the above-mentioned case-law of the ECtHR, the Federal Constitutional Court declared the relevant provisions of the Penal Code on the imposition and duration of preventive detention unconstitutional, since they did not satisfy the constitutional requirement of establishing a differentiation between preventive detention and prison sentences (**Abstandsgebot**). Further, it held that the provisions on the retrospective prolongation of preventive detention beyond the former ten-year maximum period and on the retrospective imposition of preventive detention in criminal law relating to adult and to juvenile offenders infringed the precept of rule-of-law as enshrined in the Basic Law (*Grundgesetz*).

At the same time, the Federal Constitutional Court ordered the continued applicability of the provisions that were declared unconstitutional until the entry into force of new legislation, at the latest until 31 May 2013, subject to the following two conditions:

- (a) In respect of all so-called “old cases” (i.e. persons who were kept in preventive detention beyond the former ten-year maximum period and persons subjected to a retrospective preventive detention order) in preventive detention, the competent criminal courts must immediately carry out individual assessments, in order to assess whether the persons concerned meet the requirements of involuntary placement under the new ThUG. If the persons do not meet these requirements or if the review procedure is not completed by 31 December 2011, they must be released.
- (b) The other provisions on the imposition and duration of preventive detention may only be applied under strict adherence to the principle of proportionality; as a general rule, proportionality is only respected where there is a danger that the person concerned will commit serious violent crimes or sexual offences in the future.

In its reasoning, the Federal Constitutional Court made it clear that placement in preventive detention must always be based on a comprehensive therapy-oriented concept and visibly determined by the perspective of regaining liberty (including through progressive relaxations of the regime - *Vollzugslockerungen*). Moreover, the Court instructed all prison authorities to provide adequate therapeutic activities to prisoners who are subject to a provisional preventive detention order, with a view to reducing to the extent possible the need for continued detention after completion of their prison term.

105. The CPT would like to receive detailed information on the concrete measures taken by the federal and *Länder* authorities, in the light of the above-mentioned judgments of the ECtHR and the Federal Constitutional Court.

Further, **the Committee would like to know:**

- **where and under which conditions persons subjected to a placement order under the ThUG are being held (e.g. individual care plans, treatment, regime, contact with the outside world, etc.);**
- **whether there are plans to construct any new facilities for this purpose.**

⁶⁵ 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).

2. Unit for preventive detention at Freiburg Prison

106. Freiburg Prison had a separate unit for preventive detention, which was accommodating 51 inmates at the time of the visit⁶⁶.

107. All persons in preventive detention were offered work and various other activities (such as education, sports, etc.). However, contacts between custodial staff and inmates were kept to a minimum, and there was a shortage of psychological care and therapeutic activities for facilitating the reintegration of inmates into society. Many of the inmates interviewed by the delegation stated that they had lost all their hope to be released and their motivation to engage in any form of activity. It is also striking that fewer than five inmates regularly made use of their right to spend one hour per day in the open air.

Further, the delegation observed that the conditions of detention of persons in preventive detention were scarcely better than those of sentenced prisoners. They were accommodated in ordinary cells like those of prisoners and only benefited from a certain number of privileges (e.g. cell doors remained unlocked throughout the day until 9.45 p.m.⁶⁷; permission to wear private clothes; possibility to have personal furniture, a refrigerator, a larger television set and a small aquarium or a bird inside the cell; higher rate of both pocket money and remuneration for work). In other words, it would appear that the general obligation to differentiate between these two groups of inmates (*Abstandsgebot*) was not effectively implemented.

108. The shortcomings identified by the delegation were acknowledged by the management of Freiburg Prison, and concrete measures had already been taken by the Ministry of Justice of Baden-Württemberg to improve the situation. In particular, all persons in preventive detention were being progressively transferred to a new building with a more suitable – and less carceral – infrastructure (65 single rooms, each measuring some 15 m², and one larger room for a physically disabled inmate; communal rooms with sofas and a television set, table tennis, table football, etc.). According to the management, an adjacent outdoor exercise yard (equipped with sports facilities) will then be accessible for all persons in preventive detention throughout the day.

In addition, there were plans to significantly increase the number of staff in the unit for preventive detention (by recruiting an additional three psychologists⁶⁸, four social workers and twelve prison officers) and to develop special “motivation programmes” and therapeutic activities. In the past, inmates could only benefit from such activities if they agreed to be transferred to a specialised institution (in particular, the socio-therapeutic facility attached to Offenburg Prison or the regional prison hospital in Hohenasperg).

The CPT welcomes these developments and requests that the authorities of Baden-Württemberg provide detailed information on the implementation of the above-mentioned measures and plans. In particular, it would like to be informed of the new staffing levels in the unit for preventive detention and be given an account of the “motivation programmes” and therapeutic activities in which inmates are engaged on a regular basis.

⁶⁶ Seven inmates had recently been conditionally released (following the above-mentioned judgments of the ECtHR), three of whom were temporarily accommodated on a voluntary basis in the establishment’s open unit (until they were able to find suitable accommodation outside the prison).

⁶⁷ Sentenced prisoners also benefited from an open-door regime until 9.45 p.m., but were usually locked in their cells for one hour in the late afternoon.

⁶⁸ Previously, there had been an equivalent of 4 ½ posts of psychologists for the entire prison (with more than 650 inmates).

3. Unit for preventive detention at Burg Prison

109. Burg Prison entered into service in 2009 as the first prison in Germany which is partially privatised on the basis of a “public-private partnership”⁶⁹. In April 2010, a special unit for preventive detention (capacity: 30 places) was opened in a separate building. Following a joint agreement between Saxony, Saxony-Anhalt and Thüringen, all male inmates subject to the measure of preventive detention were transferred from other prisons in the three *Länder* concerned to Burg Prison. At the time of the visit, 16 inmates were being held in the unit.

110. At Burg Prison, the material conditions of detention in the unit for preventive detention were of a high standard. All inmates were accommodated in single rooms in three sub-units⁷⁰. Cells were of an adequate size, had good access to natural light and were well-equipped. In addition, there were various communal rooms, including several multi-purpose rooms (with sofas, television, billiards, darts, etc.), table tennis rooms, dining rooms with a kitchenette, a computer room and a handicrafts room.

Further, all inmates benefited from an open-door regime throughout the day within their unit and could spend at least five hours in the open air. In principle, all of them were offered work (tailoring workshop or cleaning) and could participate in various educational and recreational activities.

The CPT welcomes the fact that a comprehensive concept (*Vollzugskonzept*) had been elaborated, on the basis of which various treatment programmes were in the process of being put in place (e.g. psychotherapy, preparation for sociotherapy, anti-violence training, drug counselling, preparation for drug therapy, occupational therapy, etc.)

