

EXECUTIVE SUMMARY

The main objective of the CPT's 2015 visit to Germany was to review the measures taken by the relevant authorities to implement recommendations made by the Committee after its previous visits. To this end, the CPT's delegation visited several police establishments, prisons and civil/forensic psychiatric hospitals in different *Länder*. The reception at the establishments visited was in many respects excellent, and all staff met by the delegation made genuine efforts to be helpful and co-operative. However, the work of the delegation was seriously hampered as a result of instructions issued by various *Länder* authorities shortly before the visit, which required the express consent of every individual prisoner or patient to give delegation members access to his/her individual administrative and medical files. The most serious problem was encountered at Uchtspringe Forensic Psychiatric Clinic (Saxony-Anhalt) where the delegation was even denied access to a list of the patients who were being held in the clinic on an involuntary basis. Since this matter could not be resolved, the delegation had no choice but to interrupt its visit to the clinic. The CPT urges all relevant federal and *Länder* authorities to take immediate action to ensure that visiting delegations henceforth have unrestricted access to the administrative and medical files of detained persons.

Police establishments

As during the 2010 visit, the delegation heard no allegations of deliberate physical ill-treatment of detained persons by police officers whilst in police custody, and most of the persons interviewed who were or had recently been in police custody indicated that they had been treated with respect by police officers. However, once again some allegations were received from detained persons – in particular foreign nationals and persons suffering from a mental disorder – that they had been subjected to excessive use of force by police officers at the time of apprehension (such as punches or kicks after the person concerned had been brought under control or unduly tight handcuffing). The CPT stresses the need for the authorities of all *Länder* to remain vigilant and to continue to remind police officers that no more force than is strictly necessary should be used when carrying out an apprehension.

Overall, the delegation gained a positive impression of the implementation in practice of the fundamental safeguards against ill-treatment, notably as regards the rights of notification of custody and access to a doctor. In most of the police establishments visited, information sheets on the rights of detained persons (*Belehrung*) were available in a wide range of foreign languages. That said, the CPT expresses concern about the fact that certain long-standing recommendations regarding fundamental safeguards have still not been implemented. In particular, detained persons are still not entitled to have a lawyer present during police questioning (as opposed to any questioning by a public prosecutor or a judge). The CPT calls upon the federal and all *Länder* authorities to take the necessary measures to ensure that all detained persons (including those who are not able to pay for a lawyer themselves) can effectively benefit, if they so wish, from access to a lawyer throughout their police custody, including during any police questioning. In addition, steps should be taken 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 presence of a lawyer and, ideally, a trusted adult.

As was the case during previous visits, material conditions of detention in all the police establishments visited were, on the whole, adequate for short-term custody. Custody cells were maintained in an appropriate state of repair and cleanliness and usually fitted with a call system. That said, despite the specific recommendation repeatedly made, mattresses were still not provided to persons held in overnight custody at Donauwörth Police Station and in the sobering-up cells at Berlin South-West Police Station and Magdeburg Police Headquarters. The CPT calls upon the police authorities of Bavaria, Berlin and Saxony-Anhalt to remedy this deficiency.

The CPT welcomes the fact that, since the 2010 visit, the use of mechanical restraint (*Fixierung*) in the context of police custody has been abandoned by the police authorities of several *Länder*, including Baden-Württemberg, Berlin, Saarland and Thuringia. The Committee calls upon the police authorities of Lower Saxony, North-Rhine Westphalia, Saxony-Anhalt and all other *Länder* concerned to put an end to this practice without any further delay.

Prisons

As in 2010, the delegation received no allegations – and found no other indications – of physical ill-treatment of prisoners by staff, and inter-prisoner violence did not seem to be a major problem in any of the establishments visited. However, the CPT must express its dismay about the frequency of complaints received from prisoners at Kaisheim Prison regarding instances of rude and disrespectful behaviour and language by several members of the establishment's health-care staff. The Committee recommends that the prison authorities of Bavaria deliver a clear message to all members of the health-care staff at Kaisheim Prison, reminding them that any disrespectful or provocative behaviour towards prisoners is unacceptable and will be dealt with accordingly.

