

**INTERIM REPORT OF THE GERMAN GOVERNMENT IN RESPONSE
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 14 TO 26 APRIL 1996**

(transmitted by letter of 27 May 1997)

7-11

INTRODUCTION

1. The Federal Government herewith comments on the recommendations, comments and requests for information made in the Committee report on its visit to Germany from 14 to 26 April 1996.
2. The Federal Government underlines the importance attached to the prevention of torture and inhuman or degrading treatment, a stance shared by the Federal Länder, which are responsible for law enforcement. It welcomes the Committee's second visit to Germany.
3. The Federal Government, too, would like to underline the excellent spirit of co-operation during the delegation's visit to Germany.
The Federal Government thanks the Committee for its recommendations and comments and looks forward to continuing the dialogue with the Committee.
4. The Federal Government notes with satisfaction that the delegation heard no allegations of torture having been inflicted on persons by police or prison officers.

The Committee was informed, in a letter by the Federal Ministry of Justice of 13 September 1996, that two enforcement officers in Berlin were charged with causing bodily harm to a person in their custody. The Federal Government hereby informs the Committee of the fact that the Tiergarten/Berlin Local Court [Amtsgericht] acquitted both public servants with final and binding effect on 15 November 1996. The public prosecution office has initiated proceedings against the main witnesses for the prosecution on suspicion of their giving false incriminating information.

5. The comments below are structured in line with Annex I to the report. The recommendations and requests by the CPT are in italics, while the statements by the Federal Government are in normal print.

Ad Annex I. A. Police establishments

1. Torture and other forms of physical ill-treatment:

The Committee recommends that

- ***police officers be reminded that no more force than is reasonably necessary should be used when effecting an arrest, and that furthermore, once arrested persons have been brought under control, there can be no justification for them being struck by police officers (paragraph 15)***

The demand made by the Committee that police officers be reminded of these restrictions arising from the system of basic rights is shared, and is being efficiently implemented in the police service.

The strict legal requirements which are to be complied with when force is used, namely the principle of proportionality, constitute an essential element of police training and further training, and they are also discussed after police operations.

2. Conditions of detention:

The Committee recommends

- ***that the German authorities review conditions of detention in the police establishments visited by the delegation in the light of the remarks set out in paragraphs 19 to 23 (paragraph 24)***
- ***to accord a very high priority to the closure of Schöneberg Police Detention Centre (paragraph 24)***

The conditions of detention at the Schöneberg Police Detention Centre, Directorate 2 Police Detention Centre in Berlin, and at the Police Detention Centre at Ulmenstraße in Rostock have been reviewed in the light of the observations made by the Committee. The results are as follows:

a) Berlin

When the Central Police Detention Centre in Tempelhof in the new building of the Berlin Office of Criminal Police was opened on 3 June 1996, the Schöneberg Police Detention Centre was finally closed.

The four collective rooms of the prisoners' collection centre of the Directorate 2 in Berlin, called communal cells in the Committee report, are designed for the short-term accommodation of up to eight persons. The space provided is considered adequate for this purpose - as for the individual cells in the prisoners' collection centre.

The collective rooms are ventilated in the same way as the individual cells. For construction reasons it is not possible to provide additional ventilation, for instance through transparent bricks which can be opened to let in fresh air. The technical conditions and the efficiency of the ventilation system will be examined by the construction section of the police service.

The statement made by the Committee in paragraph 23, according to which a detainee had been held at the Directorate 5 in Berlin since before noon and had not been offered enough to eat, is not accurate. The person concerned was only brought to the collection centre at 16:35 hrs to have his picture taken and be fingerprinted, and could have left again at 16:50 hrs. He voluntarily stayed on until 17:30 hrs because he wanted to speak with the members of the delegation.

b) Rostock

The Committee said that the cells at the Police Detention Centre at Ulmenstraße in Rostock were of a good size, but that they were poorly lit and ventilated. This is due to the fact that the detention centre is located in an old building, which has several structural deficiencies. This also entails poor working conditions for prison staff. A new police detention centre for Rostock is being planned - and thus also adequate prison conditions - and it is envisaged to start construction work by the end of 1997 if possible. Unfortunately, some inadequacies cannot be ruled out entirely until the construction work has been finished.

- to take appropriate steps to ensure that conditions of detention in all police establishments meet the criteria indicated in paragraph 17 (paragraph 24)

The recommendations made in the Committee report concerning the equipment of custodial rooms and facilities are contained in the guidelines of most of the Federal Länder governing not only the equipment but also conditions of detention, such as food etc. The conditions prevailing in the detention establishments comply with these guidelines to a large extent, or are adequately taken into account when detention centres are rebuilt or new ones are designed. Where detention conditions were found to be inadequate, the Federal Länder have set aside funds to remove such inadequacies.

It was found that in Mecklenburg-Western Pomerania two thirds of all cells of the Land police comply with an old standard. The detention centres are either being rebuilt or new ones are being constructed. However, detainees are given both mattresses and blankets.

3. Safeguards against ill-treatment

The Committee recommends

- ***that the German authorities reconsider the recommendations made in paragraph 35 of the report on the CPT's first visit, in order to ensure that persons detained by the police have, from the very outset of their custody, the right to inform members of their family or a third person of their detention (paragraph 32)***

The Federal Government has reconsidered the recommendations made by the Committee and has found that the legal system in its present form provides sufficient safeguards for the persons concerned.

Firstly, section 114 b subsection 1 of the Code of Criminal Procedure [Strafprozeßordnung] requires judges immediately to inform a member of the family of a person's detention, or a person the detainee trusts, and, secondly, detainees are entitled, under section 114 b subsection 2 of the Code of Criminal Procedure, to inform a member of the family or a third person of their own choice, unless the purpose of the investigation is jeopardised through such information.

In addition, there are provisions at Land level which require the police to ensure that detainees may immediately inform a member of the family or a person they trust, unless the purpose of the custody or of the deprivation of liberty is jeopardised through such information (cf. e.g. section 1 subsection 2 DVOPoIG in Baden-Württemberg; Art. 19 paragraph 2 first sentence PAG in Bavaria; section 19 subsection 2 PoIG in Brandenburg; section 20 subsection 2 of the Act to Avert Dangers [Gefahrenabwehrgesetz] in Lower Saxony; section 22 subsection 5 SächsPoIG). There is no evidence to suggest that detainees are deprived of these rights or of the ones enshrined in the Code of Criminal Procedure; in exceptional cases, detainees are refused these rights after due examination of the circumstances of each case, the application of such duty-bound discretion being restrictive.

- ***that all persons deprived of their liberty by the police have a right of access to a lawyer from the very outset of their detention (paragraph 32)***

Under section 137 subsection 1 first sentence of the Code of Criminal Procedure, the accused may at any stage of the proceedings avail himself of a lawyer's assistance. Section 163 a subsection 4 second sentence in conjunction with

section 136 subsection 1 second sentence of the Criminal Code of Procedure provides that the accused must be informed, not only when being interviewed by the judge and the prosecutors, but also when being questioned by the police, that he is free to answer the questions or to avail himself of the right to silence and to consult a lawyer of his own choice, also before being interrogated. Therefore the accused must be given the opportunity to contact a lawyer - by phone, if appropriate - before being interrogated for the first time. If and when he says that he wants to speak to a lawyer before answering any questions, the interrogation must be postponed or interrupted, as the case may be. Thus, the accused is given the opportunity, at an early stage, to be informed by an expert about whether he should give evidence or make use of the right to silence. It is against this background that it is not deemed necessary to expand the lawyer's right to be present during a person's custody, which tends to be short. In so far as certain requirements governing the right to access to a lawyer are set forth in the decision handed down by the Federal Court of Justice on 12 January 1996, compliance with such requirements is ensured by the Länder.

- ***that the German authorities review the practical arrangements at the Schöneberg Police Detention Centre concerning access to a doctor for detained persons (paragraph 34)***

Schöneberg Police Detention Centre was fully closed down on 3 June 1996 (cf. above ad 2 (paragraph 24)).

- ***that persons detained by the police be systematically given a form setting out their rights at the very outset of their custody, which should be available in the languages most frequently spoken by the detainees (paragraph 37)***

This recommendation will be discussed by the „Law and Administration Committee“ of the Working Group „Public Security“ of the Conference of Interior Ministers. The problem will be that even a form in various languages will not be able to cover all relevant nationalities and language groups.

- ***that the German authorities reconsider the introduction of a code of conduct for police interrogations (paragraph 38)***

It is not considered necessary to introduce a code of conduct for police interrogations. The rules of conduct for police interrogations and other relevant provisions are a key element of police training and further training.