111. That said, an ongoing conflict between inmates and the management - and related court proceedings - concerning the extent to which inmates were allowed to keep personal belongings inside their cells was a constant source of tension⁷¹. Several inmates also complained that they had been transferred against their will to another *Land*, thus being moved a long way from their families. In addition, inmates expressed their dissatisfaction about the fact that they had been kept waiting for months, pending the completion of internal security checks, to obtain their personal furniture and certain devices (such as video games).

⁶⁹ The prison is owned and administered by the private enterprise “*PJB Projektgesellschaft Justizvollzug Burg GmbH & Co KG*”. While the management and custodial staff are public officials, staff of various services, such as nurses, psychologists and social workers are contracted (the head of each service being a public official).

⁷⁰ At his own request, one inmate was accommodated alone in one of the three sub-units, but could associate at any time with inmates from the other two sub-units.

⁷¹ The prison administration of Saxony-Anhalt had decided not to allow inmates to use their personal television sets and DVD players, but instead to oblige inmates to rent television sets (with integrated radio and DVD) from a private provider, for a monthly fee.

As a result, the majority of inmates refused to take part in any organised activity, to use any of the above-mentioned communal rooms or to take outdoor exercise⁷². Staff informed the delegation that a number of inmates had given up on themselves, and several inmates interviewed indicated to the delegation that “they were only waiting to die”. Nevertheless, some inmates had recently agreed to meet a psychologist on a regular basis (weekly or every fortnight).

The CPT would like to be informed whether the above-mentioned conflict concerning permitted personal belongings has been resolved. Further, the Committee would like to receive detailed information on the therapeutic activities which are followed by inmates in preventive detention at Burg Prison.

112. As was the case at Freiburg Prison, the delegation gained a generally positive impression of the medical services and of the general health care provided to inmates in preventive detention at Burg Prison.

However, it is a matter of concern that whenever prisoners were examined by the doctor, a prison officer was present in front of the doctor’s office, with the door open. **The CPT recommends that steps be taken at Burg Prison to ensure that all medical examinations/consultations of inmates are conducted out of the hearing and – unless the doctor concerned requests otherwise in a particular case – out of the sight of prison officers.**

113. There was one security cell (*besonders gesicherter Haftraum*) within the unit for preventive detention at Burg Prison, which was equipped with a special restraint bed (with Segufix straps) and which, according to staff, had never been used. The delegation was informed that in the event that persons were to be subjected to *Fixierung* they would be monitored via CCTV (with an integrated acoustic sensor), but a member of staff (*Sitzwache*) would not be continuously present. In this regard, **the remarks and recommendations made in paragraph 93 equally apply to Burg Prison.**

4. Preventive detention at Schwäbisch Gmünd Prison

114. As already mentioned in paragraph 99, one woman was being held in preventive detention at Schwäbisch Gmünd Prison at the time of the visit. Following a series of serious violent incidents caused by the woman concerned (against staff and other prisoners), the criminal court had imposed on her a retrospective preventive detention order. In addition, she was being held in segregation (*Absonderung*) and was subjected to severe security measures (e.g. hand and feet cuffed during movements outside the cell).

From the interview with the woman concerned, the examination of her administrative and medical files and consultations with the prison management, the delegation was satisfied that she was treated in a professional manner. Efforts were being made by staff to maintain human contact with her and to offer her various activities inside the cell (such as handicraft and painting), in addition to daily outdoor exercise of one hour. In accordance with the relevant legal provisions, the security measures applied to her were reviewed by the prison authorities every three months.

⁷² At the time of the visit, only two inmates attended the workshop, and two were employed as cleaners. One inmate followed a distance-learning programme at university level.

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

E. Berlin Juvenile Detention Centre

115. For the first time in Germany, the delegation visited a Juvenile Detention Centre, located in Berlin, where young offenders (between 14 and 21 years) are subjected to short-term detention (*Jugendarrest*) on the basis of Section 16 of the Law on Juvenile Justice (*Jugendgerichtsgesetz – JGG*). This type of detention is imposed by a juvenile court and is not considered a criminal sanction but instead as an educational measure to prevent juveniles from re-offending. The maximum period of detention is four weeks (*Dauerarrest*); young offenders may also be detained in the centre at weekends (*Kurzarrest*) or during leisure time periods on weekdays (*Freizeitarrrest*).

116. Berlin Juvenile Detention Centre is located on the premises of a former youth home on the outskirts of Berlin (Lichtenrade) and comprises two houses surrounded by a large garden. With an official capacity of 33 places (four of which were reserved for female juveniles), the detention centre was accommodating 26 inmates (24 male and two females) at the time of the visit. A small number of inmates had been placed in the centre for a period of one to four weeks, while all others were being held in the centre for two to four days or were subject to leisure time arrest.

The delegation was informed that, due to a chronic shortage of detention places, young offenders often had to be placed on a waiting list for many months prior to their admission. In order to remedy this state of affairs, the authorities of Berlin had decided to reconstruct the entire detention centre, which will include an additional accommodation building. **The CPT would like to receive updated information on the implementation of this construction plan and detailed information on the future organisation of the detention centre (e.g. capacity for each sex and type of detention, staffing levels, arrangements for educational and recreational activities).**

117. The delegation received no allegations and found no other evidence of physical ill-treatment of inmates by staff. Relations between inmates and staff – as well as among inmates themselves – appeared to be positive, and the general atmosphere was relaxed.

118. Material conditions were generally of a reasonable standard. All juveniles were accommodated in individual rooms which were adequately furnished, of sufficient size (9 m² or more) and had good access to natural light and ventilation. Most rooms also had a separate sanitary annexe.

That said, a number of juveniles complained about the quality of food. The delegation was told by staff that the food budget per juvenile had recently been reduced to 2.90 Euros per day which made it difficult to provide inmates with an adequate variety of food. **The CPT would like to receive the comments of the authorities of Berlin on this matter.**

119. As regards the regime, some inmates went to school or work outside the establishment during the day from Mondays to Fridays.

The remainder were subjected to a three-level regime with varying lock-up periods. During out-of-cell time, inmates could mix freely in the common rooms to watch TV, play table tennis or table football, and (if the weather allowed) ball games could be played in the courtyard. Male and female juveniles, who were accommodated separately, could mix during recreation time in the courtyard. In addition, the inmates were offered some education (i.e. computer classes) and occupational activities (woodwork) on site. However, according to staff, there was a lack of public funding for such additional activities and the Centre had to rely on voluntary contributions from civil society. In this regard, reference is made to the remarks and request for information made in paragraph 116.

