Council of Europe
Conseil de l'Europe

CPT/Inf (93) 14
English version

Response of the Government of the Federal Republic of Germany to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Germany from 8 to 20 December 1991

The CPT's report on its visit to Germany from 8 to 20 December 1991 and the response of the Government of the Federal Republic of Germany were published on 19 July 1993. The present document contains the English version of the Government's response. The appendices to which the response refers (available only in German) may be obtained upon request.

Strasbourg, March 1994

Statement of the Federal Government on the Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on its visit to Germany from 8 - 20 December 1991

I N T R O D U C T I O N

1. The Federal Republic herewith submits its statement on the recommendations, comments and requests for information in the Report of the Committee on its visit to Germany from 8 - 20 December 1991.

2. In concurrence with the Federal Länder, which are responsible for the prison service, the Federal Government attaches considerable significance to the prevention of torture and cruel or inhuman treatment. It welcomes the fact that in the course of its first visit to the Federal Republic of Germany the Committee was able to form for itself a picture of the situation in those areas where people find themselves deprived of their liberty.

3. The Federal Government would also like for its part to once more emphasise the atmosphere of healthy cooperation prevalent during the visit of the delegation of the Committee and most of all appreciates the understanding shown by the Committee with regard to the situation of restructuring in the police and prisons in the new Länder. The Federal Government points to the fact that the restructuring work cannot be completed in the near future, in spite of intensive efforts.

4. The Federal Government thanks the Committee for its recommendations and comments and would gladly use this opportunity to continue the dialogue with the Committee in

...

its statement as well as by providing the supplementary information requested by the Committee.

5. The Federal Government is pleased to note that no complaints with regard to physical ill-treatment by police or prison officers were submitted to the Committee. In respect of the two exceptions referred to in the Report, we refer to clarifying information in Appendix I in sections II. Bavaria B. (Straubing Prison) and III. Berlin B. 1. (Moabit and Tegel Prisons).

Initially, it should however be stated that the accusation of ill-treatment of prisoners in Tegel Prison (No 66 in the Report) has only reached the attention of the Federal Government in the form of the Final Report of 2 October 1992. Neither during their visit to Tegel Prison nor during the concluding discussion at the Federal Ministry of Justice in Bonn on 20 December 1991 did the members of the delegation of the Committee mention that they had received corresponding claims of ill-treatment. For this reason, the Berlin administration of justice was not able to investigate the claims prior to receiving the Final Report on 2 December 1992. The Federal Government and the Berlin administration of justice would have appreciated it if the delegation had opted for a similar procedure to the case of their visit to Straubing Police Station in Bavaria and given those responsible the opportunity to carry out immediate investigations.

The Federal Government and the Bavarian administration of justice would also have appreciated it if, during the visit of the Committee at Straubing Prison, the delegation had given the opportunity to clarify the situation concerning the accusations levelled at police and prison officers in the riot of prisoners in August 1990 in Straubing Prison,

especially since the accusations had been examined in detail by this time.

6. The following Statement is numbered along the lines of Appendix I of the Report.

Appendix I, Part I. (General) - A. (Police establishments)

N° 1a:

The Federal Government concurs with the opinion of the Committee that scrupulous implementation of the training programmes for police officers is of particular importance, also with regard to the prevention of torture and inhuman or degrading treatment or punishment.

Instruction on basic rights, including that of physical integrity (Article 2 para 2 first sentence of the Basic Law) as well as the prohibition on mentally or physically ill-treating detained persons (Article 104 para 1 second sentence of the Basic Law) is treated as a separate item in training in the framework of the subject "State and Constitutional law", in basic training as well as in all in-service training courses. Furthermore, they are a part of training on police intervention - in the context of examining the legality requirement in each individual case.

N° 1b:

Seven Federal Länder report neither complaints of ill-treatment by police officers nor corresponding disciplinary or criminal proceedings.

...

In the other nine Länder, the number of convictions in those proceedings which have been completed is small, and is as follows (in the following, each indent indicates one Federal Land):

- 1991: seven charges of bodily harm perpetrated whilst on duty. None of the five proceedings which have been completed to date led to a conviction (two proceedings were discontinued on payment of fines of 1,000.00 DM and 1,500.00 DM respectively, two acquittals, one refusal to open main proceedings),
  1992: three charges of bodily harm perpetrated whilst on duty. The proceedings have not yet been completed.

- One criminal case against police officers in 1992, which is likely to be discontinued.

- 1991/92: Two formal disciplinary proceedings plus criminal proceedings which resulted in convictions. In the first case, the officer concerned, who had ill-treated a detainee during questioning, was sentenced to a criminal fine of 90 daily rates of 70.00 DM in respect of bodily harm perpetrated whilst on duty. Also, a cut in pay of 1/30 for a period of 18 months as well as a time-limited ban on promotion was imposed as a disciplinary measure. In the second case, two police officers ill-treated a suspect during apprehension. Both officers were sentenced to criminal fines in 150 daily rates (9,000.00 DM and 6,750,00 DM respectively). A cut in pay was also imposed as a disciplinary measure.

- 1991/92: altogether, seven formal disciplinary proceedings against police officers in respect of ill-treatment; four of these have already been concluded. In one case, an officer was transferred to a post with lower pay. One case was discontinued, one was postponed pending the result of

criminal proceedings, one further case is pending at the Administrative Court.
In all cases, criminal investigations were also carried out. Three officers were fined, two proceedings were discontinued on payment of a sum of money in accordance with section 153 a of the Code of Criminal Procedure. In two cases, the criminal proceedings have not yet been concluded.

- Of the criminal proceedings instituted against a total of four police officers during the period under report, three have now been discontinued.

- In 1991, 27 and in 1992, 21 criminal proceedings were conducted in respect of bodily harm perpetrated whilst on duty. None led to a conviction.

- In 1991, a total of 17 criminal proceedings were instigated. 12 have now been discontinued for lack of sufficient suspicion of an offence. Of the 11 proceedings instigated in 1992 (not including one formal disciplinary proceeding), two have been discontinued and the others have not yet been concluded.

- 1991/92: Of 18 complaints, 16 cases resulted in criminal proceedings being instigated against the accused police officers. Of the 12 proceedings which have already been concluded, only three resulted in convictions (in one case, a fine, in two cases a suspended prison sentence). Of the nine disciplinary proceedings instigated, five have been concluded, with four resulting in written censure.

- 1991: 582 complaints against police officers and guards in respect of bodily harm perpetrated whilst on duty, 50 of which during large operations and demonstrations; 1992: 591 complaints, 41 of which during large operations and demonstrations. On the other hand, the number of

...

disciplinary proceedings instigated in respect of bodily harm perpetrated whilst on duty is much lower, at 19 in 1991 and 20 in 1992. This points to a large part of the complaints being unfounded or the use of force on the part of the police having been proven to be justified, so that for this reason, judicial sanctions were not necessary.

N° 2a, first indent:

The Federal Länder have stated that detention units are always equipped with matresses or plastic padding for the camp beds, as well as with blankets.

The relevant rules are to be found in the Länder rules for police custody, several of which are enclosed as enclosure 1). They govern not only the treatment of those in detention, but also the conditions and equipment of the detention cells.

N° 2a, second indent and b:

Meals are distributed at times in accordance with the usual times for breakfast, lunch and evening meal. Because of the staff effort which would be necessary, it is not possible to record the actual times at which meals are distributed in each case. In view of the relatively short time spent by detainees in police detention this also seems to be out of proportion.

N° 3a, first to fourth indents:

Notification of relatives and persons enjoying the confidence of the detained person:

In addition to the obligation placed on the judge pursuant to section 114 b para 1 of the Code of Criminal Procedure (Strafprozeßordnung) to immediately inform a relative or

...

someone enjoying the confidence of the person who has been is arrested, section 114 b para 2 of the Code of Criminal Procedure grants to persons apprehended by the police the right to personally inform a family member or a third person of their choice. The only exception to this is in cases where this would endanger the purpose of the investigation or of the deprivation of liberty. Section 114 b para 2 of the Code of Criminal Procedure is however not the only relevant provision. Larger numbers of similar regulations are to be found in the police laws and police custody regulations of several of the Federal Länder as well as section 205 para 2 in conjunction with section 200 para 2 of the Land Administrative Act for Schleswig-Holstein - cf. first enclosure.

The exception to the right of the accused to inform someone, where notification would endanger the purpose of the investigation or of the deprivation of liberty suffices for the principle of legal certainty. It seems neither possible nor practicable to compile a list of all possible constellations of cases.

Right to the presence of a lawyer:

Such a right exists only in the case of examination by a judge or public prosecutor (section 168 c para 1, section 163 a para 3 second sentence of the Code of Criminal Procedure), but not in the case of interrogation by the police. The latter may however permit the presence of a lawyer if there are particular grounds for this. It does not seem necessary to generally extend the right to presence of a lawyer because interests of the person concerned worthy of protection do not seem to be placed in danger to an unacceptable extent if the interrogation is carried out without a lawyer. It seems sufficient to point to the right not to make any statement.

Confidentiality of contact with the lawyer:

Section 148 para 1 of the Code of Criminal Procedure grants to

...

an accused person within the meaning of the Code of Criminal Procedure written and oral contact with a defence counsel. Monitoring and restrictions are not permissible on principle. In police custody, which as a rule is of short duration, the purpose of enabling the accused to build a defence strategy together with his counsel without being observed by the prosecuting authorities, decisive for this regulation under the Code of Criminal Procedure, does not apply. For this reason, the detainee can reasonably be expected to accept the presence of an officer.

Informing of the right to notify:

The wording of section 114 b para 2 of the Code of Criminal Procedure, as well as the corresponding provisions, already places on the police authorities the obligation to inform detainees of their right to notify. In some Länder, there are information sheets on notifying a "lawyer emergency service in criminal matters" - second enclosure.

N° 3a, fourth to seventh indents:

Right to be examined by a doctor of one's own choice:

The doctors appointed by the police can be relied upon to reach their conclusions to the best of their knowledge and conscience, particularly with regard to fitness to undergo detention. If because of particular symptoms it becomes indispensable to call on a particular specialist or the doctor previously treating the detainee, the police are already complying with this demand. Furthermore, it should be pointed out that at present, only a small number of examinations are carried out by police doctors or official doctors. In the majority of cases, hospital or practising doctors are consulted. Some Länder permit - after the examination by the police doctor - on the detainee's request, examination by a doctor of the detainee's choice and at his expense. In view of

...

the short period spent by the person concerned in police custody, there is no practical need for a general right to preliminary examination by a "doctor of one's own choice". Moreover, there are also security arguments against a corresponding general rule because the police cannot examine the reliability of the doctors named in such a short time.

Recording the result of the medical examination:

Whether the result and findings of the medical examination are communicated to the person concerned depends on the reason for the examination. If the results of the examination, e.g. blood samples to determine the blood alcohol content, are to be used as evidence in criminal or in regulatory fining proceedings, on request, the defence counsel of the person concerned receives the relevant information through inspection of the case files. Where examinations are carried out for the protection of the person concerned, he can have the result of the examination certified by the examining doctor at his own expense.

Medical examiniation out of hearing and, preferably, out of sight of police officers:

Because of the necessity of the officers to ensure their own safety and that of the doctor (e.g. danger of detainee taking the doctor hostage), and also frequently because of the danger of absconding, a corresponding general rule does not seem to be appropriate and is unanimously rejected in practice. If the security risks mentioned do not exist, in individual cases the medical examination may be carried out without the presence of a police officer in the same room.

Form setting out the rights of persons detained by the police:

No practical need is seen at present for such a form. It must be especially taken into account that persons detained by the police are often hardly able to read and understand such

forms because of their condition (for instance due to drunkenness).

With regard to forms being made available in different languages, there are problems with regard to correct translations, the large number of languages into which the form would have to be translated, and the fact that some detainees are illiterate.