- ***to clearly define the situations in which the exercise of the detainee's right to inform a member of the family or a third person of their detention may exceptionally be delayed (paragraph 32)***

The Federal Government continues to hold the view that the provision according to which a person is refused the right to inform a member of the family or a third person, if such information jeopardises the purpose of the custody, complies with the principle that legal provisions must be worded in a precise fashion. It is not possible to state a definition which would include all conceivable cases. The question of whether the right to information is refused in an exceptional case is decided in a restrictive way by the authorities upon due consideration of the facts.

- ***that the German authorities reconsider their position regarding access by detainees to a doctor of their choice (paragraph 35)***

The Federal Government upholds its comments on the report of 19 July 1993. In the light of the fact that detainees remain in police custody for only a short time, there is no need for a general right to the first examination being carried out by a doctor of the detainee's own choice. The exercise of such right could lead to enormous problems (doctor may be absent, unable to see the detainee, or too far away).

- ***that the German authorities address the question of access to a lawyer for persons without resources held under the aliens legislation (paragraph 41)***

Under the Legal Advice Act [Beratungshilfegesetz] of 18 June 1980, which came into force on 1 January 1981, legal advice is given by a lawyer of the person's own choice. For further requirements and more details we refer to the comments of the Federal Government concerning the report of 19 July 1993. The Act provides that legal advice is also granted for administrative law cases, i.e. for cases where recourse may be had to the administrative courts. This is so in aliens and asylum law matters. In aliens and asylum law cases, unlike criminal and regulatory law cases, this is not restricted to advice: the person concerned is also represented out of court.

Anybody who, due to his personal and economic situation, is not able to pay wholly or partially for the costs of conducting a case, or only in instalments, is given legal aid provided the intended litigation can reasonably be expected to result in a favourable decision and is not considered wanton. Legal aid covers the share of the litigation costs and the costs incurred by one's own lawyer either in full or in part,

depending on the income that has to be used. In cases before the administrative courts where representation by a lawyer is not compulsory, a lawyer who is prepared to represent the assisted party is assigned where this is deemed necessary.

The Federal Government informs the public about the possibility of getting legal advice and aid, for instance through leaflets.

In Hamburg, instead of legal advice under the Act on Legal Advice, persons with low incomes are given free legal advice by jurists who work in an honorary capacity for the public legal information and conciliation body, mostly judges, and other honorary workers.

In North-Rhine/Westphalia, on top of legal advice under the Act on Legal Advice, for which all persons with low incomes are eligible, there is out-of-court legal advice which is publicly financed and independent of the authorities and particularly targeted at persons held in custody awaiting deportation. It is not means-tested. An advice scheme has been set up in the deportation custody establishments following agreements between the Land administration of justice and the local associations of lawyers pursuant to section 3 subsection 1 of the Act on Legal Advice. Detainees awaiting deportation are given advice free of charge. Any lawyer admitted to practise as a lawyer in North-Rhine/Westphalia may have his name included in the list of lawyers, which is accessible in the deportation custody establishments. If and when he is selected by a person awaiting deportation, he may give legal advice as a lawyer working in the advice agency.

Requests

- ***for information on any measures taken by the German authorities in the light of the Federal Supreme Court decision of 12 January 1996 on access to a lawyer for persons detained by the police (paragraph 33)***

The Länder have informed subordinate authorities of the Federal Court of Justice decision mentioned by the Committee; the authorities comply with the requirements set forth therein. Further measures are not required (cf. ad paragraph 32 above).

- ***a detailed account of the precise steps taken in practice to ensure that foreign nationals are not sent to a country where they run a risk of being subjected to torture or inhuman or degrading treatment (paragraph 42)***

In the individual case there is an administrative procedure, and a subsequent administrative court procedure, where appropriate, to establish whether it is prohibited to deport the alien in question, or whether there are obstacles precluding deportation. It may also be possible to appeal to the Federal Constitutional Court. A ban on deportation means that the alien may not be deported to a state where his life or liberty may be at risk due to his race, religion, nationality, his being a member of a particular social group, or owing to his political conviction (section 51 of the Aliens Act [Ausländergesetz]). The obstacles precluding deportation within the meaning of section 53 of the Aliens Act include concrete threat of torture or of capital punishment, inadmissibility of deportation with regard to the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, considerable threat to life and limb or liberty. Furthermore it is established whether deportation has been halted in general, pursuant to section 54 of the Aliens Act, and whether there are grounds for suspending deportation under section 55 of the Aliens Act. The competent authorities and courts take into account the facts presented by the person concerned and situation reports by the Foreign Office, reports by UNHCR and human rights organisations, and expert opinions. Deportation is only admissible if and when the alien finally has to leave the country with no further right of appeal.

B. Detention of foreigners

1. Köpenick detention centre for foreigners

The Committee recommends that

- ***the custodial staff at the centre be reminded that no more force than is reasonably necessary is to be used when restraining violent or disturbed detained persons and that, once such persons have been brought under control, there can never be any justification for striking them (paragraph 48)***

These basic principles are regularly conveyed to custodial staff by the centre management.

- ***steps be taken to ensure that whenever force is used against detainees, the appropriate safeguards are applied (medical treatment) (paragraph 49)***

Medical treatment in the Köpenick detention centre for foreigners has been ensured since October 1996. Any person taken into deportation custody against

whom force had to be used or who was ill-treated by other prisoners, is immediately examined by a doctor. The medical examination can be performed out of the hearing and out of sight of custodial staff, as suggested by the Committee.

Detainees are informed of the results of the medical examinations. The results of the medical examinations and relevant statements, if any, made by persons taken into custody and the doctor's conclusions are duly recorded in writing and made available to the detainee upon his request. The right to access is restricted only in the case of mentally ill persons whose condition might get worse if they learn of their illness. The right to access does not cover medical records as a whole, but only statements on scientific results and treatment details concerning the detainee (e.g. medication, operation etc.).

- ***the German authorities further develop the range of activities offered to persons detained for extended periods of time (paragraph 54)***

So far it has not been possible to offer any work with payment that would be appropriate considering the average detention period and spatial circumstances in the detention centre. However, a detention centre inspection body was established on 26 March 1997, and it is expected that it will give its support to offering more activities.

A whole range of new leisure activities has been offered: all cells have been equipped with TV sets, a library has been set up, there is a collection of board and card games, detainees can play football, handball and basketball in the outdoor courts and table tennis in the common rooms.

Furthermore, detainees awaiting deportation are regularly visited by representatives of their religious communities.

- ***every instance or resort to security measures be entered in a register specifically established for that purpose (paragraph 58)***

Specific security measures are recorded in activity reports which are filed in the order of activity numbers. It is not deemed necessary to record specific security measures in a separate register.

- ***the practice of withdrawal of outdoor exercise as a security measure be brought to an end and that the relevant regulations be amended accordingly (paragraph 59)***

Outdoor exercise is only withdrawn or restricted as a specific security measure where there is great danger that the detainee might try to escape, that he might attack persons or objects or that he might inflict injuries upon himself or try to commit suicide. If there is reason to believe that several detainees might act in the above way, the majority of the other detainees might otherwise have to be considerably restricted in their outdoor exercise.

– the German authorities take the health care measures in the detention centre which have been mentioned by the Committee (paragraph 65)

In early October 1996 a full-time woman specialist in internal medicine was taken on in the detention centre for foreigners. A woman neurologist took up work on 1 December 1996, so that psychiatric care in the centre has been very much improved. Round-the-clock first-aid and nursery care have been provided since 1 January 1997. It is envisaged that persons taken into custody at night will also have their first medical examination immediately. As the doctor has been available full-time since 1 October 1996, medical examinations are performed out of the hearing and sight of custodial staff, if security and the safety of the medical staff so allow. The telephone numbers of interpreters are known at the centre; the medical staff speak English.

– efforts be made to increase the initial and in-service training of staff assigned to detention centres for foreign nationals (paragraph 68)

Where detainees awaiting deportation are accommodated in penal institutions, and due to the increasing number of foreign prison inmates, the two-year training of prison staff puts more and more stress on how to deal with foreign detainees. This includes discussing the situation of foreign inmates, especially the religious, ethnic, cultural and linguistic particularities. Furthermore, there are in-service, on-the job and theoretical further training events to address matters relating to aliens law and how to deal with foreign detainees. In one Land, prison staff receive aid in learning foreign languages on their own initiative.

The Federal Government shares the Committee's view that the inclusion of staff members of varied origins or cultures is an extremely positive development.

The Committee states that

– the shower facilities at the centre afford limited privacy to detainees (paragraph 51)

The shower facilities comply with central European standards. Within the concept of open cells the shower facilities in the individual wards can be used at any time, so that inmates can have a shower on their own.

No complaints about violations of privacy have become known.

- ***the German authorities verify whether detainees receive a hot meal every day, in accordance with their usual dietary practices (paragraph 52)***

Inmates are given one hot meal a day. Personal or religious particularities are taken into account (vegetarian food, meals without certain meats, dietary food, diabetic foods).