120. It is not acceptable that inmates who were subjected to weekend detention at the Berlin Juvenile Detention Centre remained locked up in their rooms from Friday to Sunday without being able to benefit from outdoor exercise⁷³. In the CPT's view, all young offenders who are held in a juvenile detention centre for more than 24 hours should be granted outdoor exercise of at least one hour per day. **The Committee recommends that steps be taken by the authorities of Berlin and all other *Länder* to ensure that this precept is fully implemented in practice in all juvenile detention centres in Germany.**

121. Upon arrival, all juveniles were examined by a medical doctor, who was present on Fridays and Mondays, the days when juveniles could report voluntarily. In case a juvenile was brought in on another day or at night by the police, a duty doctor would be called. Juveniles with drug or alcohol problems (i.e. withdrawal syndromes) would not be admitted, but referred to a treatment institution instead.

122. Internal order was usually maintained by applying a differentiated regime, depending on the behaviour of inmates (see paragraph 119). In more severe cases, the following formal disciplinary sanctions could be imposed by the head of the detention centre, in accordance with the Regulation on Execution of Juvenile Detention (*Jugendarrestvollzugsordnung - JAVollzO*)⁷⁴: reprimand, restriction or deprivation of reading material for a certain period, prohibition of contacts with the outside world for up to two weeks, exclusion from communal activities and solitary confinement. Moreover, in particularly serious cases (e.g. drug abuse, physical assault), the head of the centre (juvenile court judge) may decide to terminate the placement in the detention centre, pending the imposition of a more suitable sanction⁷⁵.

The detention centre had no special punishment cell. Instead, the sanction of disciplinary sanction of solitary confinement was implemented in ordinary accommodation rooms. According to staff, solitary confinement was never applied for more than three days, and, during the implementation of the measure, inmates were granted one hour of outdoor exercise per day (which they took alone). However, the law does not provide any maximum period for this type of sanction.

⁷³ According to 12, paragraph 4, of the Regulation on Execution of Juvenile Detention (JAVollzO), inmates are only entitled to daily outdoor exercise of one hour if they stay in a detention centre for more than two days.

⁷⁴ Section 23, paragraph 3.

⁷⁵ Section 87, paragraph 3, of the JGG.

The CPT is particularly concerned about the placement of juveniles in solitary confinement, a measure which can compromise their physical and/or mental integrity. Resort to such a measure should be highly exceptional and for the shortest possible period of time. In this connection, the Committee considers that there should be a legal time limit for the imposition of the sanction of solitary confinement. Further, no disciplinary sanction for juveniles should involve a total prohibition of family contact and any restrictions on family contact as a punishment should be imposed only when the offence relates to such contact⁷⁶. Moreover, juveniles should never be totally deprived of reading material.

The CPT recommends that the legal provisions governing disciplinary sanctions in detention centres for juveniles in Germany be revised, in the light of the above remarks.

123. As far as the delegation could ascertain, disciplinary procedures were always carried out in accordance with the relevant provisions of the JAVollzO. In particular, the inmates concerned were heard in person by the head of the centre before the imposition of the disciplinary sanction, and decisions were issued in writing (supplemented with verbal explanations).

124. As regards contacts with the outside world, the CPT notes with concern that the relevant legal provisions⁷⁷ stipulate that such contacts shall, as a rule, be limited to “urgent matters”, and that it is left to the discretion of the Director to allow inmates “for educational reasons” to send/receive letters or have visits.

That said, the CPT welcomes the fact that, in practice, no restrictions were imposed on inmates regarding correspondence, and those inmates who were held in the detention centre for more than one week had unlimited access to payphones during association time. In addition, inmates subject to *Dauerarrest* could usually receive a one-hour visit from a family member after two weeks.

In the light of the information received about various other detention centres where the practice regarding contacts with the outside appears to be more restrictive, **the Committee recommends that other juvenile detention centres in Germany also allow inmates more frequent contacts with the outside world (in particular, with close relatives).**

⁷⁶ See also Rules 95.4 and 95.6 of the European Rules for juvenile offenders subject to sanctions or measures and the Commentary to these rules.

⁷⁷ Section 20, paragraph 1, of the JAVollzO.

F. Rheine Forensic Psychiatric Clinic

1. Preliminary remarks

125. Rheine Forensic Psychiatric Clinic was opened in 2005 as a temporary psychiatric institution (capacity: 84 places) on the premises of former military barracks which had been converted into a hospital setting of a modern standard. Initially, it was intended to be used for a period of six years, in order to reduce the level of overcrowding in another forensic psychiatric clinic (located in Eickelborn). Pending the construction of several new forensic psychiatric establishments (with an additional capacity of some 700 beds), the authorities of North Rhine-Westphalia have decided to prolong the use of Rheine Forensic Psychiatric Clinic until 2016.

126. Forensic patients may be placed in a psychiatric establishment under Section 63 of the Penal Code (i.e. commission of a criminal offence in a state of insanity or diminished criminal responsibility) or Section 64, paragraph 1, of the Penal Code (compulsory alcohol or drug addiction treatment upon commission of a criminal offence in a state of intoxication). Further, according to Section 126a of the Code of Criminal Procedure, a person who is suspected of having committed a criminal offence may be admitted for the purpose of conducting a psychiatric assessment. In North Rhine-Westphalia, various issues related to the living conditions and treatment of patients in a forensic psychiatric establishment are regulated by the Law on the Execution of Measures of Correction and Prevention (*Maßregelvollzugsgesetz – MRVG*) of North Rhine-Westphalia.

At the time of the visit, Rheine Forensic Psychiatric Clinic, was accommodating 90 male patients⁷⁸ in seven different wards (*Stationen*).

127. According to the relevant legislation⁷⁹, relaxations of the regime (so-called *Lockerungen*) constitute an essential component of treatment programmes for forensic patients. This precept is also reflected in the Quality Guidelines⁸⁰ issued by the Commissioner for the Execution of Measures of Correction and Prevention (*Landesbeauftragter für den Maßregelvollzug*) in North Rhine-Westphalia, which stipulate that forensic psychiatric establishments are obliged to grant *Lockerungen* “as soon and insofar as the condition of the patient permits”.

However, pursuant to a formal agreement between the municipality of Rheine and the *Land* of North Rhine-Westphalia, patients accommodated in the Rheine Forensic Psychiatric Clinic are never allowed to benefit from *Lockerungen* in the form of temporary leave of absence. This requirement was a pre-condition by the municipal administration to allow the opening of a forensic psychiatric institution on its territory, and the CPT has received reports that similar agreements also exist in various other *Länder* in Germany.

⁷⁸ 83 patients had been admitted under Section 63 of the Penal Code, two under Section 64 of the Penal Code and five under Section 126a of the Criminal Procedure Code.

⁷⁹ See Section 18, paragraph 1, of the MRVG of North Rhine-Westphalia.

⁸⁰ “*Qualitätsstandard: Grundsätze für Lockerungsentscheidungen in Maßregelvollzugseinrichtungen*” (26.06.2008).