At Celle, Kaisheim and Tonna Prisons, material conditions were generally very good in terms of state of repair, living space, access to natural light, ventilation and equipment. The delegation also gained a generally favourable impression of the regime activities provided at these prisons, but it is a matter of concern that the opportunities for work or vocational training remained very limited for remand prisoners at Kaisheim and Tonna Prisons.

As regards the provision of health care in the establishments visited, the existing facilities were generally of a high standard in terms of infrastructure and equipment. Further, access to medical consultations was generally guaranteed without delay in all the establishments visited. That said, it is a matter of serious concern that, in particular at Kaisheim and Tonna Prisons, the management repeatedly encountered major difficulties in transferring prisoners suffering from severe mental disorders to a hospital setting (either a prison hospital or a psychiatric clinic). Moreover, the delegation observed striking differences between the different prisons visited when it came to the issue of opiate substitution treatment for drug-addicted prisoners. While such treatment was offered to prisoners at Celle and Tonna Prisons, it was as a matter of policy usually not offered to prisoners at Kaisheim Prison, despite the fact that it was generally available in the outside community. In the CPT's view, such a state of affairs is clearly not in compliance with the principle of equivalence of care.

The delegation observed a striking contrast between the prisons visited regarding the arrangements for prisoners' contact with the outside world. It is particularly praiseworthy that, at Celle and Tonna Prisons, prisoners were provided with access to the telephone inside their cells, as part of the multimedia equipment which could be rented by prisoners. However, at Kaisheim Prison, both remand prisoners and sentenced prisoners (including those sentenced to life imprisonment) were – as a general rule – not allowed to make any telephone calls. In the CPT's view, such a state of affairs is unacceptable and incompatible with the European Prison Rules.

The CPT welcomes the fact that, at Celle and Tonna Prisons, sentenced prisoners (and, exceptionally, also remand prisoners) could benefit after one year of imprisonment from unsupervised visits (*Langzeitbesuche*) by spouses (and children) of up to several hours, provided that they met certain criteria and successfully underwent a risk assessment. Regrettably, no such possibility existed at all at Kaisheim Prison.

As regards discipline, the CPT considers the maximum possible period of solitary confinement of four weeks for adult prisoners in various *Länder* prison laws to be excessive. Given the potentially very damaging effects of solitary confinement on the mental and/or physical well-being of the prisoners concerned, this period should be no more than 14 days for a given offence, and preferably lower. Further, the Committee recommends that the disciplinary sanction of solitary confinement be abolished in respect of juveniles, in accordance with the United Nations Standard Minimum Rules on the Treatment of Prisoners (*Nelson Mandela Rules*).

The CPT is pleased to note that the downward trend observed during the 2013 visit regarding the use of mechanical restraint (*Fixierung*) in prisons has continued. As a matter of fact, in most of the prisons visited, hardly any prisoner had been subjected to *Fixierung* in recent years. The CPT encourages the relevant authorities of all *Länder* to abandon the resort to *Fixierung* in prisons.

Psychiatric establishments

The delegation visited St Joseph's Psychiatric Hospital in Berlin-Weißensee (Berlin) and two forensic psychiatric establishments, namely Brandenburg an der Havel Forensic Psychiatric Clinic (Brandenburg) and Wasserburg am Inn Forensic Psychiatric Clinic (Bavaria).

The delegation received no allegations of deliberate physical ill-treatment of patients by staff in any of the psychiatric hospitals visited. That said, the delegation received a number of complaints of verbal abuse, threats and disrespectful behaviour by staff at Brandenburg and Wasserburg Forensic Psychiatric Clinics. Moreover, at Brandenburg Forensic Psychiatric Clinic, the delegation received allegations that some vulnerable patients were repeatedly subjected to physical and verbal abuse, as well as sexual harassment and exploitation. The CPT recommends that the management of Brandenburg and Wasserburg Forensic Psychiatric Clinics exercise continuous vigilance and remind staff that any form of ill-treatment (including verbal abuse and threats) or disrespectful/provocative behaviour towards patients is unacceptable and will be sanctioned accordingly. The Committee also stresses the need for the management of Brandenburg Forensic Psychiatric Clinic to pursue its efforts to address the problem of inter-patient violence and protect all patients from other patients who might cause them harm (including by ensuring adequate staff presence and supervision at all times).