In one Federal Land, there is an "Information sheet on legal remedies concerning measures involving deprivation of liberty pursuant to the Police Tasks Act" (third enclosure). Also in this context, the information on the lawyer emergency service in criminal matters should be referred to once again (second enclosure).

Within the scope of application of the Code of Criminal Procedure, as a rule, the detainee will be notified of the right to appoint defence counsel already on commital to police custody by means of a form for taking personal details. In the case of foreigners with no knowledge of German, personal details can only be taken and notification given when an interpreter is available. Pursuant to section 163 a para 4 second sentence and section 136 para 2 second sentence of the Code of Criminal Procedure, the accused shall be informed of his right to consult defence counsel, in any case before his first interrogation.

<u>N° 3a, eighth indent:</u>

Section 136a of the Code of Criminal Procedure lays down the rules for interrogations in an adequate manner. The rules for conduct in interrogations resulting from this are an integral part of both police training and in-service training. Further rules do not seem to be necessary.

...

In one Federal Land, the Ministry of the Interior has developed principles for police interrogation in criminal investigation proceedings as well as additional principles for interrogation of juveniles and young adults (fourth enclosure). However, neither of the rules contains the details on practice at interrogations indicated by the Committee. From the point of view of the people concerned in practice, these do not seem to be either appropriate or necessary in the light of section 136a of the Code of Criminal Procedure.

N° 3a, ninth indent

Electronic recording of interrogations is finally regarded by the vast majority as not lightening workloads because extensive security and storage arrangements would be necessary, and also because the interrogating officers would have to ensure that the requirements of data protection were adhered to. It should be pointed out here that in any case electronic recording of interrogations is only allowed where the person to be interrogated declares his consent to it. Another argument against electronic recording of interrogations is the possibility of technical manipulation. Preparation and storage of the two copies of the tapes, which would be necessary for security reasons, would cause costs in terms of staff and material which cannot be seen to be justified either from the point of view of the administration costs or from the point of view of purchasing the equipment.

N° 3a, tenth indent:

Normally, police stations have a custody record which is kept according to the prescribed form, pursuant to uniform directives and into which all persons detained in police stations are to be entered, who have been deprived of their liberty in police stations or whose liberty has been restricted at police stations - an extract from such a custody record is

...

sent as the fifth enclosure, as is the form for notification of detention. The custody record has proved its worth. It offers more security for a complete and unchangeable documentation of all important aspects than an individualised custody record. Moreover, the custody records are supplemented by lists of exhibits and effects as well as check-lists, so that complete collection of the necessary data is guaranteed.

N° 3c:

Information on legal aid and legal counselling aid for persons in police custody in Germany:

In respect of aid for persons who have been detained pursuant to the Code of Criminal Procedure, particularly section 127 and 163 b, the following should be stated:

a) On the basis of the Legal Counselling Aid Act of 18 June 1980, in effect since 1 January 1981, Legal Counselling Aid is granted. This Act prescribes that citizens whose economic situation is unfavourable may claim aid.

When a citizen applies for legal counselling aid, he must submit a declaration of his personal and economic situation. He may submit the application personally to the competent Local Court, or, which occurs much more frequently, he may have it submitted by his lawyer.

In matters under law relating to criminal and administrative offences, the possibilities pursuant to the law are limited to counselling. In other matters, out-of-court representation is also granted.

...

As a rule, legal counselling aid is carried out through a lawyer of the citizen's choice. The lawyer may only refuse to take on counselling of a client for an important reason. In several Länder, there are special counselling centres.

The activity of the lawyer is paid for in each individual case in the form of a flat rate fee. The fee for a lawyer is 35 DM in cases where merely oral or written advice is given, 90 DM in the cases of out-of-court representation, and 110 DM where the matter is dealt with by means of a settlement or otherwise. He receives the fee from Land funds and the client must pay 20 DM, which the lawyer may however waive.

The possibilities pursuant to the Legal Counselling Aid Act are available to citizens of other EC Member States and other foreigners.

The Federal Government has informed the public by means of a brochure on counselling aid.

b) For the support of accused persons - also including persons held on suspicion pursuant to section 163 c of the Code of Criminal Procedure - there is particularly the institution of Mandatory Defence (section 140 of the Code of Criminal Procedure). Pursuant to this provision, the court appoints defence counsel for the accused - also without application - if his participation is necessary as a result of the severity of the act, the difficulty of the factual or legal situation or because of the lack of capacity on the part of the accused to defend himself.

If an accused person has not reached the age of 18, defence counsel is to be appointed for him immediately as soon as remand detention or temporary custody has been imposed on

...

him pursuant to section 126 of the Code of Criminal Procedure (section 68 No 4 of the Juvenile Courts Act).

Furthermore, each accused person may at any time appoint a lawyer for his defence (section 137 para 1 first sentence of the Code of Criminal Procedure). If it should emerge in the further proceedings that it is a case for mandatory defence, it is then possible for counsel who has already been chosen by the accused to be subsequently appointed by the court. In such cases, the lawyer also receives the fees due to court-appointed counsel for the work done before his appointment by the court (section 97 para 3 of the Federal Ordinance for Lawyers' Fees (Bundesgebührenordnung für Rechtsanwälte)).

In Germany, there is no special scheme of legal aid for persons who have just been detained, for instance along the lines of the English model of "duty solicitors".

Appendix I, Part I. (General) - B. (Detention Centres for Aliens)

Police guards assigned to deportation detention centres take part in a six-week course for guarding prisoners, in the course of which they are prepared theoretically and practically for the situation in such centres. The course entails inter alia communication and stress training lasting several days. It is also especially a question here of learning to deal with people in exceptional situations, to take into account the exceptional situation in which the detainees find themselves and how to deal with them.

The suggestion of using supervisory staff with knowledge of the detainees' languages cannot be realised. It must be taken into account here that a large number of languages would have to be learned and that the nationalities of those detained for

...

deportation are continually changing, and with them their languages. Years ago, the majority of the detainees were Turks, Pakistanis and citizens of Arab countries. Today, they are mostly Romanians, Bulgarians and Poles. It is therefore not possible to comply with the Committee's suggestion.

Appendix I, Part I. (General) - C. (Prisons):

N° 1a:

The Federal Government shares the Committee's opinion that an aptitude for interpersonal communication should be a major factor in the recruitment of prison staff. Such a practice, which had already existed for many years in the old Länder, has also been taken on by the administrations of justice in the new Länder. There too, these aptitudes are now a major factor in the recruitment of prison staff. Staff are tested in the recruitment procedure by psychologists, educationalists and experienced prison staff, both in written tests and in group and individual discussions. Also in professional training for the intermediate general prison service, interpersonal communication skills are taught.

N° 1b, first indent:

Experience has shown that in prisons, for instance in the case of hostage-taking or prisoner riots, crisis situations may arise which cannot be dealt with by the prison's own staff. In such cases, it is necessary for the protection of the staff and to restore security in the prison in question to call in the police who are responsible for general warding off of danger,

...

and who have appropriately trained and equipped officers. Outside security forces were only rarely needed to be used in the years 1991 and 1992.

The Federal Government has no reason to believe that the Committee's concern that such use of outside security forces can lead to a high risk of ill-treatment of prisoners is well-founded.

It regards it as the task of the responsible authority to avoid any risk involved in the use of police officers in prisons. This complies with the Constitution and the statutory provisions for the police and the prison service. The German constitutional and legal order prohibits all forms of state arbitrariness and guarantees comprehensive protection of the basic rights of the individual. Just like any other body exercising executive power, the police, in the exercise of all their duties, are also bound by law and justice (Article 20 para 3 of the Basic Law). The basic rights themselves are binding on the executive as directly enforceable law (Article 1 para 3 of the Basic Law). Any state encroachment on the rights of the individual requires sufficiently determined statutory authorisation. The use of direct force is only permitted if other measures have no prospect of success; the principle of the proportionality of the means must be complied with at all times.

These principles are also valid without restriction for police

...

operations in prisons. Training in legal basics, requirements and restrictions of police measures is a major part of training for police officers. Moreover, police officers are trained intensively with the aim of dealing with crisis and endangerment situations as far as possible without the use of direct force, using psychological means and negotiations with the aim of deescalating the situation. This aim is also served by joint exercises by police and prison staff.

Every prisoner is guaranteed complete legal protection if he is affected by police measures; he can have state measures against him examined for their legality without restriction by the competent courts.

If there is suspicion of conduct on the part of the officers concerned which is in breach of duty or even criminal, the competent authorities immediately initiate all necessary investigations to completely clarify the facts and where appropriate instigate the necessary criminal and disciplinary measures.

N° 1b, second indent:

In 1991 and 1992, there were in 13 of 16 Federal Länder no formal disciplinary or criminal proceedings against prison officers accused of ill-treatment.

In one Federal Land, a complaint led to the instigation of disciplinary and criminal proceedings. The disciplinary proceedings were discontinued, the criminal proceedings led to an aquittal on factual grounds.

...

In only two Federal Länder did the following measures have to be taken:

In one Federal Land, disciplinary proceedings were instigated against a prison officer for alleged insult and bodily harm perpetrated against a prisoner. The charge of bodily harm was not provable; for the insult, a fine of 250.00 DM was imposed. The disciplinary decision is however not yet final and binding.

In a further Federal Land, in 1991 an officer still in training was sentenced to a fine with final and binding effect for bodily harm in concurrence with grievous bodily harm perpetrated whilst on duty. The officer was dismissed from service. In 1992, formal disciplinary proceedings were instigated against one officer for alleged sexual coercion. The court proceedings are still pending. In 1992, another officer was charged with alleged bodily harm perpetrated whilst on duty. The officer was aquitted at first instance; the Public Prosecution Office has lodged an appeal against the judgement. In this case, the decision on instigation of formal disciplinary proceedings has been postponed.

N° 2a, first indent:

The provisions of the Prison Act (Strafvollzugsgesetz), in compliance with No 14 of the European Prison Rules, assume segregation of the prisoners at night and communal accommodation during work and leisure. With regard to the necessity of allowing exceptions, No 33 of the European Prison Rules is to be complied with, according to which discipline and order in the interest of safe custody, an orderly communal life and the treatment aims pursued in the prison are to be upheld. The temporary segregation of one prisoner from the others is to be considered as a way of fulfilling this task.

...

The Federal Government shares the Committee's opinion that prisoners in solitary confinement must also be provided with purposeful activities and appropriate human contact. This also complies with the provisions of the Prison Act. If in specially determined cases (avoidance of damaging influences, particular security measures, disciplinary measures), exceptions do arise to communal accommodation during work and leisure, they are to be organised in such a way that these measures are proportionate to their aim and do not affect the prisoner any more and any longer than is necessary (section 81 para 2 of the Prison Act). In the case of solitary confinement as a particular security measure, the possibility remains for instance of putting in the room personal possessions, wearing one's own clothes, shopping, work in the cell, reading newspapers, listening to the radio or watching television, possession of articles for leisure activities and participation in educational activities, if these are not expressly prohibited for a particular reason. In the case of solitary confinement as a disciplinary measure, it may be expressly ordered that the named privileges continue to apply for the period of solitary confinement.

The above provisions should lead to a limited and individualised use and organisation of solitary confinement. Together with the regulations on visits and correspondence, they provide the basis for necessary segregation from other prisoners being compensated for by contacts with persons outside the prison and by particular possibilities for occupation. If the conditions of solitary confinement may have damaging effects, section 3 para 2 of the Prison Act imposes on the prison authorities the obligation to counteract such consequences of deprivation of liberty.

...

The reports of the Berlin and Bavarian administrations of justice (below) show the efforts of the prison authorities to provide purposeful activities and appropriate human contact for prisoners in solitary confinement, on the basis of the existing regulations. The Federal Government assumes that these reports are suitable to supplement the observations of the Committee in Tegel and Straubing Prisons and to demonstrate in what way in practice violations of human rights can be prevented.