In practice, patients held at Rheine Forensic Psychiatric Clinic can only benefit from a *Lockerung* if they are referred to another clinic. Admittedly, efforts were clearly being made by medical staff to refer patients as soon as possible to another institution for this purpose⁸¹. At the same time it was acknowledged and also regretted by doctors interviewed by the delegation that this invariably entails a disruption of the therapeutic relationship built over years and requires the establishment of a new relationship with a new therapist, just at the time when an ongoing treatment programme has started to bear fruit. As a result, many patients run the risk of being deprived of their liberty for a much longer period than would be required if they had the possibility to be granted *Lockerungen* at Rheine.

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

128. The CPT wishes to stress that its delegation received no allegations and found no other evidence of ill-treatment of patients by staff. Further, the information gathered indicated that the level of inter-patient violence was not significant. On the contrary, the atmosphere within the clinic appeared to be relaxed, and many patients interviewed by the delegation spoke very favourably about the manner in which they were treated by staff.

2. Patients' living conditions

129. Despite the fact that the clinic was operating slightly above its official capacity, patients' living conditions were generally satisfactory. Most patients were accommodated in single rooms and the remainder in double rooms. All rooms were of an adequate size, well-equipped (including with lockable cupboards) and pleasantly decorated. It is noteworthy that patients were not locked in their rooms at night.

All patients benefited from daily outdoor exercise (one to 2½ hours) and were able to participate in various sports and other recreational activities.

3. Staff and treatment

130. Staffing levels appeared on the whole to be adequate. The clinic had an equivalent of 4.25 posts of psychiatrists, 91 full-time posts of nurses, two psychologists (one full-time and one part-time), one full-time occupational therapist and two full-time social workers. At least two nurses were present around the clock in each of the seven wards, and one doctor was on call at night. Further, a system of primary nursing (*Bezugspflegemodell*) with weekly discussions had been put in place.

⁸¹ For instance, in 2010 (until November), eleven patients had been transferred to another forensic or civil psychiatric clinic.

That said, it is a matter of concern that, due to the fact that one of the two psychologists had been on sick leave for several months, a number of patients received little psychological care and for some patients psychological treatment was interrupted. **The CPT would like to be informed whether the staffing situation regarding psychologists has been remedied.**

131. The delegation gained a generally very favourable impression of the treatment provided to patients. For every newly-admitted patient, a provisional treatment plan was drawn up within 24 hours, and a comprehensive individual treatment plan was elaborated and agreed upon within six weeks. Patients benefited from various types of treatment in addition to pharmacotherapy (such as psychotherapy, individual and group counselling, occupational therapy, art and music therapy, etc.), adapted to their needs and abilities. A dual approach was followed aimed at treating mental disorders of patients and reducing the risk of reoffending. Moreover, the provision of somatic care appeared to be adequate, and patients' files were detailed and well kept.

That said, hardly any educational activities were offered to patients, despite this being a requirement under the MRVG of North Rhine-Westphalia⁸². **Steps should be taken to remedy this deficiency.**

4. Seclusion and means of restraint

132. Rheine Forensic Psychiatric Clinic had five seclusion rooms (so-called "crisis intervention rooms"), two of which were monitored via CCTV. Resort to seclusion appeared to be rare.

133. Under the MRVG of North Rhine-Westphalia⁸³, patients considered to be at risk of harming themselves or absconding may be subjected to the special security measures of "restriction or prohibition of stay in the open air" (in addition to seclusion). A similar provision is also contained in the Mental Health Law of North Rhine-Westphalia⁸⁴ (*Gesetz über Hilfen und Schutzmassnahmen bei psychischen Krankheiten* – PsychKG) which stipulates that a patient's outdoor exercise may be "restricted" if there is an "imminent serious risk of self-harm or an imminent danger to serious legal assets of others".

The CPT welcomes the fact that a "restriction or prohibition of stay in the open air" was apparently never applied at Rheine Forensic Psychiatric Clinic. That said, it wishes to recall that, as a matter of principle, all psychiatric patients whose state of health so permits should be offered at least one hour of outdoor exercise per day. If patients display particularly aggressive/violent behaviour, appropriate arrangements can and should be found to ensure the safety of the patient concerned and others, as well as the establishment's internal order, while still guaranteeing outdoor exercise (e.g. additional surveillance by staff). **The Committee recommends that the authorities of North Rhine-Westphalia and all other *Länder* take the necessary steps to ensure that the aforementioned precepts are effectively implemented in practice in civil and forensic psychiatric establishments.**

⁸² Section 11, paragraph 1, of the MRVG.

⁸³ Section 21, paragraph 1; see also Section 9 of the Ordinance on the Implementation of the MRVG of North Rhine-Westphalia.

⁸⁴ Section 20, paragraph 1.

134. The management of the clinic had issued detailed guidelines on the use of mechanical restraint (*Fixierung*). Every resort to *Fixierung* had to be ordered by a doctor, and a nurse had to be present constantly (*Sitzwache*) whenever a patient was subjected to *Fixierung*. In addition, a special form had to be completed.

The delegation noted that resort to *Fixierung*⁸⁵ was very rare and usually of short duration, and that the above-mentioned internal guidelines were systematically adhered to in practice.

5. Safeguards

135. The CPT welcomes the fact that, upon their admission to the clinic, all patients received a copy of the house rules as well as written and oral information on their rights.

136. The examination of a number of individual patient's files revealed that the necessity of involuntary placement of forensic patients was regularly reviewed by the criminal court, in accordance with the legal requirements⁸⁶. Such judicial reviews were carried out once a year in respect of placements under Section 63 of the Penal Code and every six months in respect of placements under Section 64 of the Penal Code, on the basis of assessments provided by the clinic. It is noteworthy that, during court proceedings, patients were heard in person by the judge and indigent patients were always provided free legal aid by an *ex officio* lawyer. Further, at least once every three years, courts requested an opinion by a forensic expert who was independent of the clinic (as required by the MRVG of North Rhine-Westphalia⁸⁷), and, during every review procedure, the patient (and his lawyer) could request a second opinion by an independent expert.

137. Patients could lodge complaints to the regional complaints commission for forensic psychiatry⁸⁸ as well as to the petition commissions of the *Länder* Parliament of North Rhine-Westphalia and the federal Parliament. In addition, patients were entitled to challenge any measures applied to them by requesting a judicial review of the measure⁸⁹ (*Antrag auf gerichtliche Entscheidung*).

138. As regards inspections, Rheine Forensic Psychiatric Clinic received at least one unannounced visit per year by a regional visiting commission (*Besuchskommission*), in accordance with the PsychKG of North Rhine-Westphalia and the MRVG of North Rhine-Westphalia⁹⁰. The commission comprises a psychiatrist, a public health official of the supervisory authority, a lawyer (public official qualified as a judge) and representatives of two non-governmental organisations (Association of Former Psychiatric Patients and Association of Relatives of Psychiatric Patients). After every visit, a report is drawn up and transmitted to the supervisory authority and the management of the clinic.

⁸⁵ For instance, only one case in 2010.