- ***the German authorities review the question of detainees' access to personal effects (paragraph 53)***

The detainees' personal effects are stored on the same floor on which their cells are located, outside the cell wards, to protect them against theft. Inmates may access their effects where necessary, excluding objects with which they might hurt themselves or others. As mentioned in the report, this procedure is governed by safety aspects.

- ***the comments made in paragraph 166 of the report on the Committee's first visit concerning external committees apply, mutatis mutandis, to external committees for detention centres (paragraph 71)***

The Federal Government finds the Committee's recommendations useful. In Berlin, the inspection body took up its work in March 1997, and it is expected that it will give its support among others to offering more activities to prison inmates.

The Committee asks for:

- ***the results of investigations carried out by the LKA3136 police department, in the light of the complaints mentioned in paragraph 47 (paragraph 47)***

The Committee describes three cases where foreign nationals were allegedly ill-treated by custodial staff, against two of whom complaints are said to have been lodged. As the cases are described in an anonymous matter (the time of the ill-treatment is not mentioned, nor the particulars of the victims and of those lodging the complaint), and as only the sustained injuries and the alleged course of the

offences are mentioned, it was not possible to trace them back unequivocally to particular investigation procedures or records.

It is safe to assume, though, that the second case is the one under investigation by Berlin public prosecution office I on the charge of causing bodily injury to the Algerian national Jean M. in the exercise of official duties. The victim was born on 11 October 1960; file ref.: 81 Js 1530/96, ISVG-Nr. 951212/0945-5. Four police officers doing custodial duty were accused of having ill-treated the inmate in the way stated in the Committee report. The case was dropped by the prosecution office on 3 July 1996 under section 170 subsection 2 of the Code of Criminal Procedure.

Furthermore it may be assumed that the second and third case are identical, and that the description of the facts was slightly altered due to inmates retelling the case several times.

The first case was not found in any records of the detention centres, nor was a complaint lodged.

- ***the extent to which training in techniques for controlling and restraining agitated and/or violent detainees is included in the training of custodial staff at the centre and, more generally, at similar centres elsewhere in Germany (paragraph 50)***

In the context of training of custodial staff responsible for detainees awaiting deportation there is considerable focus on the methods used for controlling and calming down agitated or violent detainees, especially communication skills and methods of controlling behaviour and coping with stress. In addition, complementary training measures are provided within the framework of further training measures of the Land Police College.

- ***the possibility of visits being offered under much more open conditions (paragraph 55)***

It is not possible to relax the conditions for visits for reasons of safety and order in custodial establishments. Acoustic communication is possible without any restrictions. Enabling inmates to have more contact with their visitors would require a disproportionate increase in custodial staff.

– the need for and effects of the high degree of security in the centre (paragraph 69)

The proposals concerning external security made in the expert opinion by Prof. Dr. W. Rasch could not be implemented due to far-reaching mobility on the floors as part of the open-doors concept. Following several cases in the initial phase where inmates tried to escape and a foiled explosives attack on the establishment during the construction phase, additional security mechanisms had to be installed.

In the custodial wards detainees have been given independent access to built-in fire lighters. Detainees continue not to be allowed to have lighters of their own for safety reasons. There are water heaters for the detainees to make hot beverages. Their personal effects are available unless they may put themselves or others at risk.

Personal effects are stored in effects rooms organised by wards. Inmates cannot open the windows. According to the centre management "friction", as mentioned by the Committee, prevails only in individual cases, which can never be ruled out. There are two social workers, due to whom "friction" was removed or at least minimised.

– on whether the two vacant posts for social workers have now been filled (paragraph 70)

They were filled on 15 May 1996.

2. Bützow Prison

The Committee recommends

- putting an end to the practice of placing persons detained under the aliens' legislation in Bützow Prison and in prison establishments in general, and accommodate them in centres specifically created for that purpose (paragraph 76)***

Basically, we share the view that detainees awaiting deportation should not be kept with other inmates. However, the necessary facilities for this are not available in all the Länder.

Detention awaiting deportation is not an original function of the prison service. Section 8 subsection 2 of the Act on Court Procedure in cases of Deprivation of

Liberty (Gesetz über das gerichtliche Verfahren bei Freiheitsentziehungen) only states how detention pending deportation is effected in prisons within the context of service assistance.

In Berlin, Brandenburg, Bremen and Rhineland-Palatinate, detention pending deportation is effected by the Ministry of the Interior. That said, even in those Länder, the justice system is affording service assistance. In Berlin, male detainees pending deportation who require in-patient hospital treatment are accommodated in prisons as far as existing capacities allow. In Brandenburg, in cases where such detainees are considered to be very violent, they are also placed in prisons. In Bremen and in Rhineland-Palatinate, such detainees are kept in prisons if capacities are insufficient in establishments run by the Ministry of the Interior.

The Federal Government shares the view held by the Committee that detainees pending deportation should not be kept with remand detainees or sentenced inmates. It would however like to point out that in many cases separate detention centres are not built at present because of the budgetary situation in the Länder. However, where detention pending deportation is carried out in prisons, this is effected either in separate wings or sections.

The Federal Government considers that keeping such detainees in prisons also has its advantages. The prisons are establishments which have been created specifically for accommodating people who have been deprived of their liberty, and have all the means necessary for this purpose for supply, assistance and care. On principle, such detainees are therefore able in the same way as other inmates to take advantage of the wide range of activities offered in prison, as well as of medical, religious, educational, social and psychological assistance. Prison staff are qualified to deal with people who have been deprived of their liberty. Taking care of foreign inmates is an established element of the training and further training programmes organised by the Länder. Many staff have now had years of specific experience with the special needs of foreign inmates, which are the result of religious, cultural and linguistic particularities.

Because of the large number of foreign inmates in prisons, their special interests and needs are also taken into account in many ways in prison organisation. This occurs for instance by employing staff who speak foreign languages, by providing religious counselling and organising general courses in foreign languages, by adapting the menu, providing leaflets and internal rules in people's own languages,

and by many other measures. This also benefits detainees who are pending deportation.

One should also consider that effecting detention pending deportation in prisons makes it possible for such detainees to be held locally, which makes it possible to clarify questions related to the law on aliens more rapidly with the competent authorities locally responsible for aliens, and in the end leads to a reduced duration of detention.

The Committee requests that

- ***steps be taken until such time as the recommendations contained in paragraph 76 are implemented, to ensure that***
 - ***foreign nationals detained pending deportation are offered a wider range of activities;***
 - ***such detainees are properly informed, in a language they understand, of their situation and rights (contact with a lawyer, consular representatives, etc.) (paragraph 76).***

The Committee's recommendation is supported by the Ministry of Justice of the Land Mecklenburg-Western Pomerania. In order to be able to keep such detainees who have not been detained because of commission of an offence or on suspicion of committing an offence in an establishment designed for this purpose, an attempt was made in 1995, together with the Ministry of the Interior and the immigration authorities, who had original competence, to find a suitable building for this. Since it was not possible to carry out this project because of a lack of premises and funding, it was necessary to continue effecting such detention in Bützow Prison within the framework of service assistance.

Detention of women pending deportation was particularly unsatisfactory here. Because of the fact that the Land Mecklenburg-Western Pomerania is only able to detain female remand and convicted prisoners in a wing within Bützow Prison, a men's prison, which is almost impossible to separate from the men's section, it was only possible here to accommodate detainees awaiting deportation in this section.

It was not possible by these means to properly separate remand detainees from sentenced inmates. In April 1997, Bützow Prison therefore ceased providing service assistance for women detainees awaiting deportation. The Ministry of the Interior, and the immigration authorities which report to it, are presently attempting

to find adequate accommodation for such detainees outside a prison, perhaps in co-operation with another Land.

Since the visit by the Committee, it has been possible to improve the situation in detention for men awaiting deportation considerably, but the situation remains unsatisfactory because of the poor state of repair of the prison building, which was built in the last century, as well as because it is necessary to keep sentenced inmates in this building.

In order to improve the information provided to detainees awaiting deportation, leaflets have now been prepared and can be provided to inmates in Arabic, Armenian, English, French and Russian. They contain information relating to the legal situation, contacts and routines in the prison.

Additional information leaflets have been made available in English, French, Romanian, Russian and Vietnamese, provided by Rostock social welfare agency, which is involved with caring for detainees.

They are also looked after and given advice through almost weekly visits from the prison's commissioner for foreigners.

Such detainees may move freely within their section between 7 a.m. and 4.45 p.m., where there is a table tennis table and common board games. They are able to participate in sporting activities for 1 1/2 hours twice weekly, under the supervision of an officer responsible for sport. They may also order reading material from the prison library twice weekly, although to date only German, English, Russian and French literature is available.

In spite of the considerable improvements in this area, the Ministry of Justice and for Matters Concerned with the European Union of the Land Mecklenburg-Western Pomerania will strive further to move such detainees from Bützow Prison.