Solitary confinement arrangements at Tegel Prison:

In Berlin, only Tegel Prison has a special area where solitary confinement is carried out in accordance with s 89 of the Prison Act. This is the part visited by the Committee in section III of the prison. The governor of Tegel Prison reports on this that the daily routine of security unit B 1 of building III, as far as head counts and supplies are concerned, corresponds to that of the rest of building III. He reports further:

> "Communal facilities such as baths and the library can also be used by prisoners in the security unit, although under the supervision of a warden. Furthermore, a major part of the daily routine of the prisoners held in B 1 security unit is influenced by the general daily routine, such as visits to specialist doctors, consultations with lawyers, visits to the court registrar, etc, whilst being managed on an individual basis. In the same vein, visiting time for the prisoners in the security unit takes place in a room intended specially for this purpose.

...

Outdoor exercise to which the prisoners are entitled is practised in a courtyard specially separated for this purpose, whilst time spent in the open is often doubled on doctor's recommendations and under certain conditions may be spent jointly with other prisoners of the security area.

In order to combat social deprivation, from Monday to Friday between 18:00 and 22:00, on a voluntary basis, two prisoners may be kept together in one cell.

Prisoners held for long periods of time in the security unit have inter alia the possibility of working in their cells. Furthermore, it is possible in individual cases for it to be examined whether work in a closed workshop can be justified (followed by return to the cell once work is completed). Also, the cells (lighting, ventilation, state of repair, no separating bars) correspond in every way to the cells in the normal prison area of building III.

The prisoners are moreover allowed to possess a radio cassette recorder, books, Thermos flasks and crockery and possess all current periodicals and daily newspapers, as provided by the prison. Personal possessions and leisure articles may be allowed and successively extended, subject to examination of the individual case. In individual cases, chess computers and keyboards in cells have already been approved. In the evenings, prisoners may telephone to relatives or other persons.

Last but not least, the staffing situation of unit B 1 of building III combats isolation. Generally speaking, in compliance with the staffing regulations, the unit is staffed by two officers of the general prison service with one early and one late

shift. Moreover, for this area, as well as the originally responsible staff from the prisoner's section of origin who intensify contact primarily by means of visits - a group leader with years of experience is responsible on the spot. Furthermore, there is continued advice from and contact with pastoral workers, and this is in part intensified."

Solitary confinement arrangements at Straubing Prison:

In Straubing Prison in the last three years, solitary confinement as a particular security measure pursuant to section 89 of the Prison Act was imposed in a total of 13 cases. In most cases, it was possible to lift the measure after a few days; in only five cases was it necessary to maintain solitary confinement for longer than three months.

In accordance with the aim of security measures, prisoners must be subjected to solitary confinement in separate cells from their co-prisoners. As a rule, this also excludes such prisoners working together with other prisoners or participating in communal sport or other leisure activities.

In spite of this, prisoners held in solitary confinement are neither isolated from events in the rest of the prison nor are purposeful activities denied them. Many and frequent contacts exist to the prison staff and the world outside, and these are encouraged by the prison authorities. Thus, such prisoners are dealt with by specially selected and trained officers from the general prison service, as well as specialists. These people take pains to establish intensive contact with the prisoners; prisoners in solitary confinement are also granted generous opportunities to receive visits. The prisoners have the opportunity to partake in school and vocational training, to

...

use the library, read daily newspapers and listen to the radio.

Those prisoners who are in solitary confinement in order to serve the disciplinary measure known as disciplinary detention (section 104 para 5 first sentence of the Prison Act) are subject to considerable restrictions in relation to the above. In the execution of disciplinary detention, the prisoners should be induced to consider their incorrect conduct. This does not mean that the prisoner in disciplinary detention be allowed to pursue activities to the same extent as the other prisoners. Pursuant to section 104 para 5 third sentence of the Prison Act, the privileges of the prisoner under sections 19, 20, 22, 37, 38 and 68 to 70 of the Prison Act are on principle suspended when he is in disciplinary detention. Prisoners in disciplinary detention may however also receive and write an unlimited number of letters and visits; they have access to a limited amount of reading material. Other activities are permitted if they are necessary for treatment; this applies for instance to allowing course material for educational purposes and for further training.

N° 2a, second indent:

The legal provisions, as well as No 29 of the European Prison Rules assume that the prisoner is not only examined by a doctor on admission, but is also examined or treated when this becomes necessary. Section 92 of the Prison Act expressly states that the prison doctor should visit a prisoner held in a particularly secured cell as soon as possible and then daily where possible. In the case of solitary confinement as a disciplinary measure, the prisoner is under medical supervision pursuant to section 107 para 1 of the Prison Act. This measure is not executed or is discontinued if the health of the prisoner would be placed in danger (section 107 para 2 of the Prison Act).

...

In the cases mentioned by the Committee, if a prisoner reports sick to an officer or looks or behaves in a way to suggest that he is ill, the officer reports this to the prison doctor. The doctor then initiates the necessary examination and reaches conclusions as to whether the prisoner is to be accommodated in a particular way, needs special medical treatment or if he is even not able to be held in prison. Prison officers are especially not allowed to refuse to pass on to the prison doctor wishes of the prisoner.

The Federal Government regards these rules as effective means of preventing violations of human rights.

N° 2a, third intent:

The recommendation of the Committee to inform each prisoner placed for the first time in solitary confinement or whose solitary confinement has been renewed of the reasons for confinement and give him the opportunity to present his views on the matter, complies with the provisions of the Prison Act. Pursuant to section 6 para 3 of the Prison Act, treatment arrangements are discussed with the prisoner. Further provisions provide for a written record or written information of the prisoner concerned in particular cases: section 106 para 1 of the Prison Act regulates for the disciplinary procedure that the prisoner is heard and that the examinations initiated, as well as the result, be recorded in a memorandum, along with observations made by the prisoners. Section 112 para 1 of the Prison Act provides, in respect of an application for court examination of a prison decision, that the two week deadline shall not run until written notification of the measure or its refusal has been made. Section 43 para 4 of the Prison Act furthermore provides that the wages received by a prisoner are to be set down in writing.

The Committee's recommendation, going beyond these provisions, that the prisoner be informed in writing in every case of solitary confinement is worth considering. For the few cases where, in contradiction to the tendency of the Prison Act, a relatively long solitary confinement is considered, written notice and reasons could be appropriate. In the majority of cases, solitary confinement only occurs for a short period, frequently only for a few hours. Giving a written order and written reasons in all these cases would entail an extreme formalisation of these procedures. Formalisation is not always suitable to contribute to as short a use of solitary confinement as possible. The Federal Government assumes that violations of human rights can already be effectively prevented on the basis of the existing provisions.

This also applies to the recommendation to carry out regular reviews every three months. This period will have to be considered too long for normal cases. The employees of the prison concerned should not content themselves with reviews at these intervals. There must be a constant effort to immediately cease solitary confinement in cases where it is no longer necessary. The provision of section 89 para 2 of the Prison Act is also based on this aim. Solitary confinement of a duration of more than three months in one year requires the permission of the supervisory authority. The provision thus excludes the ordering of solitary confinement on grounds which are not inherent in the person of the prisoner, but for instance in organisational conditions in the prison, or for similar reasons.

...

N° 2a, fourth indent:

The above views also apply to restrictions on communal accommodation during work and leisure time pursuant to section 17 para 3 of the Prison Act.

N° 2b, first and second indents:

On principle, solitary confinement within the meaning of section 89 of the Prison Act is not limited in time. It does however require the permission of the supervisory authority if its total duration exceeds three months in one year. In contrast, segregation from other prisoners, as a particular security measure pursuant to section 88 para 2 third sentence, is only temporarily permissible - in other words for a limited period of time.

Pursuant to section 89 para 1, solitary confinement is not be permissible unless this is "indispensable for reasons inherent in the prisoner's person". These grounds are based on section 88 para 1 of the Prison Act. According to this, special precautions may be ordered if the conduct or mental state of the prisoner point to the existence of increased danger of his escaping or of violent attacks against persons or property or the danger of suicide or self-injury. The provision thus excludes ordering of solitary confinement on grounds which are not inherent in the person of the prisoner, but in organisational conditions in the prison, or for other reasons.

N° 2b, third indent:

On the practical application of section 89 para 2 of the Prison Act, the Länder have reported that solitary confinement is only ordered in very rare exceptional cases, e.g. in the case of drug dealers where there is a danger of their continuing to

...

supply drugs to addicted co-prisoners, or under particular conditions in respect of perpetrators of organised crime.

In the Saarland, since 1986 there has been the obligation to report to the Ministry of Justice every two weeks in the case of orders pursuant to section 89 para 2 of the Prison Act. In Bavaria, the supervisory body gives permission only for a further three months in cases where it agrees to solitary confinement in excess of three months. Subsequently, the supervisory authority must receive a new report. In an administrative regulation supplementary to section 89 of the Prison Act (ErgVV), Schleswig-Holstein has set down that the agreement of the supervisory authority is necessary in cases of solitary confinement pursuant to section 89 para 2 of the Prison Act in cases where solitary confinement is to exceed three months in a consecutive period of one year.

N° 2b, fourth indent:

Cases of solitary confinement in 1991 and 1992 in excess of one year were only reported from five Federal Länder. One Land reported three cases, one reported two, and in two Länder there was one case each. In a fifth Land, in 1991, there were two cases, and one in 1992.

The order was issued mostly in respect of particularly dangerous prisoners who posed a danger for their co-prisoners. In some cases, solitary confinement was imposed at the request of the prisoners concerned, inter alia because they feared reprisals on the part of co-prisoners.

...

N° 3:

The Federal Minister of Justice has as yet not made use of the authorisation contained in section 144 para 2 of the Prison Act and has not issued any ordinances on the material aspects of conditions of detention.

The basic legal provisions are to be found in section 144 para 1 of the Prison Act. This provision states:

> "Rooms in which prisoners spend the night and their leisure time as well as communal rooms and visiting rooms shall be comfortable or otherwise equipped in a manner meeting their purpose. They shall have a sufficient cubic content of air and, for reasons of health, have sufficient heating and ventilation, floor space and size of windows."

This regulation includes the complete area of regulation on size and equipment of the rooms and in its aim complies with No 16 of the European Prison Rules. The ordinance would consequentially only have had the task of further detailing this provision. There has up to now been no need for this.

As long ago as 1976, the Land administrations of justice issued the following regulations, which are valid until such time as an ordinance enters into effect:

1. The prisoners are accomodated in rooms with sufficient cubic content of air, good ventilation and sufficient daylight.

2. Rooms in which prisoners spend the night and their leisure time should have at least 22 cbm cubic content of air. The window of such a room should have at least 1 m^2 of lighted area. Access of fresh air must be ensured.

...

3. Rooms in which prisoners only spend the night, and exeptionally their leisure time, (night cells) should have at least 11 cbm cubic content of air. The window of such a room should have at least 1/2 m^2 of lighted area. Access of fresh air must be ensured.

4. In communal areas, in which prisoners spend the night and their leisure time, there should be at least 16 cbm cubic content of air per prisoner.

5. Where there are rooms in which prisoners sleep communally, these rooms should have at least 10 cbm cubic content of air per prisoner, in communal work and leisure rooms, at least 8 cbm cubic content of air per prisoner.

N° 4a, first and second indents:

The Federal Government agrees unreservedly with the Committee's recommendation of entering all treatment administered to a patient in his medical records. This has been the practice for a long time. In cases where, exceptionally, treatment is administered without a patient's consent, this is also included in the entry.

On the basis of the nationally standard Prison Rules (No 60), medical records are already kept for each prisoner by the prison doctor, and consist inter alia of a state of health sheet and a treatment sheet.