⁸⁶ See, in particular, Section 67e of the Penal Code.

⁸⁷ Section 16, paragraph 3, of the MRVG of North Rhine-Westphalia.

⁸⁸ *Beschwerdekommision Maßregelvollzug des Landschaftsverbands Westfalen-Lippe*.

⁸⁹ Before submitting a request to the court, patients are required to raise the matter with the supervisory authority (*Widerspruchsverfahren*) within one week after the contested measure has been taken.

⁹⁰ See Section 23 of the PsychKG and Section 32, paragraph 1, of the MRVG of North Rhine-Westphalia.

The delegation was provided with a copy of the most recent inspection report. From that report, it transpired that members of the commission paid particular attention to the living conditions in the clinic, the quality of treatment provided, the implementation in practice of patients' rights and the compliance with various procedural requirements, but that direct contacts with patients were very limited (in fact the report only refers to one interview with a patient).

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

139. The existing arrangements for contact with the outside world were satisfactory. Patients were able to send and receive correspondence, to make telephone calls and to receive visits from their family and friends (in principle, every day).

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

140. Germany is one of the very few countries in Europe, where orchiectomy (“surgical castration”) may be applied in the context of treating of sexual offenders. In the course of the visit, the delegation gathered information on this subject; in particular, it had consultations with representatives of the Medical Chamber of Berlin and examined the individual file of a detained person who had undergone surgical castration in Berlin⁹¹. Moreover, during its visit to Rheine Psychiatric Hospital⁹², it interviewed a patient who had been surgically castrated some ten years before.

141. The legal requirements for the application of surgical castration are set out in the (federal) Law on Voluntary Castration and Other Methods of Treatment of 1969 (hereinafter: “Law on Voluntary Castration”)⁹³. According to Sections 2 and 3 of the aforementioned law, a person may be the subject of surgical castration – at his own request – if:

(a) the intervention is indicated, in the light of the latest findings of medical science, in order to prevent, cure or alleviate severe illness, mental disorder or suffering which are related to an abnormal sex drive, or

(b) a person displays an abnormal sex drive, which, on account of his personality and past life, gives reason to suspect that he will commit one or more criminal offences enumerated in the law (in particular, murder, manslaughter, rape, sexual abuse of children, severe bodily injury, or exhibitionism) and that castration is indicated in the light of the latest findings of medical science, in order to counter that risk and thus to support the person concerned in managing his life.

In both above-mentioned cases, the following additional criteria must be met:

- before giving his consent, the person concerned must be informed about the reasons, implications and side effects of the castration as well as other treatment possibilities;
- minimum age of 25 years;
- the castration will not lead to physical or psychological adverse effects which are disproportionate to the aspired aim of the intervention;
- medical examination and positive evaluation by an expert commission (*Gutachterstelle*) of the medical chamber of the respective Land;
- approval of the guardianship court (applicable only when the person concerned is not able to give a valid consent).

⁹¹ Due to the difficulties encountered by the delegation in gaining access to medical files (see paragraph 6), no other files could be consulted.

⁹² See Section F.

⁹³ Surgical castration for the purpose of sex reassignment is covered by the Law on Transsexuals (*Gesetz über die Änderung der Vornamen und die Feststellung der Geschlechtszugehörigkeit in besonderen Fällen – “Transsexuellengesetz”*) of 1980, major parts of which have recently been declared unconstitutional by the Federal Constitutional Court (Judgment of 11 January 2011; 1 BvR 3295/07).

142. The procedure for processing requests for surgical castration by the expert commission of the relevant medical chamber is regulated by *Länder* legislation. For Berlin, the (*Länder*) Law on the Expert Commission for the Voluntary Castration and Other Treatment Methods⁹⁴ (dated 29 January 1971) stipulates the following:

- the procedures can only be initiated at the request of the person concerned;
- the expert commission must be composed of two doctors (including one psychiatrist) and a lawyer with the qualification of a judge;
- the commission must carry out a medical examination of the person concerned and consult and analyse all relevant judicial and administrative files;
- subsequently, the commission must provide the person concerned with all the relevant information (so that he is placed in the position to give a valid (“informed”) consent);
- in the event of the person concerned being deprived of his liberty (i.e. prison, forensic psychiatric hospital, preventive detention), he must be informed that surgical castration does not entail entitlement to early release;
- the person concerned must also be advised to undergo medical checks after the intervention;
- the spouse of the person concerned must be consulted, unless the latter is opposed to it or such a consultation appears to be inappropriate (“according to the individual circumstances”);
- the person concerned must give his consent by signing a statement to this effect;
- the expert commission decides by majority; a positive decision is valid for one year; if the castration is not performed within one year, the authorisation can be renewed once for another year (upon request).

143. From the consultations with the Chairperson (psychiatrist) of the expert commission and legal staff of the Medical Chamber of Berlin and the examination of an individual case file, it would appear that applications for surgical castration were carried out in accordance with the above-mentioned formal requirements. Although not required by law, the expert commission only approved requests for surgical castration if the person concerned had previously undergone other treatment programmes. Further, applicants were always assisted by a lawyer.

144. The CPT acknowledges that, in the light of the information gathered by its delegation, resort to surgical castration appears to be quite rare, not only in Berlin but throughout Germany. According to unofficial statistics available to the Committee, during the last ten years, the total number of surgical castrations of sexual offenders in Germany has been fewer than five per year, and in many *Länder* no person had been subjected to surgical castration during the same period. Moreover, in Berlin, more than half of the applications which had been submitted since 2001 (five out of nine) had been rejected by the expert commission, and no application had been submitted to the expert commission during the past two years.

⁹⁴ The Medical Chamber of Berlin has also issued internal guidelines for the work of its expert commission (dated 10 November 2008).

145. Notwithstanding this, the CPT must express its fundamental objections to the use of surgical castration as a means of treatment of sexual offenders.

Firstly, such an intervention has irreversible physical effects; it removes a person's ability to procreate and may have serious physical and mental consequences.

Secondly, surgical castration is not in conformity with recognised international standards, and more specifically, is not mentioned in the authoritative "Standards of Care for the Treatment of Adult Sexual Offenders" drawn up by the International Association for the Treatment of Sexual Offenders (IATSO). As a matter of fact, new methods of treatment have been developed since the adoption of the Law on Voluntary Castration (in particular, anti-androgens and LHRH⁹⁵ analogs with reversible effects as well as various methods of psychotherapy).

Thirdly, there is no guarantee that the result sought (i.e. lowering of the testosterone level) is lasting. As regards re-offending rates, the presumed positive effects are not based on sound scientific evaluation⁹⁶. In any event, the legitimate goal of lowering re-offending rates must be counterbalanced by ethical considerations linked to the fundamental rights of an individual.