Living conditions were generally of a high standard at St Joseph's Psychiatric Hospital and at Brandenburg and Wasserburg Forensic Psychiatric Clinics. In all three establishments, patients were offered a range of sports and other recreational activities, and patients usually benefited from daily outdoor exercise. However, at Wasserburg Forensic Psychiatric Clinic, the delegation received a number of complaints that, on various occasions, patients had not been granted access to daily outdoor exercise.

Health-care staffing levels appeared to be generally adequate in all the psychiatric establishments visited. Further, the delegation gained a generally favourable impression of the treatment provided to patients. Patients usually had individual treatment plans that appeared to correspond to their needs. In addition to pharmacotherapy, patients were also offered individual psychotherapy and several group therapies, as well as a range of occupational, educational and sports therapies. Notwithstanding that, the Committee encourages the management of the Clinic to re-double their efforts to encourage patients who are currently not enrolled in any therapy to participate in therapeutic activities that are adapted to their specific needs.

At Brandenburg Forensic Psychiatric Clinic, some patients who had committed sexual offences and who had been or were receiving anti-androgen treatment (so-called "chemical castration") claimed that they had been put under pressure by the treating doctor to accept the treatment and that they had been advised that there would be no relaxation of the regime (*Lockerung*) until they started the treatment (the implicit message being that there would otherwise be no realistic prospect of being released in the foreseeable future). Thus, the CPT has some doubts as to whether all patients concerned were placed in a position to give free and informed consent to anti-androgen treatment. The Committee recalls that, as a matter of principle, anti-androgen treatment should be given on a purely voluntary basis. As should be the case before starting any medical treatment, the free and informed written consent of the patient concerned should be obtained prior to the commencement of anti-androgen treatment, it being understood that consent can be withdrawn at any time; in addition, the patient should be fully informed of all the potential effects and side-effects of the treatment, as well as the consequences of refusal to undergo such treatment.

As regards the use of means of restraint, the CPT expresses serious concern that, in all three psychiatric establishments visited, patients under mechanical restraint (*Fixierung*) were not always subjected to continuous, direct and personal supervision by a member of the health-care staff (*Sitzwache*). The Committee also stresses the need for all establishments visited to establish a specific register to systematically record all instances of recourse to means of restraint and to provide relevant staff with training in the use of restraint techniques and equipment.

Moreover, the CPT formulates a number of specific recommendations regarding the legal safeguards offered to civil and forensic psychiatric patients in the context of involuntary placement and review procedures.

The CPT notes that Bavaria is one of very few *Länder* in Germany where the relevant mental-health legislation provides for the possibility of imposing disciplinary sanctions on forensic psychiatric patients, a possibility which, in the CPT's experience, does not as a rule exist in other Council of Europe member States. As a matter of principle, the CPT has reservations about the use of disciplinary measures vis-à-vis psychiatric patients. Such measures aim at sanctioning patients' behaviour, which is often likely to be related to a psychiatric disorder and should be approached from a therapeutic rather than a punitive standpoint.

In its reports on the 2010 and 2013 visits, the CPT expressed its fundamental objections to the use of surgical castration as a means of treatment of sex offenders, since it was a mutilating, irreversible intervention which could not be considered as a medical necessity in this context. In the present report, the Committee welcomes the fact that, according to official data, not one single surgical castration had been carried out in the context of treatment of sex offenders during the period 2013 to 2015, and it encourages all relevant federal and *Länder* authorities to put a definitive end to the use of surgical castration as a means of treatment of sex offenders, including by amending the relevant legal provisions.