The Federal Government also emphasises the further recommendation of the Committee that it be ensured that accommodation in a single cell and use of instruments of restraint, irrespective of whether this is in a medical context, is entered in the record with grounds and duration of the measure.

...

This recommendation is already complied with by the Prison Rules, applicable throughout the Federation, No 59 para 4, according to which such prison procedures are to be specifically entered in a special form. The Bavarian Ministry of Justice, in its report below (II B. 4, fifth indent) refers to the fact that there the keeping of the medical records in 1990 was examined in the context of an expert medical report and that these documents are kept in compliance with the recommendations and guidelines then issued.

The Land administrations of justice state the following on the practice in this respect in the prisons:

Medical treatment is carried out on principle only with the consent of the prisoner concerned, i.e. on a voluntary basis, so that there is no need to separately document the fact that treatment is voluntary. If the prisoner refuses consent, the prison doctor explains in detail the consequences of the treatment not being carried out.

If treatment takes place under coercion - under the strict conditions laid down in section 101 of the Prison Act - this is always documented.

One Federal Land points to the special situation with such patients who are kept in a prison hospital and because of a serious psychotic condition must be sedated, primarily for their own protection. Such treatment is carried out without the patient's consent however only if, because of severe mental disturbances, symptoms of acute mental illness, it can no longer be assumed that the patient is capable of consenting or freely forming his own will, and if acute health risks to the patient or severe endangerment of the environment cannot be avoided by any other means. In such cases the law already provides for a system of extensive legal guarantees for the protection of the prisoner concerned. If a curator is appointed to a prisoner who is prevented from managing his affairs in

relation to medical treatment rendered necessary by illness or disability, the necessary medical treatment cannot be carried out without the consent of the curator, which under certain circumstances must be approved by the Guardianship Court (sections 1896 and 1904 of the Civil Code). Such procedures are absolute exceptions and in each case are recorded in the medical files.

The reasons for ordered duration of solitary confinement and use of instruments of restraint are without exception recorded in writing. The relevant note is entered in the prisoner's record.

N° 4b, first indent:

The aim of the Committee is welcomed by the Federal Government. Pursuant to the Prison Act, the prison authority is not obliged to carry out coercive treatment of a patient where it can be assumed that the prisoner is able to form his own will (section 101 para 1 of the Prison Act).

If nevertheless, in individual cases, coercive treatment of a patient becomes necessary, the decision should be reserved in individual cases as to whether a second medical opinion is called for. Here, not least the interests of the prisoner are to be taken into account, which may well stand in the way of admittance into a psychiatric hospital.

...

Furthermore, the report below (II B. 4 a, first, second and fifth indents) of the Bavarian Minstry of Justice shows examples of calling on specialist doctors according to the needs of the case at hand. Also here, the Federal Government sees sufficient opportunities for preventing violations of human rights.

N° 4b, second indent:

The Federal Government emphasises the opinion of the Committee that a severely mentally disturbed and violent patient must be treated through medical observation and support, if necessary with sedation.

The Federal Government is of the opinion that persons showing the symptoms described do not belong in prison, but should be treated as mental patients in appropriate establishments outside of the prison system. This is in compliance with section 65 para 2 of the Prison Act. If there are immediate reasons which make it unavoidable for the person concerned to be held in prison, decisions must be taken in respect of methods of treatment in individual cases on the basis of the actual circumstances.

The problems are multifarious and are solved in the prisons on the basis of the actual circumstances and taking into account the individual situation in each case.

The comments of the Committee under No 142 of the Report refer to the Land Berlin. The Berlin administration of justice - in concurrence with other Land administrations of justice - does not share the opinion of the Committee that a severely mentally

...

disturbed and violent patient should be primarily treated through administration of sedatives and that resorting to instruments of physical restraint is only seldom justified. The Land administration of justice, in concurrence with the doctors working in the Berlin prison authorities, regards enforced administration of sedatives as a compulsory measure which could considerably reduce the future readiness of the prisoner to voluntarily take psychiatric drugs subsequently indicated. The administration of sedatives against the will of the patient is a more severe encroachment on physical integrity than bodily restraint. The latter has no influence on the prisoner's consciousness and may be discontinued at any time once the aggressive condition has passed.

Nos 4b, third indent and 4c, first indent:

The Federal Government concurs with the opinion of the Committee that there is no medical justification for the isolation or segregation of an HIV positive prisoner who is not ill. This is also the opinion of the Land administrations of justice.

Furthermore, without more detailed information, it is not possible to respond to the allegations in paragraph 145.

No 4b, fourth indent and 4c, second indent:

In all Federal Länder, prison staff and prisoners receive information on AIDS. This is carried out by means of information sheets - which are usually made available to the prisoners in several languages - by information from the

...

medical staff in the course of medical examinations and partly by special information events (for the prison staff, also in the course of both training and in-service training). Special information events in prisons are held by prison doctors and in some Länder also by outside persons. For this aim, a few Länder use employees of aids assistance organisations as honorary prison helpers.

A few Länder have issued guidelines for dealing with HIV positive prisoners. Enclosure 6 contains information and decrees from several Land administrations of justice on the subject of aids and on dealing with HIV positive prisoners.

N° 4c, third indent:

In several Länder, condoms are officially distributed to prisoners in prisons, free of charge and anonymously. In other Länder, aids assistance organisations are given the opportunity of distributing condoms. In other Länder, condoms can in any case be purchased in the prison. Where condoms are not distributed free of charge, this is in order not to encourage homosexual practices.

N° 4c, fourth indent:

Independence of medical staff is guaranteed in the criminal provisions on the duty of doctors not to reveal secrets (section 203 of the Criminal Code), as well as by the cannons of professional medical ethics.

The prison doctor is on principle subject to the duty not to reveal secrets, including to the prison authorities; staff who are not concerned with the medical treatment of the prisoner are not able to inspect the medical files.

...

N° 4c, fifth indent:

Pursuant to section 151 of the Prison Act, the Land administrations of justice supervise the prisons. Para 2 of this Act goes on to state that the administration's own specialist staff must participate in supervision of health care, as well as of other justified treatment of the prisoners. Where the supervisory authority has no specialist staff of its own, expert advice must be guaranteed.

N° 4c, sixth and seventh indents:

In several Federal Länder, in the sanitary and nursing areas of the prisons, only those people work who have completed a course of training which leads to a diploma as either full or auxiliary nurse recognised by the State.

In several Federal Länder, a relatively small section of the prison staff working in the sanitary and nursing areas has been prepared for their work "in another way". This includes particularly training as a first-aid attendant in the Bundeswehr or with civilian organisations such as the Red Cross and introduction to the work of a certain intensity and duration by the prison doctor. In one Land, staff working in the sanitary and nursing areas not possessing a licence under the Nursing Act are trained in hospitals outside the prison service. Enclosure 7 contains a corresponding schedule for training in a hospital.

In the seven Federal Länder where there are also nursing staff who have been trained "in another way", the ratio of persons

...

possessing a licence under the Nursing Act to the former is as follows:

28:7, 17:8, 88:60, 198:17, 289:7, 43:8; in one Federal Land, the number of staff trained "in another way" is less than 10 %.

N° 5a, first indent:

The recommendation of the Committee to repeal the legal provisions facilitating deprivation of outdoor exercise as a disciplinary sanction appears worthy of consideration in the view of No 86 of the European Prison Rules.

The aim of the German provision is to enable the prison authorities to temporarily exclude prisoners who disturb the outdoor exercise of other prisoners by major disturbances.

Also, the majority of the Länder are in favour of repealing the exclusion of prisoners from outdoor exercise as a disciplinary measure (section 103 para 1 No 6 of the Prison Act, No 68 para 1 No 7 UVollzO). In contrast, one of the Land administrations of justice considers that abolition of the disciplinary measure pursuant to section 103 para 1 No 6 of the Prison Act is not justifiable, since practical experience shows that this disciplinary measure, especially in the case of culpable breaches of duty perpetrated by prisoners which are connected with daily outdoor exercise (e.g. prohibited contact with co-prisoners, prohibited handing over of objects, assaults during outdoor exercise), appears to be particularly suitable as a pedagogically effective reaction in compliance with the instructions of section 103 para 4 of the Prison Act.

...

N° 5a, second indent:

The work of the prison advisory councils is generally stated to be effective. The Federal Government assumes that the preventive effect of bodies such as these advisory councils with regard to torture and degrading treatment can be best ensured by taking the respective regional conditions into account.

In response to the comments of the Committee, the Bavarian administration of justice has stated that the regulations in Bavaria are largely in compliance with its recommendations, and that the work of the prison advisory councils in Bavaria is extremely effective. Thus for instance the advisory counsellors in Straubing Prison have many times taken the initiative in both individual cases as well as, going beyond this, in relation to general questions to do with the prison, have drawn attention to existing problems and, together with the prison governor and the supervisory authority, have striven successfully for appropriate solutions. The two parliamentary members of the advisory council of Straubing prison on their own were consulted by 210 prisoners on an individual basis in 1991 and 1992, and in 153 cases required written reports from the prison governor. In cases where it was not possible to reach agreement with the governor, the members of the advisory council subsequently took the matter to the supervisory authority.

The regulations of various Länder on advisory councils are to be found in enclosure 8.

N° 5b, first indent:

There are no reservations with regard to allowing confidential letters from prisoners to the President of the Committee.

...

N° 5b, second indent:

The the new Länder, almost all prisons now have advisory councils. In one of these Länder, eight out of 11 prisons have advisory councils; a further prison is at present closed. It was not possible in the case of the others to find sufficient numbers of suitable persons for an advisory council. The Land Berlin intends to set up advisory councils for prisons in the eastern part of the city as soon as such establishments are set up there.

The regulations in several Länder on advisory councils are to be found in enclosure 8.

N° 5b, third and fourth indents:

The Committee's concern with regard to the need for a certain flexibility in applying the rules on visits to prisoners whose families live far away from the prison is in compliance with the legal provisions.

Section 23 and 24 of the Prison Act prescribe that contacts with persons outside the prison are to be encouraged and, that under certain conditions, visits are to be allowed beyond the statutory minimum period if they forward the treatment or integration of the prisoner or serve the purpose of personal, legal or business matters. This obligation goes beyond the recommendation of No. 43 of the European Prison Rules.

The Federal Government attaches a high priority to contacts between the prisoner and his loved ones within the meaning of the prison rules. For this reason, it shares the opinion of the Committee that it is important to give prisoners who do not receive regular visits from members of their families, because they live far away from the prison, extra opportunities to make telephone calls.

...

N° 5c, first indent:

Commentators understand "deprivation or restriction of time spent outdoors" in section 88 para 2 sub-para 4 of the Prison Act and in the corresponding provision - section 63 para 1 sub-para 6 of the Remand Custody Regulation (Untersuchungshaftvollzugsgesetz), to mean not deprivation or restriction of all outdoor exercise, but rather limitation of communal outdoor exercise with other prisoners. Thus, this restriction could be satisfied by the hour of individual outdoor exercise. This view is not, however, without its dissenters.

N° 5c, second indent:

On principle, the rights listed in section 104 para 5 third sentence of the Prison Act and in section 71 para 2 of the Remand Custody Act are suspended during disciplinary detention. The extent and conditions of implementation of this measure varies. In the great majority of cases, detainees are denied the opportunity to work and to take items purchased in the prison into the cell. In most cases, detainees are allowed to keep training material. There is no standard practice as to whether and to what extent they may keep reading material. Sometimes they may keep "reasonable quantities" of reading material, sometimes this only occures if periods of disciplinary detention exceed one week.