Fourthly, given the context in which the intervention is offered, it is questionable whether consent to the option of surgical castration will always be truly free and informed. A situation can easily arise whereby patients or prisoners acquiesce rather than consent, believing that it is the only available option to them to avoid indefinite confinement.

To sum up, surgical castration is a mutilating, irreversible intervention and cannot be considered as a medical necessity in the context of the treatment of sexual offenders. In the CPT's view, surgical castration of detained sexual offenders could easily be considered as amounting to degrading treatment.

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

⁹⁵ Abbreviation for "luteinising hormone releasing hormone".

⁹⁶ When this point was discussed with the Chairperson of the expert commission of Berlin, the delegation did not get a cogent explanation regarding the "latest findings of medical science" on the basis of which the effectiveness of surgical castration ought to be assessed (in accordance with Section 2, paragraph 2, of the Law on Voluntary Castration). Moreover, the Medical Chamber of Berlin had never followed up cases in which sex offenders had been surgically castrated. Thus, no information was available on the side effects of the castration, nor on any instances of recidivism.

APPENDIX I

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

Co-operation

recommendations

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

Development of a National Preventive Mechanism

requests for information

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

Police establishments

Ill-treatment

comments

- the CPT trusts that the authorities of all *Länder* will remain vigilant and will continue to remind police officers that no more force than is strictly necessary should be used when effecting an apprehension and that, once apprehended persons have been brought under control, there can be no justification for striking them (paragraph 14);
- the CPT encourages all the *Länder* to follow the example of the *Land* of Berlin, where all police officers are obliged to wear identification badges (paragraph 17).

requests for information

- in respect of the period from 1 January 2009 to the present:
 - (a) the number of complaints of ill-treatment made against federal police officers and officers of the police services of all *Länder* and the number of criminal/disciplinary proceedings which have been instituted as a result;
 - (b) the outcome of the above-mentioned proceedings and an account of any criminal/disciplinary sanctions imposed on police officers in these cases (paragraph 15);

- detailed information on the mechanisms for carrying out investigations into allegations of police ill-treatment in each of the *Länder* (paragraph 16).

Safeguards

recommendations

- the federal and all *Länder* authorities to take the necessary measures to ensure that relevant information on the implementation of the fundamental safeguards against ill-treatment (i.e. when the person was informed of his/her rights; when he/she had contacts with and/or visits from close relatives, a lawyer, a doctor or a representative of a consular service) is kept in respect of every police establishment in such a way that it can be retrieved retrospectively (on paper or in electronic form) (paragraph 19);
- the relevant legal provisions to be amended so as to ensure that they reflect the precepts set out in paragraph 20 as regards the possibility to delay the exercise of the right of notification of custody; the practice in all police establishments should be revised accordingly (paragraph 20);
- the federal and all *Länder* authorities to take the necessary measures to ensure that all persons detained by the police can effectively benefit, if they so wish, from access to a lawyer throughout their police custody, including during any police questioning. Save for highly exceptional circumstances when the matter is urgent, whenever a detained person has made a request to have a lawyer present, police officers should delay the questioning of the person concerned for a reasonable time pending the arrival of the lawyer (paragraph 21);
- the federal and all *Länder* police authorities to take steps to ensure that all persons deprived of their liberty by the police are informed in writing of the possibilities to benefit from lawyers' emergency counselling services (paragraph 22);
- the federal and all *Länder* police authorities to take steps without delay to ensure that detained juveniles are not subjected to police questioning or required to sign any statement related to the offence of which they are suspected without the benefit of a trusted person and/or a lawyer being present. The relevant legal provisions should be amended accordingly (paragraph 24).

comments

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

requests for information

- whether and under which circumstances an *ex officio* lawyer may be formally appointed (*beigeordnet*) for indigent persons during the period of police custody (paragraph 23).

Conditions of detention

recommendations

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

comments

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

Other issues

recommendations

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

Detention of foreign nationals under aliens legislation

Preliminary remarks

recommendations

- the German authorities to take immediate steps to ensure that, in all German *Länder* (including Baden-Württemberg, Bavaria and Saxony), detention pending deportation is governed by specific rules reflecting the particular status of immigration detainees (paragraph 33);
- the authorities of Baden-Württemberg, Bavaria and Saxony to take the necessary measures to ensure that immigration detainees are accommodated in centres specifically designed for that purpose, meeting the criteria set out by the Committee in its 7th and 19th General Reports⁹⁷. Such measures should also be taken by the authorities of all other *Länder* which have not yet set up detention centres for foreigners (paragraph 33).

⁹⁷

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

comments

- steps should be taken to ensure that all minors (including those between the age of 16 and 18) are, as a rule, not held in detention pending deportation (paragraph 34).

Conditions of detention

recommendations

- material conditions in the unit for male immigration detainees at Munich-Stadelheim Prison to be improved, in the light of the remarks made in paragraph 36 (paragraph 36);
- steps to be taken at Leipzig, Munich-Stadelheim and Schwäbisch Gmünd Prisons and, where appropriate, in other establishments in other *Länder* in Germany to ensure that an open-door regime is implemented for all immigration detainees throughout the day (paragraph 40);
- steps to be taken at Munich-Stadelheim Prison to ensure that male immigration detainees are provided with board games and made aware of the possibilities of having access to reading material (in various languages) and that more recreational activities are organised for them (paragraph 40).

Contacts with the outside world

recommendations

- the authorities of Bavaria and, if necessary, of other *Länder* to take immediate steps to ensure that immigration detainees are granted regular and frequent access to the telephone (at the detainee's own expense) (paragraph 41);
- the authorities of Baden-Württemberg and Saxony and, if necessary, of other *Länder* to take steps to ensure that all immigration detainees are allowed to receive at least one visit of one hour per week (paragraph 41).

Health care

recommendations

- the authorities of Bavaria and all other *Länder* to create secure rooms in major hospitals, with a view to avoiding the shackling of inmates to hospital beds (paragraph 43);
- the authorities of all *Länder* to take steps to ensure that all medical examinations/consultations of hospitalised inmates are conducted out of the hearing and – unless the doctor concerned requests otherwise in a particular case – out of the sight of prison officers (paragraph 43).

Staff

comments

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

Information and assistance to foreign nationals

recommendations

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

requests for information

- detailed information on the arrangements made in all German *Länder* to provide legal counselling to immigration detainees (paragraph 46).

Prisons

III-treatment

comments

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

Conditions of detention of juveniles in the prisons visited

recommendations

- the sanitary facilities in the cells of the juvenile unit at Cologne Prison to be fully partitioned (paragraph 54);
- the authorities of Saxony to develop the regime for juveniles at Leipzig Prison so as to ensure that such prisoners enjoy out-of-cell activities throughout the day during the week, until the early evening (paragraph 58);

- immediate steps to be taken at Cologne, Herford and Leipzig Prisons to provide juvenile prisoners with increased out-of-cell time during weekends (paragraph 59);
- steps to be taken at Herford Juvenile Prison to ensure that placement under the regime in Level 1 really is for the shortest possible time. Further, inmates placed in the treatment unit should be heard in person before the measure is applied, receive a copy of the decision and be informed in writing of the modalities for appealing against that decision. They should also confirm with their signature that the measure has been explained to them, as well as the avenues for appeal (paragraph 60).