C. Prisons

1. Torture and other forms of physical ill-treatment

The Committee recommends that

- ***sustained attention be paid to the training of staff at Bützow Prison and, more generally, make every possible effort to improve relations between prisoners and staff at the establishment (paragraph 81)***

Considerable attention is paid to staff training. Roughly 90 % of the prison staff from the former GDR were retained after the political changes. Between 1992 and 1994, each of these staff underwent roughly 200 hours of further training. It was impossible in the subsequent years to continue the further training at the same rate because of the considerable increase in the number of prisoners and the resulting staff shortages, but the Ministry of Justice continues to attach a high priority to intensive training and further training for prison staff. For the reasons named by the Committee, the fiscal authority and Parliament have taken account of this priority and have provided funding for training and further training which is far in excess of the average.

The Committee requests that

- ***the duty of care which is owed by the prison authorities to prisoners in their charge includes the responsibility to protect them from other prisoners who might wish to cause them harm. In particular, prison staff must be alert to signs of trouble and both resolved and properly trained to intervene. Such a capacity to intervene will of course also depend in large measure on an adequate staff/prisoner ratio (paragraph 82)***

The Federal Government and the Ministry of Justice of the Land Mecklenburg-Western Pomerania share the view taken by the Committee on the extent of the duty of care incumbent on the prison authorities without reservation. The obligation to safeguard prisoners from attacks by fellow prisoners is part of the professional duties of prison staff. Very high priority is attached to this point in the course of theoretical and practical training. Staff are given intensive training in this area with the objective of enabling them to immediately recognise dependencies formed between inmates, as well as signs of the impending use or threat of violence or other manifestations of oppression. Within the context of training, staff are provided with the skills needed in order to be able to act in such cases to protect the inmates concerned. However, it is not always possible to prevent inmates being threatened or injured without staff being able to recognise this in good time. If such an incident

is recognised, the reaction is immediate, and the inmate who breaks the rules is disciplined, and where appropriate a criminal charge filed.

This applies to the same extent in the other new Federal Länder, where the adaptation training which was intensively carried out during the first years after Unification have now borne fruit. Even staff who have worked within the system for years have largely digested the perception of the profession which is new for them, and are therefore also able to fulfil their new role. Furthermore, the initial difficulties in adaptation are shrinking as the number of staff trained after the changes grows larger.

In addition to this, the Ministry of Justice of the Land Mecklenburg-Western Pomerania has provided the following statement on the observations made in wing A of Bützow Prison:

In spite of all the efforts, it had not yet been possible at the time when the Committee visited Bützow Prison to adequately tackle the overall situation which favoured subcultural developments which existed there after the changes. Completely insufficient staff capacity collided with a situation regarding prison places in which up to eight inmates had to be accommodated in interleading cells which had only one entrance and which were therefore not possible to be observed. This situation led to the circumstances of which the Committee complained with good reason under which the staff was frequently not able to prevent unfortunate occurrences, but could only subsequently observe that they had happened and react accordingly. A clear improvement in staffing, in particular by the building activity described in detail under paragraph 111, has now facilitated considerable improvements to the overall situation in Bützow Prison.

The Committee requests

- ***to be informed of results of the inquiries made following complaints of ill-treatment by staff at Bützow Prison, and of any decisions made as a consequence (paragraph 80)***

All prison governors in Mecklenburg-Western Pomerania have been instructed to file charges with the competent public prosecution office in respect of any accusation or suspicion of criminal offences committed by staff, or of such criminal offences which inmates have committed in respect of one another. Furthermore, the public prosecution office of the Land has been instructed to report to the supervisory authority on all preliminary investigation and criminal proceedings

concerned with a criminal offence committed in a prison between October 1995 and November 1996. None of the investigation proceedings carried out in respect of staff has yet led to a charge or a conviction. There are however investigation proceedings still pending.

The Committee also requests nation-wide

- **information relating to each Federal Land for 1995 and the first half of 1996:**
 - **relating to the number of complaints of ill-treatment lodged against prison officers and the number of criminal/disciplinary proceedings initiated as a result of such complaints;**
 - **an account of criminal/disciplinary sanctions imposed following complaints of ill-treatment by prison officers (paragraph 83)**

The information requested was provided to the Committee by letter dated September 13, 1996.

2. Follow-up visits

The Committee recommends that

- **a strategy be developed for on-going modernisation of prisons in the Berlin area and to provide the funding needed in order to ensure that the strategy is carried out (paragraph 99)**

The Berlin Senate Judicial Administration and the Senate Administration for Public Works, Housing and Transport carry out regular discussions in the course of which a priority is allocated to all coming measures, and where the state of completion and funding and scheduling are co-ordinated.

The following details can be provided with regard to building and modernisation measures in the Berlin Prisons:

- The old cells in Moabit Prison are being successively renovated and fitted with electric sockets and new sanitary facilities. This has been completed in some parts of the building, whilst work is still being carried out in other areas. Further renovation work is being carried out in the rest of the prison on an on-going basis, section by section.

- In this context, renovation work is also being carried out section by section on renovating showers in the sections, the tea kitchens, washing up rooms and common rooms.
 - In addition, the Church room is being renovated and adapted to multi-purpose use.
 - The medical stations are being converted in parts I and II of the Prison.
 - It has been investigated whether the operation theatres in Berlin Prison Hospital (local section for Moabit) could be converted, but this would unfortunately be impossible in the light of the condition of the older part of the prison. At present, work is being carried out on building a new separate prison hospital, which is however not expected to be completed until 2003/4 - cf. statement regarding paragraph 129.
 - Social rooms are being build in part I of the prison for work administration and for inmates.
 - In Tege! Prison, renovation of the cells is being carried out to the same extent as in Moabit Prison (cf. above).
 - Furthermore, a "substitution section" was recently set up which is to protect drug addicts and make it possible to treat them with the aid of Methadone.
 - Preparation is underway to build a drug counselling centre.
 - Berlin Youth Detention Centre has been completely renovated over the past two years.
- ***as regards renovation of Moabit Prison, more effective arrangements should be made to screen the in-cell lavatories (paragraph 100)***

According to information provided by the Senate Judicial Administration, the Senate Administration for Public Works, Housing and Transport is presently examining possibilities of integrating the in-cell lavatories in Moabit Prison into separate bathrooms.

– renewed efforts be made to enhance the quality of the regime offered to inmates at Moabit Prison (paragraph 101)

With regard to the improvements recommended by the Committee concerning possible activities for inmates in Moabit Prison, the Senate Judicial Administration has informed us that under the present social and fiscal circumstances in the Land of Berlin it is unfortunately not possible to bring about sustained improvements in the range of activities offered to inmates in Moabit Prison as recommended by the Committee. The prison authorities are constantly striving to increase the number of jobs available to inmates. However, this is countered by the general situation on the labour market, and in particular the proximity to countries with a low level of salaries. Problems are also caused by inmates' increasing lack of qualifications, as well as by the more and more frequent difficulties in communicating with foreign prisoners, making it difficult to give even simple instructions, and which can only be resolved to a certain extent by the interpreters who are available. Up to 50 % of inmates are under a judicial order forbidding them to work. Inmates who are subject to judicial restrictions can in any case only be employed to a very limited extent within the limited range of jobs offered by the prison. Because of the construction of the prison, it is not possible to noticeably expand this range because no rooms are available for this. By introducing sharing of housekeeping jobs, it has nevertheless been possible to create roughly 30 new jobs.

Because of the restrictions in funding and the concomitant staff savings, it has unfortunately been necessary to restrict group events and individual counselling in the prison's counselling centre. The precarious budgetary situation in the Land of Berlin has also meant that the deployment of outside staff in prisoner care has also been considerably reduced. Taking into account the occupancy figures in the area of remand detention, which are once more growing drastically at present, together with an unusually high number of dangerous inmates, it is also not possible to extend the improvements in the locking-up measures, such as those which have led to increased opportunities of association in Parts I and II of the prison. If these circumstances do not improve dramatically, all efforts in future will have to concentrate on preventing the situation from getting worse. In this light, it is not possible to extend the range at present.

- ***additional steps be taken to improve the regime offered to prisoners held in the "isolation block for narcotics dealers" at Tegel Prison. The improvements to be introduced should inter alia provide inmates with access to educational activities and to work of vocational value (paragraph 102)***

According to the report by Berlin Senate Judicial Administration the so-called "isolation block for narcotics dealers" at Tegel Prison is intended to prevent such inmates continuing to deal in narcotics at the prison. The aim is to close all possible supply and distribution channels. The consequence of this necessity of isolation is that these inmates cannot be given work in the prison workshops. Neither the premises nor the funding is available to construct a separate workshop for the inhabitants of this section. Because of the general situation on the labour market, no work has been offered by external enterprises for years. The principle of absolute isolation also runs counter to allowing access to educational activities. In individual cases, inmates could at best be permitted to take part in correspondence courses (the Open University in Hagen or similar). Special group activities organised by external agencies cannot be planned at the present because of the restricted funds available for outside staff. In accordance with the principle of proportionality, dealers are generally allocated to this isolation block for dealers for a limited period only. The inhabitants of the block have much more leisure time in the block outside their cells than in other parts of the prison. Furthermore, they have a constant contact because at least one officer is continually present.