N° 5c, third indent:

The provision under section 121 para 2 of the Prison Act whereby a convicted prisoner acting as an applicant in court proceedings pursuant to section 109 et seq. of the Act must pay the cost of court proceedings and any necessary expenses if he loses the case or withdraws his application, does not deviate from the general procedural principles that also apply outside

...

prison, when, for instance, a person at liberty addresses a civil or administrative court.

Even if account is taken of the relatively low ability to pay of prisoners under normal circumstances, it would be inconsistent with the principle of approximation in section 3 para 1 of the Prison Act if they were to enjoy total exemption from the costs risk inherent in this principle. Moreover, prisoners have full access to legal aid.

Under the existing provision set forth in section 121 para 2 of the Prison Act, prisoners are not burdened with such an incalculably high risk in terms of costs as to dissuade them from exercising their rights. Assessment of the actual costs is effected under the Court Costs Act (Gerichtskostengesetz) in line with the principles applying to proceedings before the administrative courts. Accordingly, if the monetary or non-monetary liability is not quantifiable, the amount in dispute - the key to assessment of costs - is determined at the discretion of the court in accordance with the importance of the matter to the applicant, taking account of detention-related considerations. In court practice, this has resulted in a downwards tendency in assessment of the amount in dispute. Thus, when disciplinary measures are challenged, amounts in dispute between 300 and 900 DM are generally assessed, depending on the intensity of the burden upon the applicant, which imposes upon the prisoner, should he lose the case, a full fee amounting to between 15 and 33 DM, plus a charge for service, or, if the application is withdrawn, a half fee.

In view of these relatively minor financial implications and the possibility of legal aid also highlighted by the Committee, no "dissuasive effect" attaches to the provision laid down in section 121 para 2 of the Prison Act, either causally or in day-to-day practice.

...

N° 5c, fourth indent:

Each prisoner who feels that his rights have been violated by a disciplinary measure imposed on him is entitled under sections 109 et seq. of the Prison Act to have this measure reviewed by a court with a view to its being quashed. Section 109 para 1 of the Prison Act provides on principle for the prisoner to apply directly for a court decision. In line with the fact that the structure of the judicial remedy against measures of the prison authority is modelled on administrative proceedings, the Prison Act has empowered the Federal Länder, in section 109 para 3 to make the admissibility of an application for a court decision dependent under Land law on the outcome of preliminary administrative proceedings (protest procedure). The Länder of Baden-Württemberg, Bremen, Hamburg, Lower-Saxony, North-Rhine/Westphalia and Schleswig-Holstein have availed themselves of this preliminary sifting option, which also exists in administrative court procedure, whereas the other Länder - Bavaria, Berlin, Brandenburg, Hesse, Mecklenburg/West Pomerania, Rhineland-Palatinate, Saxony, Saxony-Anhalt, the Saarland and Thuringia - have chosen not to insist on preliminary administrative proceedings.

In so far as Land law provides for preliminary administrative proceedings, the prisoner must as a rule lodge a protest in writing or have it recorded by the prison administration before he can apply for a court decision. The decision on the protest is taken on principle by the authority directly above the agency ordering the adverse measure (e.g. the supervisory authority). Details of individual competence and the more precise formalities of preliminary proceedings are provided by the relevant Land laws and regulations, which are annexed by way of example.

...

The authority deciding on the protest reviews the disciplinary measure on points of fact and law. Here, in addition to the supervisory powers vested in the courts under section 115 para 5 of the Prison Act, the authority may also review the expediency of the measure. Depending on the result of the review, the authority may cancel the disciplinary measure or issue an adverse official response to the protest, i.e. one which confirms the disciplinary measure.

If Land law prescribes such a preliminary procedure, its unsuccessful pursuit is as a rule a prerequisite for the admissibility of an application for a decision by the criminal enforcement division (Strafvollstreckungskammer) of a court. If the court to which an application has been addressed establishes in its review which has to be carried out ex officio that unsuccessful preliminary proceedings were neither conducted nor may exceptionally be waived, it rejects the application as admissible. A case in which preliminary administrative proceedings are dispensable, though otherwise prescribed by Land law occurs, for instance, when a prisoner appeals directly against an adverse measure imposed on him by the supervisory authority or when the supervisory authority fails to react to the protest and does not make its decision on it within a reasonable time.

Irrespective of this formal procedure, the prisoner can file a complaint against the action of an officer to the superior authority or submit a petition to the appropriate departments of the German Bundestag or the parliaments of the Länder.

The regulations of the Federal Länder of North Rhine/Westphalia, Hamburg and Bremen relating to preliminary administrative proceedings are attached as Annex 9.

...

N° 5c, fifth indent:

As explained above (N° 5 b, third and fourth indents), the Federal Government attaches a high priority to contacts between the prisoner and those who are close to him. Statutory provisions explicitly prescribe that relations with people outside the institution are to be encouraged.

Where staffing permits, prisons try to make visiting arrangements flexible and convenient for families and to provide visiting times beyond the statutory minimum. This is true at least with regard to married prisoners. In three Federal Länder, for instance, these prisoners are allowed one extra two- to four-hour unsupervised family visit per month. The buildings are sometimes not conducive to the creation of rooms for extended visits, a situation that still applies in two of the Federal Länder, although they are planning suitable accommodation.

In one Federal Land, all of the long-stay prisons have comfortable accommodation available for extended visits; indeed, in one of those prisons, the inmates themselves have, since May 1984, had the opportunity to organize at least some aspects of the visit themselves.

Two other Federal Länder each have one prison, and a third state has three, in which the extended visiting area may also be used for sexual contacts. On the other hand, three other Federal Länder have rejected such a concession out of hand because of doubts about security.

The Federal Government proceeds on the assumption that the maintenance and strengthening of relations between prisoners and their loved ones can still best be encouraged by means of granting leave from custody. Promotion of these relations through visits to the prison is only considered if granting

leave from custody is out of the question, or if it is too early to grant leave from custody. The prerequisite for extended visits without continuous supervision is therefore ineligibility for such leave at the time of the extended visit. Thus, relaxations of the prison regime such as leave must not yet be possible. As a rule, only a close family circle is authorized for visits.

To support the marriages and families of prisoners, most of the Federal Länder also conduct marriage and family seminars for prisoners and their loved ones.

N° 5c, sixth to ninth indents:

The basis in international law for aliens serving prison sentences imposed in Germany in their country of origin is the Convention of 21 March 1983 on the Transfer of Sentenced Persons, which entered into force for the Federal Republic of Germany on 1 Februar 1992 (BGBl - Federal Law Gazette - II 1992, page 89 et seq.). This Convention merely lays down the legal basis for the execution of foreign prison sentences in the executing state but does not grant sentenced persons any subjective entitlement to be transferred. As it stated in its declaration on the Convention as a whole, the Federal Republic of Germany proceeds, in conformity with the preamble to the Convention, upon the assumption that the application of the Convention is intended not only to promote the social rehabilitation of sentenced persons but also to serve the cause of the judicature. Accordingly, it will take the decision on the transfer of sentenced persons in each individual case in the light of all the penal purposes underlying its criminal legislation. Consequently, the wish of a foreign prisoner, or a relevant suggestion on the part of the sentenced person's state of origin that his transfer be effected will only be followed up if the offence for which sentence is passed does not seem to demand that the sentence be executed in the Federal Republic of

...

Germany and if there is no prior knowledge that enforcement practice in the executing state would lead to unacceptable results for the German judicature.

The Convention does not provide for any obligation on the sentencing state to transfer the sentenced person to his country of origin. Nor, it follows, does the Convention contain any obligation to give reasons for refusing transfer - unlike other conventions on cooperation in criminal matters. Given that there is no obligation to give reasons for the decision to the requesting contracting state, there is certainly no such obligation vis-à-vis the sentenced person, whose right under the Convention is limited to expression of his wish to be transferred.

In accordance with the Council of Europe recommendation, foreign prisoners are informed of opportunities under the Convention on Transfer by means of a leaflet translated into the most widely spoken languages of the Convention, namely French, Greek, Italian, Spanish, English, Turkish and Dutch, and made available to prisoners by the penal institutions.

In the so-called "jurisdiction agreement" of 22 November 1983 between the Federal Government and the Länder governments, the Federal Government delegated to the Länder governments the exercise of its authority to request transfer of enforcement, on condition that the transfer of enforcement was based on an international agreement that provided for official dealings between an authority of the foreign state and the Land government. According to the German declaration on Article 5 para 3, such provision exists with regard to all contracting states except Turkey and Sweden, and so it is the respective Land administrations of justice which decide whether transfer of enforcement is to be requested from another contracting states. The Convention is interpreted by the Federal Minister of Justice on the basis of discussions in the PC-OC committee

...

of the Council of Europe and bilateral contacts with Member States.

Whether a request for transfer is made to the state of origin of the sentenced person is decided after due consideration and with reference to the aforementioned declaration by the Federal Republic of Germany on the Convention as a whole.

On depositing the instrument of ratification, Germany made the following declaration on Article 4: The Federal Republic of Germany dispenses with the information envisaged in Article 4 paras 2 to 5 if, in the view of the competent German authorities, a request for transfer of enforcement is excluded a priori. It understands that an obligation to inform sentenced persons exists only where it is compatible with the relevant provisions of national law and that, in particular, the sentenced person has no right to be informed about official internal procedures.

It is not possible at the present time to provide information on the average length of the transfer procedure or on the number of cases in which the procedure under the Convention has been implemented to date.

Appendix I, Part I (General) - D. (Psychiatric institutions):

The Federal Government regards the care of the mentally ill and handicapped as a major responsibility. Although, because of the federal structure of the Federal Republic, the Federal Government does not have the power to regulate the psychiatric care of the population of the entire country by means of a law, it has long been concerned to improve the situation of the mentally ill within the scope of its powers. The report commissioned by the Federal Government on the state of psychiatry in the Federal Republic of Germany (Bundestag

...

Document 7/4200), which was published in 1975 and became known as the psychiatry inquest, already set out the basic principles of modern psychiatry:

- care close to the patient's own community,
- appropriate and comprehensive care of all mentally ill and handicapped persons,
- appropriate coordination of all care services, and
- equality of status between the mentally and physically ill.

There is a general consensus on the basic principles. Through generous promotion of a prototype scheme costing a total of 186.5 million DM between 1980 and 1985, the Federal Government helped to bring to fruition the momentum generated by the inquest. In addition, since 1976, the Federal Government has been assisting model projects aimed at acquiring new knowledge that can be put to use in psychiatric care. One central target in the field of forensic psychiatry, involving a total of four individual projects, has been the problems of out-patient aftercare of mentally ill offenders following release or during lengthy periods of leave from their institutions.

The main purpose of the reform was to switch from custodial to therapeutic and rehabilitative psychiatry.

Since then, a structural transformation has taken place in psychiatric care in the Federal Republic of Germany, a transformation which, in accordance with the aims established by the inquest, has primarily affected out-patient care and complementary therapy, and in particular has improved the treatment of the chronically mentally ill and handicapped. Psychiatric treatment is increasingly marked by closeness to the patient's own community, out-patient support and complementary care services, which offer very closely coordinated assistance at a regional level in terms of

...

- treatment/care/rehabilitation,
- housing assistance,
- employment assistance, and
- help in social integration and assertion of material entitlements.

On the basis of the scientific observation of the Federal Government's model programmes, a government commission of experts has drawn up recommendations on reforms in the psychiatric and psychosomatic/psychotherapeutic fields which were published in 1988. These recommendations should be seen as a fundamental blueprint for the reform of psychiatric care in general; they must be continually adapted and reformulated to meet the needs created by future developments. The Federal Government has outlined its views on this subject in Bundestag Document 11/84594.

Proceeding from this fundamental blueprint, the Federal Länder are endeavouring to decentralize clinical psychiatry and to create a blanket system of community psychiatric care structures.

This approach is intended to establish equality between the mentally and physically ill and to ensure that the integration of the mentally ill into their social environment can be sustained.