Conditions of detention of adult female prisoners at Schwäbisch Gmünd Prison

recommendations

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

comments

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

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

recommendations

- the authorities of Saxony to improve the programme of activities, including work and vocational training opportunities, for prisoners at Leipzig Prison; the aim should be to ensure that all prisoners, including those on remand or serving short sentences, are able to spend a reasonable part of the day outside their cells engaged in purposeful activities of a varied nature (work; vocational training; education; sport; recreation/association) (paragraph 64);
- the authorities of Baden-Württemberg to take immediate steps to increase out-of-cell activities for remand prisoners at Ellwangen Prison (paragraph 65).

requests for information

- on the plans to construct a new building for workshops at Leipzig Prison (paragraph 64).

Health care

recommendations

- the authorities of Saxony to redouble their efforts to fill as soon as possible the vacant posts for psychiatrists at Leipzig Prison Hospital (paragraph 68);
- health-care staffing levels at Herford and Leipzig Prisons to be reinforced, in order to ensure a nursing presence within the establishments on all days of the week (including at weekends). This should *inter alia* make it possible to avoid the need for medication to be distributed to prisoners by custodial staff (paragraph 74);
- steps to be taken at Herford and Leipzig Prisons to ensure that someone competent to provide first aid, preferably with a recognised nursing qualification, is always present on the premises (including at night) (paragraph 74);
- existing procedures to be reviewed in all German prisons in order to ensure that, whenever injuries are recorded by a doctor which are consistent with allegations of ill-treatment made by a prisoner (or which, even in the absence of allegations, are indicative of ill-treatment), the record is systematically brought to the attention of the relevant prosecutor, regardless of the wishes of the person concerned (paragraph 76);
- in all the prisons visited, prisoners to be made aware that they are not obliged to reveal their reasons for wishing to have access to the health-care service. If they so wish, prisoners should be able to approach the health-care service on a confidential basis, for example by means of a message in a sealed envelope (paragraph 78).

comments

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

requests for information

- on the plans for the construction of a new hospital building at Leipzig Prison (paragraph 67);
- comments of the authorities of Saxony on the issues raised in paragraph 69 concerning Leipzig Prison Hospital, namely the low level of nursing staff at night and related security-issues as well as the high rate of sick leave amongst nurses (paragraph 69).

Other issues

recommendations

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

- the authorities of Baden-Württemberg, North Rhine-Westphalia, Saxony and, where appropriate, of other *Länder* to formally abolish the restriction regarding access to reading material for prisoners subjected to the disciplinary measure of solitary confinement (paragraph 82);
- the authorities of Baden-Württemberg and all other *Länder* concerned to take steps to ensure that disciplinary punishment of prisoners never involves a total prohibition of family contact and that any restrictions on family contact as a punishment are imposed only when the offence relates to such contact; the relevant *Länder* laws should be amended accordingly (paragraph 83);
- the role of prison doctors in relation to disciplinary matters to be reviewed in all prisons, in the light of the remarks in paragraph 84. In so doing, regard should be had to the European Prison Rules (in particular, Rule 43.2) and the comments made by the CPT in its 15th General Report (see paragraph 53 of CPT/Inf (2005) 17) (paragraph 84);
- the authorities of all *Länder* to take the necessary steps to ensure that prisoners under segregation, whose state of health so permits, are offered at least one hour of outdoor exercise every day. The relevant legal provisions should be amended accordingly (paragraph 86);
- steps to be taken by the management of Leipzig Prison to follow the approaches at Cologne and Schwäbisch Gmünd Prisons as regards the clothes provided to prisoners during their stay in a security cell (paragraph 87);
- steps to be taken by the relevant authorities to ensure that the precepts set out in paragraph 93 are effectively implemented in all prison establishments in Germany resorting to *Fixierung* (paragraphs 93 and 113);
- the prison authorities of all *Länder* to take the necessary steps to ensure that all prisoners, whatever their legal status, are entitled to a visit of at least one hour every week (paragraph 94);
- the authorities of all German *Länder* to make the necessary arrangements to ensure that both remand and sentenced prisoners are granted regular and frequent access to the telephone (paragraph 95).

comments

- steps should be taken by the authorities of North Rhine-Westphalia and Saxony to resolve the problem of low staffing levels and extended overtime obligations at Herford and Leipzig Prisons, not only for the sake of the staff concerned but also because of the negative effects this problem may have on prisoners (paragraph 79);
- the management of all prisons visited should ensure that a record is kept of placements of prisoners in a plain cell (paragraph 85);

- the CPT wishes to stress once again that the aim should be to abandon the resort to *Fixierung* in non-medical settings⁹⁸; it would be desirable for the prison authorities of all *Länder* to follow the approach adopted by the authorities of Saxony (paragraph 93).

requests for information

- in respect of all German *Länder*, detailed information about independent prison monitoring and complaints bodies (paragraph 98).

Preventive detention (*Sicherungsverwahrung*)

Preliminary remarks

requests for information

- detailed information on the concrete measures taken by the federal and *Länder* authorities, in the light of the judgments of the European Court of Human Rights (ECtHR) and the Federal Constitutional Court referred to in paragraphs 100, 101 and 104 (paragraph 105);
- information as to:
 - where and under which conditions persons subjected to a placement order under the Law on the Treatment and Placement of Violent Offenders Suffering from a Mental Disorder (ThUG) are being held (e.g. individual care plans, treatment, regime, contact with the outside world, etc.);
 - whether there are plans to construct any new facilities for this purpose (paragraph 105).

Unit for preventive detention at Freiburg Prison

requests for information

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

⁹⁸

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

Unit for preventive detention at Burg Prison

recommendations

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

requests for information

- whether the conflict between inmates in the unit for preventive detention and the management of Burg Prison concerning the extent to which personal belongings could be kept inside the cells has been resolved (paragraph 111);
- detailed information on the therapeutic activities which are followed by inmates in preventive detention at Burg Prison (paragraph 111).

Preventive detention at Schwäbisch Gmünd Prison

requests for information

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

Berlin Juvenile Detention Centre

recommendations

- steps to be taken by the authorities of Berlin and all other *Länder* to ensure that all young offenders who are held in a juvenile detention centre for more than 24 hours are granted outdoor exercise of at least one hour per day (paragraph 120);
- the legal provisions governing disciplinary sanctions in detention centres for juveniles in Germany to be revised, in the light of the remarks made in paragraph 122 (paragraph 122);
- inmates in all juvenile detention centres in Germany to be allowed more frequent contacts with the outside world (in particular, with close relatives), in the light of the remarks made in paragraph 124 (paragraph 124).

requests for information

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

- comments of the authorities of Berlin about the complaints received from a number of juveniles regarding the quality of food provided to them (paragraph 118).