The Committee states that

- ***the toilet facilities should ideally be located in a sanitary annex which is quite distinct from the space in which prisoners live (paragraph 100)***

Reference is made to the above observations.

The Committee requests

- ***detailed information to the plans of the German authorities with regard to modernisation of the Berlin prison estate (paragraph 99)***

Reference is made to the observations at paragraph 99.

3. Establishments visited for the first time

a) Bützow Prison

The Committee recommends that

- ***a high priority be accorded to completing the planned renovation work at Bützow Prison (paragraph 111)***

The overall situation at this prison has improved considerably since the visit by the Committee:

As of July 1, 1996 the newly built Waldeck Prison with 222 individual cells became operational, and hence the occupancy of Bützow Prison has been considerably reduced in spite of continually increasing prisoner numbers within the Land. Wing A of Bützow Prison, which the Committee was right to consider during its visit to be particularly problematic, has been closed and was replaced in February 1997 with a container-type detention block with 100 individual detention places. Inmates here are held in four accommodation groups with 25 individual places each. Each group has a common room, a tea kitchen, a shared shower and a sports room. The new wing also has an outdoor sports ground and a volleyball field.

In wings B and C, the central shared showers, which previously were in the basement, have now been replaced with showers on the corridors. C wing has been completely renovated and most of the cells in B wing (approx. 75%) have been renovated. The cells in building II have been refurnished and the cells repainted. A cell communication system has also been installed. Work was commenced on May 2, 1997 on the construction of a new building with a kitchen and bakery. It is to be operational by the end of 1998.

In addition to these measures, a conversion plan has been drafted for Bützow Prison which has now been approved by the Ministry of Finance. The first step is for a new detention building to be erected with 172 new individual cells and the sick bay renovated. These construction measures are likely to start in 1998.

In a further stage, which is to be carried out in 2000, the old building, which is listed as a monument, is to be completely restored.

The Committee further recommends that

- ***the German authorities give a higher priority to developing activities in Bützow Prison. The programmes to be introduced should aim to ensure that prisoners on remand have the opportunity to spend a reasonable part of the day (i.e. eight hours or more) outside their cells engaged in purposeful activities (work, preferably with a vocational value; education and training; sport and recreation/association activities, etc.). Sentenced prisoners should be offered a programme of activities which corresponds to the objectives set out in the Prison Act (paragraph 117)***

Bützow Prison has a total of 294 jobs and training places for inmates. These can be broken down as follows:

- in prison workshops	60 places,
- in housekeeping functions	38 places,
- in enterprises	18 places,
- "auxiliary" functions (cleaning, etc.)	17 places,
- schooling (primary and secondary certificate)	28 places, and
- <u>vocational training</u>	<u>79 places</u>
Total	294 places

Efforts to persuade other enterprises to give work to Bützow Prison have been unsuccessful as yet. Because of the high rate of unemployment in the Land, it is also unlikely that these efforts will be very successful in the near future. In the light of this, and taking into account the function of incarceration, as set out in section 37 of the Prison Act, of providing, maintaining or furthering vocational skills to be used in order to earn a living on release, emphasis is being placed on creating further jobs for inmates on the area of vocational training. In this vein, the following measures are being prepared:

- wood workshop	16 places
- automobile repair workshop	16 places
- re-training in gardening and landscape gardening	16 places.

The Committee asks for:

- ***up to date information regarding the progress of renovation work in Bützow Prison (paragraph 111)***

Reference is made to the information provided relating to paragraph 111.

- ***confirmation that cells 8, 9 and 10 in the basement of B wing are no longer being used (paragraph 112)***

Cells 8, 9 and 10 in the basement of B wing are no longer being used.

- ***information is requested on the steps taken to ensure that any juveniles detained at Bützow Prison for extended periods are provided with activities suited to their circumstances (paragraph 117)***

According to the prison plan for the Land Mecklenburg-Western Pomerania, Bützow Prison is not responsible for juvenile detainees. Only in exceptional cases where an inmate is removed from the youth detention system by means of a judicial order are juveniles detained at the prison for extended periods. Otherwise, juveniles are only detained for short periods when being transferred to attend court appointments. In the few cases where juveniles have to be kept in the prison for longer periods, extra care is taken of them.

b) Hamburg Remand Prison and Central Prison Hospital

The Committee recommends that

- ***conditions of detention in the existing reception unit be improved as a matter of urgency (paragraph 121) and that steps be taken to provide Hamburg Remand Prison with a modern and purpose-built reception facility (paragraph 121)***

The inspection section, including the reception unit of the remand detention centre, is in a part of the basement of the criminal justice building. It is not possible to expand this area because it is essential for the building to be used for criminal jurisdiction, which because of the lack of space had to be moved to other building complexes outside of the criminal justice building. For reasons concerned with the constructional calculations (statics) of the building, modernisation of the inspection section in accordance with its purpose within the area which is being used at present could only be achieved, if at all, by investing a disproportionate amount of money. In the light of Hamburg's budgetary situation, this will not be possible in the foreseeable future. In the opinion of Hamburg Ministry of Justice, moving the

reception unit into the building complex of the remand detention centre, in addition to the costs incurred, would entail a considerable loss of prisoner places which cannot be justified under any circumstances in the light of the overall occupancy situation. Although it basically agrees with the Committee, Hamburg Ministry of Justice is therefore unable to carry out such plans.

Hamburg Ministry of Justice has also informed us that waiting room 28 in the admissions area of the summons office at Hamburg Remand Prison has now been completely renovated. The other cells in the section are to be renovated in 1997 as far as funding allows.

- ***prison staff to be instructed to pursue a more flexible allocation policy in Wing A (1) of the main building in order to maximise the amount of cell space made available to prisoners held there overnight and that under no circumstances three persons held at Hamburg Remand Prison should have to spend the night in an 8m² cell (paragraph 124)***
- ***renovation of cells used to hold newly-arrived prisoners in Wing A (1) and Unit A be accorded a very high priority (paragraph 124)***

Hamburg Ministry of Justice has informed us that accommodation of up to three temporary detainees in one cell only occurs in Hamburg Remand Prison in exceptional cases because of the over occupancy situation, and is restricted to stays of one night.

The statutory requirement contained in section 119 subsection 1 of the Code of Criminal Procedure which states that remand detainees have a right to be accommodated in individual cells is adhered to at Hamburg Remand Prison. Exceptions may occur only in cases provided for by the legal basis (section 119 subsection 2).

It is intended for reception unit A to be completely renovated in 1997, and wing A 1 in 1998.

- ***steps be taken to develop the regime activities offered to inmates at Hamburg Remand Prison. As well as ensuring a significant increase in out-of-cell time, the regime to be introduced should include work (preferably with vocational value), education, sport and other associative activities (paragraph 126)***

Hamburg Remand Prison presently has more than 240 jobs available in various workshops, as well as roughly 50 jobs entailing activities carried out in cells. An

additional approximately 40 jobs will be provided soon. Planning is currently underway to set up an educational and pedagogic working area.

Furthermore, the prison offers schooling and other educational activities, as well as discussions and leisure activities with individual or group supervision within the framework of the premises available and the staff and financial capacities. Inmates are only excluded from these activities in adherence to the statutory basis in accordance with section 119 subsection 3 of the Code of Criminal Procedure. In individual areas, Hamburg Remand Prison is already practising internally open detention as far as possible. It is being examined at present whether this could be extended to other areas.

The Committee requests that

- ***the German authorities initiate an appropriate modernisation programme and develop a strategy designed to reduce the number of prisoners being held two to a single cell at Hamburg Remand Prison (paragraph 125)***

The statutory requirement contained in section 119 subsection 1 of the Code of Criminal Procedure which states that remand detainees have a right to be accommodated in individual cells is adhered to at Hamburg Remand Prison. Exceptions may occur only in cases provided for by the legal basis (section 119 subsection 2).

4. Health-care services

The Committee recommends that

- ***the basement cells at Moabit Prison Hospital no longer be used to hold inmates with suicidal tendencies (paragraph 128)***

Berlin Prison Hospital has four so-called crisis intervention rooms at Moabit Prison which facilitate supervision, treatment and video monitoring of patients where medical observations have indicated that this type of treatment is required. Two of these rooms are in the basement, and two are in the raised ground floor of the building. It is correct that in comparison to the latter, the former have less natural light and that this must be compensated for by artificial light.