The state of psychiatry in the new Länder was marked by centralized, hospital-orientated care. Differentiated out-patient care and complementary therapy facilities in line with the psychiatric reforms were lacking. Moreover, there were serious economic shortages. Since the reunification of Germany, a wide range of action has been taken at the Federal, Land and communal levels. In many places, the creation of appropriate care structures has already begun. The supply situation is undergoing a rapid transformation. Just as in the old Länder,

...

the knowledge and principles derived from the psychiatric inquest and model programmes also apply to the establishment of a modern psychiatric system in the east. This development is supported by the Federal Government through its assistance to model projects and regional prototypes, the impact of which reaches beyond regional boundaries.

Appendix I, Part II (Bavaria) - A. (Police establishments):

Summary N° 1 (N° 21 of the Report):

The Bavarian State Ministry of the Interior has indicated that it had not been made aware of any case of apprehended persons having had their needs struck against a wall during identity checks in connection with the demonstrations in Munich in July 1992. No complaints to that effect have been received. Nor is there any truth in the generalized allegation that foreign demonstrators received particularly brutal treatment.

It is correct that persons apprehended at demonstrations on 6 July 1992 had to be held temporarily in police vehicles. The smallest of the vehicles used for this purpose were Volkswagen minibuses, the passenger cells of which comfortably accommodate four persons. The detained persons had to stay for lengthy periods in the prison vans with barred windows because the detention centre at Munich police headquarters was overcrowded. At the time in question, more than 450 additional temporarily detained persons had to be held in the detention centre at Munich police headquarters. It was therefore unavoidable that up to 70 persons had to be accommodated for a few hours in each of the two collective cells, which measure 50 and 60 m^2 respectively. This does however seem reasonable in the context of such an exceptional operation, but more especially in view of the short period of custody.

...

Summary, N° 2 (N° 27 of the Report):

As part of the refurbishment of the entire Munich police headquarters building, there are plans to modernize the detention cells. The general condition of the cells, in particular their heating, ventilation and lighting, are to be improved. Application has been made for the necessary funding of the extention.

Under the service regulation governing the equipping and use of detention areas (Police Custody Regulation - Haftvollzugssordnung der Polizei - HVoPol), prisoners may be held in separate or shared cells. Prisoners are to be held separately if, for instance, they are unreasonably dirty, suffer from an contagious disease or are drunk. Separate accommodation is certainly the ideal, but limited availability of space and operational considerations relating to the paramount need for security often run counter to its realization. Separate accommodation of prisoners is not possible in the detention centre of Munich police headquarters. It should however be noted that prisoners do not normally stay longer than 24 hours in the detention centre.

Nevertheless, the Bavarian State Ministry of the Interior will ask the management of Munich police headquarters to improve the allocation of cells by means of internal measures. It should be noted, however, that shared accommodation also serves to protect the prisoners themselves.

The Police Custody Regulation prescribes that a mattress and woollen blankets be made ready and issued to prisoners, unless such prisoners are drunk or excessively dirty. The centres have been asked, particularly when police inspections take place,

...

to ensure that this provision is observed.

Appendix I, Part II (Bavaria) - B. (Straubing Prison):

N° 1:

On 2 August 1990, around 5 p.m., 103 inmates of Straubing Prison refused to return to their accommodation after exercise in the yard. 95 prisoners subsequently managed to climb from the yard onto the roofs of two adjacent prison buildings; some of the prisoners were armed with missiles and striking-tools.

The eight prisoners who remained in the yard were overpowered by police at 3.19 a.m. on 3 August. About 4.45 a.m, the other defiant prisoners were again asked to come down voluntarily from the roofs. 22 prisoners acceded to this request, climbing down through the skylight and surrendering without resistance to waiting police.

Between 5.20 and 5.50 a.m., a police task force stormed the roofs and apprehended the mutineers who were still there. Resistance was offered in individual cases. A total of five prisoners and one police officer received minor injuries in the course of the apprehensions. The injured persons were treated without delay by doctors.

On the same day, 3 August 1990, 101 of the mutinous prisoners were transferred to other prisons.

Where individual prisoners involved in the mutiny subsequently made allegations of physical ill-treatment by police or prison officers, these allegations were examined by the competent criminal prosecuting authorities (the Office of Public Prosecution and police authorities). None of the participating

...

officers was found to have acted criminally. Nor did the disciplinary enquiry into the conduct of the officers at Straubing Prison provide any indication of improper conduct by prison officers in connection with the described incidents of 2 and 3 August 1990.

N° 2:

Please refer to the remarks on Appendix I, Part I (C) (first indent page 22/33).

N° 3a, first indent:

Catering at Straubing Prison is organized on the basis of modern nutritional science with the collaboration of the prison doctors. Special emphasis is placed on the proper preparation of appetizing meals under the direction and supervision of suitably trained experts. The inmates' representative body at Straubing Prison helps to compile the menu.

A study carried out by government nutrition consultants in February 1992 concluded that the prison was offering its inmates a balanced diet.

The cooked meals are brought to the cells in heated trolleys and are properly served there by auxiliary staff under the direct supervision of prison officers. No information has been received regarding provocative behaviour by prison officers when meals are served. Moreover, without further details, it is not possible to investigate the complaints referred to in the report.

...

N° 3a, second indent:

An examination of the ventilation system in the six disciplinary detention detention cells and the two high-security cells in the A/O wing of House II at Straubing Prison has established that the system provides adequate ventilation. Each cell has a cubic capacity of some 27 cbm and has two windows to the outside. Both windows, which each have an area of about 1.7 m^2, are fitted with a tilt-and-turn mechanism and can be tilted or opened wide by the prisoner, so that the air in the cell is completely exchanged within a short time. In addition, the two high-security cells are equipped with an electric fresh-air blower that is capable of ensuring a supply of fresh air above and beyond the basic requirement.

The prisoners accommodated in the aforementioned cells, then, are themselves able to ensure at any time that the cells are adequately ventilated. At the same time, the officers responsible for that section have been explicitly instructed to particularly ensure that the cells in question are adequately ventilated.

N° 3b, first indent:

At Straubing Prison, prisoners who refuse to fulfil their statutory obligation to work (section 37 and section 41 para 1 of the Prison Act) are categorized as being "without work through their own fault". This also applies in cases where these prisoners are assigned work in an enterprise run by a private contractor. Although section 41 para 3 of the Prison Act lays down that the employment of a prisoner in an enterprise run by a private contractor is subject to his formal consent, that provision has not yet been put into force.

...

Parliament thus took account of the fact that in view of the large number of posts provided in prisons by private contractors, it would otherwise no longer be possible to guarantee the adequate employment which is indispensable for the treatment of prisoners. Section 198 para 3 of the Act therefore prescribes that section 41 para 3 will only enter into force by virtue of a special Federal law. That has not yet happened.

N° 3b, second indent:

According to section 29 para 2 of the Prison Act, the only prisoners' letters not subject to surveillance are those written to the parliaments of the Federal Republic and the Länder and to their Members, provided that the letters are written to the addresses of the parliaments and the envelopes contain correct details of the sender, and those written to the European Commission of Human Rights. Letters received from parliaments and their members may, for reasons of treatment or security or order within the prison, be monitored (section 29 para 3 of the Prison Act). The key to this decision by the legislature was the fact that unmonitored incoming mail can fairly easily be used for non-allowed transmissions of information.

The practice at Straubing Prison, as described in the Committee's report, is therefore in line with the statutory rules.

N°4 a, first and second indents:

In 1990 the Bavarian State Minister of Justice appointed an advisory body of three high-ranking academics from the psychiatric field to advise and assist the Bavarian State Ministry of Justice in all matters concerning the professional

supervision of the psychiatric unit of Straubing Prison. On the basis of the recommendations made by this Standing Advisory Council, comprehensive measures to enhance and extend the therapeutic activities in the psychiatric unit of Straubing Prison have been introduced since 1991. This has meant that since 1991 the unit has had the full-time services of a further specialist in neurology and psychiatry and a graduate in social education. In addtion, the Bavarian State Ministry of Justice ordered the establishment of an occupational therapy workshop in the psychiatric unit, in which eight prisoners have been constantly employed under the direction of a properly trained and qualified officer since July 1992 and which has achieved good therapeutic results. The extension and development of this occupational therapy is envisaged.

In accordance with the recommendations of the Standing Advisory Council, the fullest possible adjustment of the general living standards of the patients in the psychiatric unit to those of the other inmates of Straubing Prison is being pursued; this includes, for instance, the opportunity for suitable patients from the psychiatric unit to be integrated into industrial-type working processes in the numerous prison enterprises.

To assist the experts who work permanently in the psychiatric unit, the psychologists employed in the mainstream penal institution at Straubing may also be involved in therapeutic measures in cases where such involvement is warranted; this applies particularly to discussion and behavioural therapy. Since as a rule more than half of the prisoners accommodated in the psychiatric unit are foreign nationals, often with inadequate knowledge of German, increasing importance attaches to the development and expansion of non-verbal forms of therapy with a view to further improving the therapeutic climate. For instance, in the psychiatric unit, a course of musical therapy based on Carl Orff's system of music education is being prepared, a pottery course and courses in traditional and

...

Chinese physiotherapy will shortly be offered and patients given instruction in the handling, care and breeding of animals. It is intended that some of these measures should, if possible, be conducted with the assistance of voluntary external instructors.

The prisoners accommodated in the psychiatric unit are able at present to spend a daily total of three and a quarter hours in the open air.

N° 4a, third indent:

The Bavarian State Ministry of Justice shares the view of the Committee that depressive illnesses are also a matter of considerable importance in prisons and that prisoners with depressive illnesses require special antidepressant therapy. Care is taken to ensure that due attention is devoted to such illnesses in the psychiatric unit of Straubing Prison.

N° 4a, fourth indent:

In line with the recommendations of the Standing Advisory Council, care is taken to ensure that all medical treatment carried out in the psychiatric unit is immediately noted in the medical records and that a record is also kept of whether the prisoner is capable, in the view of the physician, of declaring his valid consent to the proposed treatment, whether he was given an adequate medical briefing on the treatment, and whether he declared his consent. If a prisoner lacks the capacity to declare his valid consent to the treatment, and if the competent Guardianship Court has appointed a curator for him, the curator's consent to the medical treatment, if required, is noted in the records.

If the conditions for coercive medical treatment under section 101 of the Prison Act obtain, detailed documentation is drawn

...

up in accordance with the nationally standard administrative regulations enacted pursuant to section 101 of the Prison Act and includes the reason for the coercive treatment order, as well as the type and scope of the treatment.

N° 4a, fifth indent:

Some considerable time ago, the Bavarian State Ministry of Justice indicated measures to ensure the participation of outside experts in the work of the psychiatric unit of Straubing Prison. The Standing Advisory Council referred to above (see the comments on N° 128) is available as required to advise the specialized staff of the psychiatric unit on both general issues and specific cases. In addition, contacts are maintained with consultant physicians outside the psychiatric unit, and their expert opinion is sought by the unit's doctors in specific cases.

Finally, the management of Straubing Prison is anxious to obtain the services of suitable people and associations whose influence can promote the integration also of the prisoners in the psychiatric unit. To this end, contacts are maintained with the regionally responsible Psychosocial Study Group from the immediate area around the institution; efforts are being made to encourage members of the group to participate as voluntary helpers to look after the prisoners in the psychiatric unit.

N° 4b, first indent:

All dormitories in the psychiatric unit without exception are fitted with wall shelves which prisoners may use for hanging up their clothes and keeping other personal items; as a measure for the prevention of suicides, the shelves are not fitted with

...

doors. The prisoners can also keep articles of clothing, such as bulky items for inclement weather, in locked cupboards outside their cells.