Rheine Forensic Psychiatric Clinic

Preliminary remarks

comments

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

Staff and treatment

comments

- more educational activities should be offered to patients at Rheine Forensic Psychiatric Clinic (paragraph 131).

requests for information

- whether the staffing situation at Rheine Psychiatric Clinic regarding psychologists has been remedied (paragraph 130).

Seclusion and means of restraint

recommendations

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

Safeguards

recommendations

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

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

recommendations

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

APPENDIX II

LIST OF THE FEDERAL AND *LÄNDER* AUTHORITIES, ORGANISATIONS AND PERSONS WITH WHOM THE DELEGATION HELD CONSULTATIONS

A. National authorities

1. Federal authorities

Federal Ministry of Justice

Ms Sabine LEUTHEUSSER-SCHNARRENBERGER, Bundesministerin (Federal Minister)
Dr Birgit GRUNDMANN, Staatssekretärin (Secretary of State)
Mr Benjamin BRAKE, Persönlicher Referent der Ministerin
Mr Thomas DITTMANN, Ministerialdirektor
Dr Almut WITTLING-VOGEL, Ministerialdirigentin
Dr Hans-Jörg BEHRENS, Ministerialrat
Ms Gudrun TOLZMANN, Ministerialrätin
Ms Sonja WINKELMAIER, Staatsanwältin
Ms Claudia RADZIWILL, Amtsrätin

Federal Ministry of the Interior

Mr Tobias PLATE, Oberregierungsrat

Federal Foreign Office

Ms Sylvia Ursula GRONEICK, Vortragende Legationsrätin
Mr Jan KANTORCZYK, Vortragender Legationsrat
Mr Florian KARNER, Konsulatssekretär

2. Länder authorities

Baden-Württemberg

Mr Michael STEINDORFNER, Ministerialdirektor, Ständiger Vertreter des Justizministers
(Permanent Representative of the Minister of Justice)
Mr Ulrich FUTTER, Ministerialdirigent, Ministry of Justice
Mr Martin FEIGL, Polizeidirektor, Ministry of the Interior

Bayern

Mr Horst KRÄ, Ministerialrat, Ministry of Justice and Consumer Protection
Mr Peter HEIGL, Leitender Polizeidirektor, Ministry of the Interior

Berlin

Prof Benjamin-Immanuel HOFF, Staatssekretär (Secretary of State), Senate Department of Health, Environment and Consumer Protection

Dr Martin MÖLLHOFF-MYLIUS, Senate Department of Health, Environment and Consumer Protection

Dr Gero MEINEN, Senatsdirigent, Senate Department of Justice

Mr Torsten ZIPSE, Regierungsdirektor, Senate Department of Justice

Mr Klaus ZUCH, Senatsdirigent, Senate Department of the Interior and Sports

Ms Kerstin MENZEL, Leitende Polizeidirektorin, Senate Department of the Interior and Sports

Mr Andreas SALOMON, Polizeihauptkommissar, Senate Department of the Interior and Sports

Mr Thomas DUBLIES, Polizeidirektor, Police Headquarters

Mr Stephan LENGOWSKI, Polizeirat, Police Headquarters

Brandenburg

Mr Robert MÜNDELEIN, Ministerialrat, Ministry of Justice

Hamburg

Ms Renate FEY, Wissenschaftliche Direktorin im Verwaltungsdienst, Department of Justice

Hessen

Dr Helmut ROOS, Ministerialdirigent, Ministry of Justice, Integration and Europe

Mr Torsten KUNZE, Ministerialrat, Ministry of Justice, Integration and Europe

Mecklenburg-Vorpommern

Mr Uwe KOOP, Regierungsdirektor, Ministry of Justice

Niedersachsen

Dr Monica STEINHILPER, Ministerialdirigentin, Ministry of Justice

Mr Helmut KRONE, Regierungsdirektor, Ministry of Justice

Ms Uta SCHÖNEBERG, Ministerialrätin, Ministry of the Interior and Sports

Nordrhein-Westfalen

Dr Brigitte MANDT, Staatssekretärin (Secretary of State), Ministry of Justice
Mr Wilfried MAINZER, Ministerialdirigent, Ministry of Justice
Mr Rainer MUES, Leitender Ministerialrat, Ministry of Justice
Mr Helmut HAMMERSCHLAG, Oberstaatsanwalt, Ministry of Justice
Dr Marten PFEIFER, Ministerialrat, Ministry of Internal and Municipal Affairs
Dr Daniela LESMEISTER, Oberregierungsrätin, Ministry for Health, Equality, Social Care and the Elderly

Rheinland-Pfalz

Ms Ursula DECKER, Oberregierungsrätin, Ministry of Justice and Consumer Protection

Sachsen

Dr Jürgen MARTENS, Staatsminister der Justiz und für Europa (Minister of Justice and Europe)
Dr Wilfried BERNHARDT, Staatssekretär (Secretary of State), Ministry of Justice and Europe
Mr Willi SCHMID, Ministerialdirigent, Ministry of Justice and Europe
Ms Ingeborg SCHÄFER, Ministerialrätin, Ministry of Justice and Europe
Mr Rainer ARADEI-ODENKIRCHEN, Ministerialrat, Ministry of Justice and Europe
Mr Dirk BÖLTER, Ministerialrat, Ministry of the Interior
Mr Martin STRUNDEN, Ministerialrat, Ministry of the Interior

Sachsen-Anhalt

Mr Andreas KRATZ, Regierungsdirektor, Ministry of Justice and Equality

Schleswig-Holstein

Dr Werner BUBLIES, Ministerialrat, Ministry of Justice, Equality and Integration

Thüringen

Mr Rainer LEICHT, Staatsanwalt, Ministry of Justice

B. National Agency for the Prevention of Torture

Mr Klaus LANGE-LEHNGUT, Honorary Director of the Federal Agency for the Prevention of Torture

Prof Hansjörg GEIGER, Chairman of the Joint *Länder* Commission for the Prevention of Torture

C. Other organisations and persons with whom the delegation held consultations

Ärztammer Berlin (Medical Chamber of Berlin)

Deutsches Institut für Menschenrechte (German Institute for Human Rights)

ACAT (Aktion der Christen für die Abschaffung der Folter; Action by Christians Against Torture)

Amnesty International

CURARE

Jesuiten-Flüchtlingsdienst Deutschland (Jesuit Refugee Service Germany)

Komitee für Grundrechte und Demokratie (Committee for Fundamental Rights and Democracy)

Reach Out

Prof Johannes Feest, Professor of Criminology, University of Bremen