With regard to the clientele held in these rooms, Berlin Senate Judicial Administration has informed us that more than 90 % of patients held in the crisis intervention rooms are not suicidal, and that they are also not correctly described

by the category of "desperate". As a rule, if inmates have made serious suicide attempts, such as by strangulation, or have otherwise injured themselves in a serious way, they are taken to a sick bay, either with other patients or in intensive care, as soon as they have received first aid. This depends on the seriousness of the damage to their health and the extent of their need for clinical treatment. If their lives are at risk after reanimation, they are immediately transferred to an outside public hospital. The overwhelming majority of all inmates who need to be temporarily held in the crisis intervention rooms are reacting to incarceration or have a social case history (delirious alcohol or narcotics withdrawal symptoms). Naturally, it would be desirable to hold these inmates in better equipped friendlier cells, it is impossible to offer alternatives in the light of the inadequate premises at the Moabit section of the prison hospital, which was explained to the Committee at the time of its visit.

The following information can be provided with regard to the prerequisites for placement in the crisis intervention cells:

This is carried out on principle on the basis of a decision taken by a doctor on the basis of his or her medical finding. These are inmates with the delirious alcohol or drug withdrawal syndromes which have already been mentioned, paranoid hallucinatory psychoses, who have swallowed objects, have cut themselves, autoaggressive inmates with extremely demonstrative components, inmates with psychomotoric aggressive states of excitement where a suicide risk cannot be ruled out. The overwhelming majority of these inmates are therefore held for their own safety. The assessment that the mental state cannot be essentially improved by the location and condition of the crisis intervention rooms is not shared by the head doctors of Berlin Prison Hospital on the basis of their experience. Most of the inmates held there are able within a relatively short period of time to regain a hold on reality and control of their situation and own conduct under the influence of therapy and care. This is demonstrated by the relatively short time spent in these cells, being roughly between one and three days, although it is rare for an inmate to be held there for three days. The latter cases mostly concern inmates who have swallowed objects where it is necessary to wait for their controlled excretion.

- ***immediate steps be taken to ensure that a psychiatrist is in regular attendance at Bützow Prison (paragraph 134)***
- ***an urgent review be undertaken of prisoners' access to psychological services and properly-staffed programmes be introduced adapted to prisoners' needs (paragraph 134)***

A specialist doctor for neurology/psychiatry has been working in Bützow Prison since mid-1996, initially on an irregular basis, and then on a regular basis since April 1, 1997. This means that necessary medical advice and treatment can be provided, and where required it is possible to pass on patients to in-patient psychiatric treatment.

Furthermore, a general practitioner has been working in the prison since 1993 - (practitioner in intensive medicine with training in psychosomatic medicine).

The psychological service of the prison presently has three staff members and a further person is to be recruited soon. It is hoped that it will be possible to further expand the psychological service in the prison.

- the German authorities verify the scale of the problem of access to a doctor or dentist and, if appropriate, take the necessary action (paragraph 135)

The prisons in the Land Mecklenburg-Western Pomerania are obligated under a decree to allow inmates immediate access to a doctor were necessary.

Availability in Bützow Prison is such that inmates register in a book to see a doctor and are able to add the note "urgent" in order to see the doctor on the same day. It must be admitted that waiting times of up to two days are possible, and in non-urgent cases of up to four days. It is however certain that inmates may approach health-care staff at any time of the night and day who take a look at the patient and where necessary arrange for them to see a doctor immediately, even outside of surgery hours. Outside of normal daytime working hours, patients are treated by three doctors who are on call for the prison.

- the treatment of patients with delirium tremens at Bützow Prison be reviewed accordingly (paragraph 136)

Patients undergoing alcohol and narcotics withdrawal at Bützow Prison are treated with medicines. If during this treatment, in spite of being administered distranneurin or combinations of carbamezepin and diazepam or haloperifol, a patient falls into a pre-delirious state, he or she is restrained by means of cloth straps in order to avoid injuries, as is also the case outside of the prison system, for instance with patients in need of considerable care.

The prison authorities of the Land Mecklenburg-Western Pomerania do not understand how the impression could have been given that only this restraining equipment is used in Bützow Prison in treating delirious patients.

- *a detailed medical policy be drawn up on the use of physical restraints for therapeutic purposes. In particular, the following aspects should be addressed:*
 - *types of cases in which resort can be made to such a measure; objectives sought by the measure; its duration and the frequency of reviews; the existence of appropriate human contacts; the requirement for increased staff supervision (paragraph 137),*
 - *measures should be taken to ensure that the record drawn up following a medical examination of a newly admitted prisoner (or a prisoner returning to an establishment) should contain (i) an account of statements made by the person concerned which are relevant to the medical examination (including his description of his state of health and any allegations of ill-treatment), (ii) an account of objective medical findings based on a thorough examination, and (iii) the doctor's conclusions in the light of (i) and (ii) as well as that steps be taken to ensure that practice in Germany is brought into line with the above considerations. Further, the result of the medical examination referred to above should be made available to the prisoner concerned. It is axiomatic that the same approach should be followed whenever a prisoner is medically examined following a violent episode in prison*

The practice followed in prisons with regard to documenting medical examinations corresponds to the Committee's recommendations. When medical examinations are carried out of newly-arrived inmates, the medical files are carefully kept to include both the findings made and the comments made by the inmates themselves which are relevant to the medical examination, including their observations regarding the causes of any injuries and other health problems.

During the examination carried out on reception, an examination is carried out *inter alia* as to whether inmates are able to serve, whether they need medical attention, and to what extent they are able to perform work and take part in sporting activities, as well as whether there are health-related objections to single cell accommodation. Inmates' state of health is ascertained not only through a physical examination, but also by means of case history in which comments made by the patients themselves, including the description of their state of health and any observations concerning ill-treatment, are also taken down in writing.

The outcome of the medical examination is made available to the inmates concerned, meaning that they are informed verbally by the doctor. In the context of the legal protection afforded to inmates under the Prison Act, they also have a right to inspect medical records where this is necessary in order to assert their rights.

To the extent that the Committee found the medical records kept at Bützow Prison and Hamburg Remand Prison regarding injuries incurred by inmates to be inadequate, the prison authorities have made the following observations:

A record is kept of recognisable injuries to newly-arrived inmates in Bützow Prison. Patients frequently do not state how the injuries were incurred, so that it is difficult for the doctor to reach an assessment.

Where inmates are involved in violent acts and then see the doctor, the result of the examination is also recorded. Inmates are asked about the course of the incident and a brief record is kept of their comments. However, many patients shy away from prosecution of criminal acts and say that they fell out of bed or knocked themselves against a cupboard or the like.

Without having any precise information, it is difficult for a doctor to reach a judgment regarding the course of the offence. If the patient does however provide such information, the doctor can then draw the appropriate conclusions.

At Hamburg Remand Prison, records are also kept of the result of medical examinations in the case of an unusual incident, such as a violent dispute.

The Committee observes that

- ***it would be desirable to review the question of the availability of dental services at the Central Prison Hospital in Hamburg (paragraph 130)***

There is provision for 18 hours of regular dental care per week in the Remand Prison. There is also provision for care of acute problems and emergency treatment outside of this period.

- ***the bathroom in section 2 was leaking and that the sanitary facilities in the patients' rooms were inadequately separated (paragraph 131)***

The construction faults have been resolved in the course of the renovation (cf. comments on paragraph 111).

- ***with regard to psychological services, that the necessary task of assessing prisoners must not be carried out at the expense of therapeutic and rehabilitative activities. It is also important to draw a clear distinction between assessment and treatment in order to preserve the therapeutic relationship which underlies any philosophy of care (paragraph 134)***

The Federal Government agrees with the view taken by the Committee. However, at present the staff available in the light of the budget situation faced by the Länder is insufficient to take account to the same extent of all requests for assessment and therapeutic activities or rehabilitation.

In most of the Länder, it is possible to separate assessment from treatment. Furthermore, in cases requiring both, an attempt is made to avoid asking staff appointed to assess inmates psychologically to also give them therapy. However, because of the staff situation, this is not always feasible. In some Länder, outside therapists are commissioned to treat inmates, meaning that diagnosis and therapy are kept separate.

The Committee requests

- ***further information about the measures being taken to improve the current situation in the Psycho-Neurological Unit at Tegel Prison, and to be informed of the date on which it is expected that the new prison hospital will enter into service (paragraph 129)***

The situation in the Psycho-Neurological Unit of Berlin Prison Hospital at Tegel Prison has further improved since the visit by the Committee. In the meantime, it was finally possible in December 1996 to occupy the post of a therapist for activities and work, so that now ergotherapeutic measures in the mornings and afternoons, as well as individual and group treatment, can be carried out. Preparations are being made to conclude contracts on a fee basis with art and music therapists in order to cover remaining shortcomings in the area of treatment to specifically further creativity. Shortcomings caused by the lack of work therapy specifically for the Unit are covered by the creation of protected workplaces in a setting which is similar to therapy in various artisan workshops within Tegel Prison. Until the Unit can organise its own range of sport and movement therapy, patients may take part in sporting activities for two hours per week in the sports hall of Tegel Prison under the supervision of sports supervisors. A qualified psychologist with trainee status is presently working in the Unit on the psychological care of inmates inter alia offering a relaxation group. Furthermore, additional group activities are organised by a social worker. The premises in which the Unit is housed however

mean that it is impossible to adapt it to the standards of in-patient psychiatric treatment outside the prison system. The storeroom is currently being moved, a step which as of February 1997 will enable another therapy room to be created for specific therapeutic activities (art and music therapy, relaxation, etc.).