N° 4b, second indent:

Medical treatment is very seldom carried out without the consent of the prisoner affected; it is only necessary if, for instance in the case of an extremely acute psychosis, immediate medical treatment is required and the prisoner's consent cannot be obtained.

Under section 101 of the Prison Act, coercive medical treatment of prisoners is admissible only in cases of danger to the prisoner's life, in cases of serious danger to the prisoner's health or in cases of danger to other people's health. The measures must be acceptable for those concerned and must not entail any substantial danger to the life or health of the prisoner. Furthermore, like every coercive measure in prison, it is only permitted if the objective pursued cannot be achieved by other means; it must be consistent with the principle of proportionality. The measures themselves may only be administered by order of a physician and under his direction.

The prisoner concerned may demand a judicial review of any medical treatment administered without his consent; in this procedure, the adjudicating court will call on the services of a medical expert witness if necessary.

In addition, before medical treatment is administered without the consent of the prisoner, it may be appropriate, depending on the case in question, to obtain the expert assessment of another physician from outside the prison as a second opinion. If the illness of a prisoner in the psychiatric unit of a prison cannot be diagnosed or treated, the prisoner must, under

...

section 65 para 2 of the Prison Act, be committed to a suitable psychiatric institution outside the prison system. The psychiatric unit of Straubing Prison acts in accordance with these principles.

N° 4b, third indent:

The Bavarian State Ministry of Justice shares the view of the Committee that the consent of a prisoner to medical treatment must not be obtained by means of threats or unreasonable pressure.

N° 4b, fourth and fifth indents:

The view of the Committee that it is most inappropriate to arouse or encourage feelings of fear in prisoners towards a medical unit is wholeheartedly shared. The Bavarian State Ministry of Justice considers it important to point out that such feelings of fear are neither aroused nor encouraged by the management of Straubing Prison. Close and ongoing cooperation with the Standing Advisory Council, as recommended by the Committee, is assured.

N° 4c:

The Bavarian State Ministry of Justice shares the view of the Director of the Psychiatric and Outpatient Clinics of the Technical University of Munich, who, as a member of the Standing Advisory Council (see the comments above on N° 128), certified that the medical records in the psychiatric unit of Straubing Prison were now being administered in accordance with the advice and recommendations submitted by him in the specialist's report he made to a Committee of Enquiry of the Bavarian Landtag in 1990.

...

Appendix I, Part III (Berlin) - A. (Detention Centre for Aliens - Tiergarten Police Detention Centre):

N° 1, first indent:

Standing Order LPolDir 10/1988 on procedure in detention prior to deportation at the Tiergarten Police Detention Centre provides, in section 27 para 1 for a compulsory minimum of 30 minutes' outdoor exercise per day. This period is extended when staffing permits. It should, however, be borne in mind here that the wardens not only have to supervise the detainees during exercise periods but must also serve the three daily meals, take the aliens to court hearings and direct operations at visiting times.

In order to guarantee security and order among the detainees, who presently number over 100, during outdoor exercise, they can only be taken from one wing at a time to the exercise yard. For this reason, a daily outdoor stay exceeding 30 minutes per day cannot always be ensured.

N° 1, second indent:

The following leisure facilities are available in the deportation detention centre:

- Two television sets with cable TV, of which ample use is made

- In the exercise yard, there is a weatherproof table-tennis table, and football matches are also organized during free time.

...

- A few years ago, with the collaboration of the Protestant Church, a small library was set up consisting of about 50 books in several languages, particularly Arabic and Turkish. In recent years, this library has been little used, and sometimes not at all. One reason for this is that the nationalities of the aliens held at the Centre have changed considerably.

- The games that were provided, such as nine men's morris, draughts, halma, etc., became unusable in a short time as a result of missing or damaged pieces, so it was decided not to provide any other. Nevertheless, the aliens detained for deportation do have the oportunity to buy games and packs of cards for themselves.

- The aliens detained for deportation have the opportunity for their families and other visitors to bring them newspapers and magazines.

- Finally, the fact that each person detained for deportation is permitted to receive visitors every day should also be regarded as a leisure activity.

N° 1, third indent:

In view of the many religious affiliations among the foreign nationals, it is not possible to offer individualized menus. Nevertheless, in deference to the religous laws observed by the many nationals of Muslim countries, no pork is offered; for that reason, sausage products have also been missing from the menu for many years.

...

N° 2:

A psychiatrist and neurologist employed in the Police Medical Service is also available, if required, for the Deportation Detention Centre. Likewise, psychologists from the Police Social Sciences Department are available to help in the Deportation Detention Centre if needed. Permanent employment of a psychiatrist or psychologist is not feasible because of their other working commitments.

Appendix I, Part III (Berlin) - B. (Moabit and Tegel Prisons):

N° 1:

Because of the time-lag, the Berlin administration of justice was unable, despite considerable efforts, to investigate the allegations. In particular, it proved impossible to ascertain which prisoner is alleged to have been sprayed with water in a special detention cell in the basement of building III at Tegel Prison. Enquiries revealed that this cell was last occupied in November 1990 for a few hours. Since then it, like two adjoining cells, has not been used; as a result of the Committee's remarks, it has now been structurally altered and can no longer be used. Perusal of the prison records revealed that all but one of the prisoners accommodated in that cell from 1988 to November 1990 have been released and cannot be questioned. This prisoner was questioned, but gave to understand that the matter was of no interest to him. Nor did enquiries among the prison staff yield any further information. Furthermore, neither the prison management, the Prison Advisory Council, the Petitions Committee of the Berlin House of Representatives, the criminal enforcement division of Berlin

...

Regional Court, nor the Senate Department of Justice has any knowledge of corresponding oral or written complaints from prisoners about such abuses in past years. It may therefore be concluded that these allegations are unfounded.

N° 2:

The Berlin administration of justice considers that the recommendations of the Committee regarding the regime in the isolation block for narcotics dealers in building I of Tegel Prison have now been put into practice. As in other parts of the Prison, the prisoners - numbering 15 on average - who are accommodated in this area are permitted unrestricted communication with each other from 7.30 to 8.15 a.m., 11 to 11.45 a.m., 3 to 4.45 p.m. and 6 to 10 p.m. Moreover, at these times they have access to a communal television, as well as to packs of cards and various board games. There is a 30-minute visiting period for families four times a month. In addition, the prisoners in this area receive regular visits from external collaborators and external advisory bureaux for drug addicts, while the prison chaplains look after their spiritual needs. Since the prisoners in this area, on account of their former entanglement in drug-trafficking, cannot be assigned to duties in the normal prison enterprises, they can only be offered menial tasks in the isolation block or in their cells. However, this is not possible at times because, dispite the vigorous efforts of the prison's occupational administration, not enough suitable contracts are obtainable from outside companies. It is virtually inevitable that this situation will continue in the future, in view of the general state of order books, particularly in Berlin and the new Länder. When no work is available, the prisoners are allowed to congregate in a day room during working hours.

...

Furthermore, these prisoners may enjoy free time outside their block for at least one hour daily, but generally for two.

N° 3a, first and second indents:

In the basement of building II of Moabit Prison, there are not nine but only four special cells without dangerous objects. The renovation and modernization of these cells have been repeatedly proposed by the prison management in recent years but have never been implemented because of many even more important and costly modernization measures elsewhere. In the last few years, the cells have been used extremely infrequently, and mostly for a few hours only.

The cells in the basement of building III of Tegel Prison are officially closed. Please see the comments under I. above.

N° 3a, third indent:

The Berlin Department of Justice emphasizes the obligation to accommodate prisoners in conformity with the European Prison Rules, ensuring that the conditions of custody and prison regime do not aggravate the restrictions that necessarily accompany the deprivation of liberty, unless this is required for the maintenance of discipline or of an otherwise justifiable separation of prisoners. In the case of persons remanded in custody, account must also be taken of measures ordered by the court for their separation from other prisoners.

The result of these efforts is that in Moabit Prison, which is primarily responsible for remand detention, occupational or educational measures can be offered to almost 60 % of all

...

prisoners. A total of 456 jobs and about 200 places on educational courses are available. In addition, a Group Centre and Advisory Bureau was set up in the prison in 1990 in which group activities are conducted and numerous external advisory agencies are available at certain times for consultation; the prisoners can use these facilities without having to make appointments. Moreover, on several days each week a large number of prisoners who are not subject to security restrictions are given the opportunity to move about their own block with cell doors open for a few hours or to socialize with selected prisoners in their own cell.

The administration of justice regards these measures as a good basis for ensuring that a separation of prisoners that is required for reasons of discipline or security does not jeopardize their human rights. This purpose is also served by the committal procedure for convicted offenders at this prison. In line with the recommendations contained in the European Prison Rules, these prisoners are involved in the process to draw up their individual treatment and training programmes before being transferred, after extensive counselling, to the appropriate institution in the Berlin prison system.

N° 3a, fourth indent:

"Block 01 of TA I in Tegel Prison" evidently refers to the isolation block for narcotics dealers in the prison, which was commented on under N° 2 above.

N° 3b, first and second indents:

The modernization programme for Moabit Prison, which was begun many years ago, is being continued gradually as funding permits. The refurbishment of 57 cells has recently been

...

completed. Unfortunately, this did not include the installation of partitioned sanitary facilities, which the size of the cells precluded. Most of the cells are, however, equipped with movable wooden screens. This programme is being continued. The Berlin administration of justice would also welcome a global occupancy level of one prisoner per cell at Moabit Prison. However, in view of the sharp rise in the number of prisoners, this cannot be implemented in all cases. Furthermore, a large number of remand prisoners wish to share a cell with another prisoner, especially at the start of their stay in custody. Despite the cramped conditions, all experience shows that this is a useful means of coping with the trauma of imprisonment and of preventing suicides.

N° 3b, third indent, and N° 3c:

A return to service for the former high-security facilities in building I of Moabit Prison, which were finally taken out of commission in 1989, is not planned and would also not be possible without extensive construction work.

N° 3b, fourth indent:

The modernization of the old buildings at Tegel Prison is advancing swiftly. In February 1993, the refurbished A Wing of building III was able to be brought back into service. The modernization work for the whole of building I is nearing completion. A start has been made on the modernization and refurbishment of B Wing of building III. These measures are all highly time-consuming and entail very considerable reconstruction costs.

...

N° 3b, fifth indent:

It would not be possible to move the isolation block for narcotics dealers in building I of Tegel Prison, and there are no plans to do so. Admittedly, the cells in the whole of building TA I are comparatively small, and the Berlin administration of justice does not intend to detain prisoners in them for years at a time. However, because of the extremely high number of prisoners, it has now also proved necessary to start keeping prisoners again in the previously unused cell blocks of building I now that they have been radically refurbished, even if the cells are relatively small. A large number of these prisoners, however, are only to be held there temporarily with a view to being transferred to differently structured areas of the prison.

N° 4a, first indent:

Efforts have again been stepped up recently to develop the therapeutic activities in the Psycho-Neurological Unit of the Berlin Prison Hospital at Tegel Prison. Besides the medical and nursing staff, various volunteers (including an educationalist and a psychologist) work in the Unit. Regrettably, the post of occupational therapist, which has been advertised several times, has not yet been filled, due to a lack of interested or qualified applicants. The search, however, is continuing.

N° 4a, second indent:

A particular focal point of the work of Moabit Prison in recent years has been the quest for preventive measures against suicides. Besides the aforementioned cell-sharing in the first

...

phase of imprisonment, each new prisoner has immediate induction interviews with specially trained prison staff, the permanent staff of the admissions department are kept together and there are multilingual information pamphlets and immediate help from interpreters, by telephone if necessary, for non-German-speaking prisoners. Any prisoner with a high suicide risk is also specially observed as the need arises.