It is intended for the Psycho-Neurological Unit to be integrated into Berlin Prison Hospital, which is to be built in Berlin-Buch. However, this is not expected to be operational until 2003/2004. The Berlin Senate recently re-included the new prison hospital building in the investment plan of the Land and assigned it a high priority. In order nevertheless to improve the size of the premises of the Psycho-Neurological Unit as soon as possible, as a temporary measure it is to be moved in the spring of 1998 into a building in Charlottenburg Prison, which was finished in 1985 and is used as a women's prison.

- ***confirmation is needed that the new Central Prison Hospital building at Hamburg Remand Prison has now entered into service (paragraph 130)***

The new Central Prison Hospital building at Hamburg Remand Prison entered into service on October 1, 1996.

5. Other issues related to the CPT's mandate

The Committee recommends that

- ***the internal rules of every prison establishment in Germany be made available to inmates in an appropriate variety of languages, together with other basic information about prisoners' rights (paragraph 142)***

Attention is being paid to providing foreign prison inmates with information. Information relating to the Prison Act, information sheets on the rights and duties of remand detainees and other printed matter and information sheets, for instance about social insurance and unemployment insurance, information on the cost of detention, negotiations on release, a medical questionnaire to be filled in on reception, AIDS, etc. are available in the prisons in the most common languages.

Some Länder have translations of internal prison rules. One Land has informed us that it is unable to afford translations of all internal prison rules because of the volume involved and because it would involve an unjustifiable amount of effort. Since however in most cases several prisoners with the same nationality are in one prison, newly-arrived inmates are frequently informed by co-detainees of the daily

routine and particularities of the prison in question, so that it did not appear to be vital to provide written information.

- ***the regimes offered in unit D II at Bützow Prison and in B 2 at Hamburg Remand Prison be reviewed, in order to ensure that all prisoners held there are offered at least one hour of outdoor exercise every day and provided with purposeful activities and appropriate human contact (paragraph 152)***

According to information provided by the Ministry of Justice of the Land Mecklenburg-Western Pomerania, there is provision for each inmate being able to have at least one hour of outdoor exercise every day in unit D II. It is also ensured that placement in this unit for security purposes is not effected for "quasi-disciplinary" purposes. In this context, the prison has been referred once again to adherence to the administrative provision subsection 3 relating to section 88 of the Prison Act, in accordance with which the supervisory authority is to be informed of any placement in a particularly secure cell, and of any restraint lasting longer than three days.

Hamburg Ministry of Justice has informed us with regard to placement of remand detainees or convicts in the security unit B 2 at Hamburg Remand Prison that this is effected in accordance with the statutory provision contained in section 119 of the Code of Criminal Procedure in conjunction with the provisions of the Remand Detention Code (Untersuchungshaftvollzugsordnung) and/or sections 88 et seqq. of the Prison Act. The necessity of restrictive measures is assessed in terms of the individual case and in adherence to the principle of proportionality. Placement for "quasi-disciplinary" purposes is therefore ruled out.

- ***every person placed in solitary confinement be informed in writing of the reasons for their placement and be given an effective opportunity to appeal to a relevant authority against their placement (or the renewal of their placement) in solitary confinement (paragraph 152)***

Reference is made to the statement by the Federal Government regarding the first visit by the CPT Committee.

Each inmate is extensively informed, generally orally, of the reasons for such an order. This information is provided in writing in three Länder, and a further Land intends to begin providing such information in writing.

Since in the majority of cases solitary confinement is ordered only for a very short period, written reasons for the measure would mean taking it on a highly formal nature. Inmates' rights to object or to submit appeals to the competent authority apply in the case of any measure related to the prison regime which is ordered either in writing or orally, so that the opportunity is provided to file an objection to placement or renewal of placement in solitary confinement. The Federal Government presumes that this constitutes adequate prevention of human rights violations.

- ***legislation be adopted as soon as possible abolishing the disciplinary sanction of deprivation of outdoor exercise, and pending entry into force of the abovementioned legislation, instructions be issued to prison governors making it clear that, as a matter of principle, inmates undergoing the disciplinary sanction of solitary confinement should no longer be deprived of outdoor exercise (paragraph 159)***

It is intended to delete section 103 subsection 1 No. 6 of the Prison Act in the draft Fourth Amending Act to the Prison Act which is to be brought before the legislative bodies this year. At the Prison Committee of the Länder, the Land Ministries of Justice have declared their readiness to act in accordance with the statutory amendment even before it has entered into force.

There is also no provision for such a measure in the draft Bill on Remand Detention.

- ***safeguards against ill-treatment which apply to force used against persons detained under the law on aliens (cf. paragraph 49) be applied when force is used against a detained person should also apply to the penal sphere (paragraph 161)***

The Federal Government does not share the fear expressed by the Committee that there is a considerable risk of inmates being mistreated if direct force is used. The use of direct force on convicts is permitted only when measures concerned with prison regime and security are carried out, and the aim being pursued thereby cannot be achieved by other means (section 94 subsection 1 of the Prison Act). The proportionality of the means is to be respected in all cases (section 96 of the Prison Act).

In accordance with subsection 1 of the national administrative provisions regarding section 94 of the Prison Act, assistance is to be afforded to individuals injured in the use of direct force. They are also to be given medical treatment as soon as the

situation permits. This also in fact happens. Even where inmates have obviously not been injured by the use of force, they are taken to the prison doctor if they so request.

- ***steps be taken to ensure that instruments of restraint are not used for a period of days (paragraph 162)***

Instruments of restraint and other security measures are always deployed in adherence to the principle of proportionality (sections 81 subsection 2 and 88 subsection 5 of the Prison Act). This principle also requires that such instruments should not be used disproportionately and only for so long as is required by the purpose of the measure. The prison authorities are therefore obligated in such cases to examine on an on-going basis whether restraint continues to be necessary, where appropriate with the assistance of the prison doctor or other specialist services. As a rule, these measures are only carried out for a short period of time, mostly only for a few hours. In special, rare exceptional cases, it may however be very much necessary to maintain the special security measures which have been ordered for a longer period because it is impossible to achieve the intended purpose by means of less incisive measures. The medical supervision which is provided for by law, and because of the duty to report to the supervisory authority, the duration of the restraint is sufficiently supervised. It is considered that there is no need to amend the statutory basis or its application in practice.

- ***every instance of the resort to instruments of restraint - or to any other means of force - be recorded in a specific register established for that purpose. The entry should include the times at which the measure began and ended, the circumstances of the case, the reasons for resorting to the measure and an account of any injuries sustained by inmates or staff (paragraph 164)***

In accordance with No. 63 of the Prison Rules, the ordering of special security measures, with the exception of restraint during accompanied absence, when brought before a court or similar, or during transportation, is entered in special registers. Furthermore, each individual security measure is carefully documented in the inmates personal file, specifying the duration, the reasons for the order, the accompanying measures which were ordered (such as medical supervision) and any injuries which inmates or staff may have incurred.

- ***the methods of restraint described in paragraph 165 should no longer be used to restrain inmates in German prisons (paragraph 166)***

Attention is paid in the prisons to no further humiliation being caused by the mechanical means which are deployed where, in infrequent cases, inmates' hands and feet need to be secured.

- ***the issue of access to a telephone for remand prisoners be reviewed (paragraph 173)***

Remand detention serves primarily to facilitate the carrying out of proper criminal proceedings by holding the accused in safekeeping. General access to a telephone is not compatible with this aim since this type of communication is particularly suited for use in such a way as to cause detriment to the proceedings.

Within the context of the work on the draft Bill on Remand Detention, it is being examined whether the comments of the Committee can be afforded greater consideration.

The Commission asks for

- ***a statement that in the context of both initial and in-service training of prison staff, considerable emphasis should be placed on the acquisition and development of inter-personal communication skills. Building positive relations with prisoners should be recognised as a key feature of a prison officer's vocation (paragraph 141)***

We share without restriction the view held by the Committee with regard to the significance of the communication skills possessed by prison staff. For the recruitment of staff a positive attitude towards fellow human beings is an important criteria. Learning and developing inter-personal communication skills is a core element of training.