N° 4a, third indent:

To describe all of the measures for drug-addicted prisoners which are being implemented or prepared in the Berlin prisons would go beyond the framework of the present report. Suffice it to say that well-trained specialists in drug problems are employed in all prisons and that all prisoners also have unhindered access to external advisory bureaux for drug addicts, which maintain a constant presence in the prisons. In addition, there is a wide range of information on the dangers involved in the use of narcotic drugs with regard to infection with the HIV virus. Full and conclusive therapy can scarcely be administered under prison conditions. None the less, many methods are being tried to motivate prisoners to undergo therapy after their release (or early release under section 35 of the Narcotics Act).

N° 4b, first indent:

It is not true that a doctor would not be on the spot in good time in an emergency at Tegel Prison. During the day, several doctors are on duty in their surgeries and in the hospital unit at Tegel Prison. They are not required at night because the orderlies who work round the clock can obtain advice by telephone in simple cases from the night doctors who are always on duty at the hospital units in Moabit and Plötzensee; in addition, in real emergencies an emergency physician's vehicle,

...

operated by the Berlin Fire Service, is on constant standby at a nearby civilian hospital, or the rescue helicopter can be alerted and brought to the prison in a matter of minutes.

N° 4b, second indent:

The accommodation arrangements at the Psycho-Neurological Unit of the Berlin Prison Hospital at Tegel Prison are also considered unsatisfactory by the Berlin administration of justice. Some improvements have recently been carried out, namely a reduction in the number of beds in some cells and the conversion of most wards to open wards. This has proved beneficial to the extent that aggressive attitudes among patients have abated considerably. Nevertheless, a truly satisfactory solution cannot be achieved within the constraints of the existing premises. For this reason, the Berlin Senate is planning the construction of a completely new prison hospital; on the basis of current progress, the new hospital is likely to be available in about four years' time.

N° 4b, third indent:

Contrary to the view of the Committee, advisory arrangements for prisoners taking an HIV test have been functioning almost perfectly for about three years now. The prison doctors and orderlies, as well as the social workers employed in the prison, have received comprehensive training through extensive in-service courses on the interrelated subjects of drug addiction, HIV infections and AIDS. In addition, a psychologist is also employed for special counselling duties for HIV-infected prisoners, and she enjoys the particular trust of the prisoners.

...

N° 4b, fourth indent:

Allegations suggesting involvement of prison staff in the smuggling of drugs into Tegel Prison are also often raised at the administration of justice of the Berlin Senate as well as in the media. Every one of these allegations is investigated. With the exception of one case many years ago, which resulted in the dismissal and sentencing of the officer involved, the investigations - frequently conducted by the Office of Public Prosecution - have produced no evidence of allegations of this kind. The Berlin administration of justice presumes that such allegations are chiefly raised by prisoners who wish to divert attention from the real supply channels.

N° 5a, first indent:

The report of the Committee was taken as an opportunity to renovate the visiting area at Moabit Prison. The renovation work is complete. Regrettably, however, the design of the prison buildings makes restructuring work impossible.

N° 5a, second indent:

Telephone calls by remand prisoners to persons outside the prison are permissible only with judicial authorization, and this is seldom granted.

In such cases, audio monitoring is ordered almost without exception, which means that a listening device must be fitted; these are only fitted in the offices of prison officers. The legal position and the consequences in terms of staffing make it impossible for this practice to be changed.

...

N° 5b:

The visiting system at Moabit Prison have to cope with a steady increase in the number of visitors as the occupancy rate of the prison grows and as judicial authorizations increase the number of special visits. The prison management has no means of controlling the distribution and frequency of such authorizations. Despite the great personal efforts of the staff, waiting periods are often unavoidable. Sadly, as was mentioned above, the structure of the buildings cannot be altered because there is simply no more space available. It must also be said that this situation is also considered unsatisfactory by the management and staff of the prison.

Appendix I, Part IV (Saxony) - A. (Waldheim Prison):

N° 1:

Relations between staff and prisoners in Waldheim, like those in most prisons in the new Länder, are marked by a process of development and reorientation, which takes time. They have already changed a great deal since 1990, mostly in a positive sense. Improvement of the cooperative structures in prisons is at the top of the agenda for the administrations of justice in the new Länder.

In the meantime, stronger motivation and considerably more interest in the new tasks have been perceptible. At the same time, one must not overlook the fact that the prison's lack of technical security needs to be offset by a greater staff presence. Moreover, as the number of prisoners in their care increases, the officers become less able to know and assess them. Frequent transportation of prisoners, accompanying

...

them to court, taking them for medical treatment, as well as secondments and in-service training of officers, constitute additional burdens. This situation can only be alleviated when further changes are made to buildings and technical facilities.

N° 2a and b:

As of 1 April 1993, 184 convicted prisoners, 30 remand prisoners and 12 detainees awaiting deportation were held at Waldheim Prison. In December 1992, building II was able to be occupied after extensive refurbishment. In November 1992, a first-offenders' block was opened in building IV.

The majority of the buildings were built in the 18th and 19th centuries. Over the last 60 years, the only maintenance measures carried out were those most urgently needed to keep the prison in use. That is why Waldheim Prison has needed complete refurbishment and modernization. This work will have to continue for a considerable time to come. Because of the role of the prison (long sentences), the needs of prison security must be paramount.

On 31 December 1992, there were 104 prison jobs for a total of 141 prisoners. Of the latter, a total of 44 were employed in the prison's own workshops (printing, carpentry, metal workshop, building), a total of 25 in the domestic services of the prison (heating, kitchen, laundry, stores, general maintenance) and 35 in outside enterprises (window production, electrical work, work for the German Postal Administration).

A sum of around 1,000,000 DM has so far been invested in the equipping of the prison enterprises.

In the field of leisure facilities, the prisoners' library has now been enlarged to 1,000 books. Additional television sets

...

and video recorders have been purchased. The available sports are football, volleyball, table tennis, trials of strength, running and judo. A music circle is also being established. Small groups of prisoners interested in aquarism and model railways have evolved in the units. A leisure room has been set up and is used for group discussions on the most diverse subjects. As part of the ongoing renovation of the prison, there are plans to lay out a nursery/market-garden and build a gymnasium and to develop leisure areas within the prison buildings.

N° 2c:

Under the prisons plan of the Free State of Saxony dated 1 January 1993, remand custody, imprisonment of up to 18 months and over, as well as preventive detention are carried out at Waldheim Prison. This role is to be maintained, long-term prisoners, persons in preventive detention and prisoners posing a security risk being housed in building I, prisoners in residential groups in building II and first offenders and prisoners with privileges and short sentences in building IV. Building V is to be used as an open unit. After the appropriate renovations and refurbishment, the present plans envisage a total capacity of 499 inmates, 451 of whom will be in one-man cells.

N° 3a:

Medical care at Waldheim Prison is the responsibility of one prison doctor, two psychologists, two nurses and eight medical orderlies.

...

N° 3b, first indent:

A new sick bay has been set up in part of building I. It consists of three renovated rooms separated from the rest of the prison. Up to eight prisoners can be accommodated there, which is regarded as sufficient.

In addition, the prison has been equipped with new medical facilities, new instruments having been obtained from Regis Prison, which has been temporarily closed. Medicines and medical supplies are now acquired from Leipzig Prison Hospital. The hospital and prison set high standards and abide by expiry dates.

N° 3b, second indent:

The prison's geographical isolation and the long distances to the nearest hospitals have to be accepted. So that medical care can be constantly assured, one of the staff of the sick bay is always present in the prison. A call-out system for the medical service has been established. No problems have yet arisen with regard to medical care.

N° 4:

Arrangements for visits to Waldheim Prison are treated flexibly. It is possible to combine or extend visiting entitlements on request. Visiting times of three hours per month are no rarity at Waldheim Prison.

...

Appendix I, Part IV (Saxony) - B. (Psychiatric Institutions):

N° 1, first indent:

Implementation of the provisions of section 63 of the Criminal Code will be organized with two principles in mind:

- Forensic-psychiatry units should be large enough to be able to offer a range of specialized therapy provided by qualified staff to suit the broad spectrum of patients.

- The units should permit treatment to take place as close to the patients' homes as possible.

Forensic-psychiatry units with 60 to 90 beds are to be created in a psychiatric hospital in each of the three administrative districts on Chemnitz, Dresden and Leipzig. Furthermore, it is intended to set up small field stations at suitable places away from the hospital complexes for the purpose of gradual social rehabilitation. The establishment of the units will be carried out in stages over the next few years.

N° 1, second indent:

In Saxony at the moment, departmental draft legislation on the mentally ill is under discussion. The process is taking longer than expected, since the proposed law does not simply concern custody, but rather seeks to create the legal framework within which the mentally ill will enjoy guaranteed assistance and enshrined rights. In the coming months, the first Saxon Land plan for the care of the mentally ill will be published. It

...

will establish commissions to visit psychiatric hospitals and units, as well as a board of trustees with a kind of ombudsman role, and will lay down the procedure for formal complaints.

N° 2a, first indent:

As regards the comprehensive improvement of buildings, there is a degree of uncertainty as the planners debate whether the location should be retained or whether the institutional psychiatric care should be transferred to the nearest county town and linked with the hospital there. Nevertheless, improvements in the furnishings and fittings of the various wards are being carried out in the short term, and the number of patients is substantially falling.

N° 2a, second indent:

The improvement of therapy and treatment depends on the staff who are available. The Federal Governments's Psychiatric Staff Order of 18 December 1990 laid down the numerical framework. These staffing targets are to be met in full from 1 January 1996 at the latest.

In-service training and further education at various levels are being developed to qualify psychiatric staff in therapeutic skills. In the Education Centre of the Saxon State Ministry of Social Affairs, Health and Families, further-education opportunities for psychiatric nursing staff and for middle-level medical staff working in the psychiatric field are to be liberally expanded in the coming years.

Unfortunately, it must be stated that it is proving difficult at present to recruit sufficiently qualified therapeutic staff for the isolated rural hospital at Hochweitzchen. Once the

...

restructuring phase is completed, including management restructuring, and once the future siting of the hospital has been settled, it will be possible to overcome these difficulties.

N° 2a, third indent:

In this respect, please see the comments on N° 1 (progress of the draft legislation on aid to the mentally ill).

N° 2b, third indent:

The incident referred to was an exception that derived from temporary organizational problems. The competent authorities have ensured that such occurrences cannot arise in future.

LIST OF APPENDICES

to the response of the Federal Government of Germany to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on its visit to Germany from 8 to 20 December 1991

Annex 1: Police Laws and Police Custody Regulations of several Länder (Thuringia, Bavaria, North Rhine-Westphalia, Saarland, Lower Saxony, Baden-Württemberg) - Rules of various regional police headquarters and regional CID headquarters (Hesse and Schleswig-Holstein) - Extract from the Land Administrative Act (Landesverwaltungsgesetz)

Annex 2: Information on the lawyer emergency service in criminal matters (Munich and Berlin)

Annex 3: Information Sheet on legal remedies concerning measures involving deprivation of liberty pursuant to the Police Tasks Act (Polizeiaufgabengesetz) (Bavaria)

Annex 4: Principles governing police interrogations (Bavaria)

Annex 5: Extract from a police custody record (Bavaria) and a form for notification of detention (North Rhine-Westphalia)

Annex 6: Information on AIDS, guidelines on dealing with HIV positive persons (North Rhine-Westphalia, Bavaria, Berlin, Baden-Württemberg, Bremen, Hamburg, Saarland, Hesse)

Annex 7: Example of a training schedule in a hospital (Heilig-Geist-Hospital, Bingen/Rhein)

Annex 8: Regulations of various Länder on prison Advisory Councils (Brandenburg, Berlin, Bremen, North Rhine-Westphalia, Rhineland-Palatinate, Saxony, Thuringia, Schleswig-Holstein)

Annex 9: Provisions relating to preliminary administrative proceedings (North Rhine-Westphalia, Hamburg)