Considerable attention is also paid to inter-personal communication in the further training of staff. Learning situations are created here where awareness is increased of the participants' own communicative conduct and opportunities provided to change and improve communication. This approach, centred as it is on experiencing one's own conduct in teaching inter-personal communication skills typifies the range of training available and increases the likelihood that positive communication patterns will be adopted and incorporated into staff members' personal style. The aim here is for these skills to be incorporated into a positive

relationship with inmates, and hence to create as relaxed a situation as possible in relations with inmates.

The issue of building up positive relations with inmates is strengthened even further in some areas of the prison service by the formation of smaller groups within the prison where prison officers are available as a specific contact for a small group of inmates, and the staff are assigned a great number of decision-making powers. This also includes the system of special "care officers" or "contact officers".

- ***a review of the operation in practice ad regards the system of placement in unit D II at Bützow Prison and in B 2 at Hamburg Remand Prison, in order to ensure that placement in these units is not effected for "quasi-disciplinary" purposes (paragraph 152)***

Reference is made to the comments in response to the recommendation in paragraph 152.

- ***a wider range of reading material available to prisoners subject to the disciplinary sanction of cellular confinement (paragraph 160)***

Deprivation of reading material during cellular confinement is a decision which is always taken in terms of the individual case. General deprivation of reading material, which may be imposed in accordance with section 104 subsection 5 of the Prison Act, is effected only in very special cases caused by the conduct or personality of the inmate in question.

- ***a review of concrete measures to improve the current system at Moabit Prison (paragraph 170)***

With regard to the Committee's observation that no improvements had occurred in the visiting system at Moabit Prison since the first visit in 1991, Berlin Senate Judicial Administration has pointed out that the situation has been improved both with a telephone appointment system, which has led to much shorter waiting times, and by the creation of speaking areas for groups. There are however limits in objective terms as to efforts to achieve an absolutely satisfactory situation in the reality of the premises in Moabit.

The continually rising number of remand detainees entails a corresponding increase in the number of visits. In order to make this clear, we would like to refer to the following figures for 1996:

6,203 individual visits were carried out and supervised.

3,991 joint visits were carried out without supervision.

In addition, 1,670 prisoners had counselling, with another
415 special visiting hours, and
476 lasted more than one hour.

All in all, 11,864 visits took place in Moabit Prison in 1996.

Because of the general reduction in staff numbers also affecting the Berlin prison system, including the visitors service, it is impossible to account for the increase by deploying extra staff and increasing visiting hours.

The situation could be alleviated somewhat if the courts largely refrained from ordering individual acoustic supervision of visits. However, beyond making suggestions, the administration is unable to exert an influence on the courts, which are declared independent by the Constitution.

Because of the extreme restrictions imposed by the size of the premises at Moabit Prison, the visiting area cannot be expanded. The Committee was evidently also convinced of the existence of this material limitation during its visit, otherwise it would not propose building a reception centre for visitors outside the prison walls. Because of the amount of buildings in the immediate surroundings of Moabit Prison, as well as because of the type of criminal held at the prison this suggestion is however unfortunately not feasible. Finally, it should be pointed out that the prison governor takes advantage of any opportunity to make improvements, however small, which appear to be feasible under the circumstances.

The Committee points out that

- *the ventilation in the visiting rooms was mediocre (paragraph 171)*

The Ministry of Justice of the Land Mecklenburg-Western Pomerania is presently discussing ways of improving the ventilation in these rooms with the regional building office.

- ***remand prisoners' telephone contacts could - where necessary - be made subject to appropriate review; in many cases such an arrangement should render redundant the imposition of judicial restrictions on telephone contact (paragraph 173)***

Reference is made to the above comments on the recommendation made in paragraph 173.

The Committee requests

- ***information as to whether all of the safeguards listed in paragraph 155 are available to remand prisoners subject to judicial restrictions (paragraph 155)***

In accordance with section 119 subsection 3 of the Code of Criminal Procedure, persons who have been arrested are only to be subject to such restrictions which are necessary in order to achieve the purpose of remand detention or good order in the prison. Furthermore, as a consequence of the principle of proportionality applying to remand detention, restrictions are permissible only when they are necessary in order to avert a real danger to the public interests listed in this subsection, and if this aim cannot be achieved by taking less incisive steps. Of necessity, this leads to a restriction, once ordered, being withdrawn or amended if in a specific case the purpose of incarceration or the good order in the prison no longer requires this restriction, or no longer requires it to the extent originally ordered.

Inmates may file a complaint against judicial restrictions in accordance with section 304 subsection 1 of the Code of Criminal Procedure. For this reason, grounds are to be provided for such decisions (section 34) and these are to be notified to the inmate in question (section 35).

There is provision in the draft Bill on Remand Detention for remand detainees to be able to request a judicial decision against a measure carried out by the prison authorities or the public prosecution office in order to arrange individual matters concerned with remand detention, or against refusal to carry out such measures.

- **information about Moabit, Bützow and Hamburg Remand Prisons in respect of 1995 and the first half of 1996 concerning:**
 - **the total number of prisoners who were subject to judicial restrictions, expressed as a percentage of the total number of inmates held on remand, and a breakdown of the nature of the restrictions applied to remand prisoners, together with an indication of the average length of time for which they were applied (paragraph 156)**

No summarised statistics are kept at Hamburg Remand Prison and in Mecklenburg-Western Pomerania with regard to the information requested relating to judicial restrictions imposed on remand prisoners.

Berlin has made the following comments with regard to the requested information:

In order to provide the statistical information requested by the Committee for the period from January 1, 1995 through June 30, 1996, it would be necessary to examine approximately 10,200 prisoner files. A large proportion of these files are however no longer kept at Moabit Prison, but in prisons such as Tegel, Plötzensee, Hakenfelde and Düppel, as well as in various prisons in other Federal Länder to which inmates were transferred once their sentences had gained the force of law. It is estimated that out of these 10,200 files roughly 7,000 are still at Moabit Prison. Evaluating only these files would however give a completely wrong impression since inmates with long sentences - who are usually subject to many judicial restrictions - have been transferred directly and relatively quickly to prisons. Their files are therefore not among the 7,000 which remain.

In order nevertheless to be able to offer some figures, Berlin Senate Judicial Administration has prepared figures applying as of October 28, 1996 allowing an overview to be formed of the number of inmates subjected to judicial restrictions or orders by the public prosecution office. Thus, on that date, out of the 994 remand detainees 375 (37.7 %) were subject to restrictions, and in some cases to several restrictions.

These were in detail:

18.8 %	no joint accommodation
28.4 %	to be separated from accomplices
2.9 %	to be kept in strict isolation
11.0 %	to be transferred from "hand to hand"
0.5 %	to be accompanied by two officers at all times
19.7 %	to be kept locked up incl. prohibition of association
19.0 %	to be kept from attending church services
10.9 %	to shower individually
6.7 %	to take exercise strictly individually
4.3 %	to take exercise in groups
18.6 %	to be prohibited from wearing private clothes
0.7 %	to be prohibited from performing handicrafts
0.7 %	to be searched at irregular intervals
4.2 %	to be observed particularly closely, for instance because of violent tendencies, suicide risk or risk of escape
5.3 %	to be removed from cell only with three officers
4.3 %	hands and feet to be restrained when removed from cell
13.3 %	counselling to be prohibited.

– details regarding steps taken in Tegel Prison to ensure that all disciplinary proceedings at this prison are carried out in accordance with the statutory provisions (paragraph 157)

The way in which the disciplinary proceedings are carried out is out in accordance with the statutory provisions. A written notice is given once the inmate has been heard and the content of this hearing has been evaluated. This ensures that submissions made by the inmate are included in the assessment leading to the ordering of disciplinary measures. The practice which had previously been customary of giving the inmate the disciplinary notice, which had been prepared in advance, immediately after the hearing was changed even during the visit by the Committee.

- ***the comments of the German authorities on the possibility of extending throughout Germany the system of allowing appropriately-equipped visiting areas to be used for maintaining family and personal relations (paragraph 174)***

Maintaining family and personal relations with suitable persons outside prison is a matter of particular concern for the German prison authorities. Over and above the minimum visiting hours contained in the Prison Act, longer visiting hours are permitted in many cases. In many Länder, marriage seminars are organised for prisoners and their spouses.

Longer visits have been established in various prisons in several Länder. These exist in particular in prisons where inmates are serving longer terms, who are not yet granted relaxation of prison regime, and who are therefore not able to visit their family members at home.

The Federal Government considers that there is no need to facilitate longer visits in all prisons since maintenance of family and personal relations with individuals outside can be organised differently, depending on the duration, and hence on the nature of incarceration. The situation is different for those serving short terms or who are in open prisons and are therefore regularly granted relaxation of prison regime than for inmates who are not yet suited to such relaxation.

Several Länder have stated that it is not possible at present to expand the system of longer visits because of the budgetary situation.