CPT/Inf (2007) 18

Report to the German Government on the visit to Germany carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

from 20 November to 2 December 2005

The German Government has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2007) 19.

Strasbourg, 18 April 2007

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Copy of the letter transmitting the CPT's report

Strasbourg, 28 July 2006

Dear Mr Dittmann,

In pursuance of Article 10, paragraph 1, of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment, I enclose herewith the report to the Government of Germany drawn up by the European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) following its visit to Germany from 20 November to 2 December 2005. The report was adopted by the CPT at its 60th meeting, held from 3 to 7 July 2006.

The various recommendations, comments and requests for information formulated by the CPT are listed in Appendix II. As regards more particularly the CPT's recommendations, having regard to Article 10 of the Convention, the Committee requests the German authorities to provide **within six months** a response giving a full account of action taken to implement them. The CPT trusts that it will also be possible for the German authorities to provide, in the above-mentioned response, reactions to the comments formulated in this report which are listed in Appendix II as well as replies to the requests for information made.

In respect of the request for information in paragraph 98 of the report, the CPT requests the German authorities to provide a response **within one month**.

It would be most helpful if the German authorities could provide a copy of the responses in a computer-readable form.

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

Yours sincerely,

Silvia CASALE
President of the European Committee for the
prevention of torture and inhuman
or degrading treatment or punishment

Mr Thomas DITTMANN
Ministerialdirigent
Federal Ministry of Justice
D – 11015 BERLIN

I. INTRODUCTION

A. Dates of the visit and composition of the delegation

1. In pursuance of Article 7 of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment (hereinafter referred to as "the Convention"), a delegation of the CPT carried out a visit to Germany from 20 November to 2 December 2005. The visit formed part of the CPT's programme of periodic visits for 2005. It was the CPT's fourth periodic visit to Germany and the fifth visit in total[1].

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

- Silvia CASALE, President of the CPT (Head of the delegation)
- Zdeněk HÁJEK
- Latif HÜSEYNOV
- Renate KICKER
- Veronica PIMENOFF.

They were supported by Michael NEURAUTER and Muriel ISELI of the CPT's Secretariat, and assisted by:

- Timothy Wilfrid HARDING, Director of the University Institute of Forensic Medicine, Geneva, Switzerland (expert)
- Clive MEUX, Consultant Forensic Psychiatrist, Oxford, United Kingdom (expert)
- Barbara CHISHOLM (interpreter)
- Angela DRÖSSER (interpreter)
- Hubert HUGO (interpreter)
- Sybille von MÜLMANN (interpreter)
- Silvia SCHREIBER (interpreter).

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1 The CPT's previous visits to Germany took place in December 1991, April 1996, May 1998 and December 2000. The Committee's reports on these visits, as well as the respective responses by the German authorities have been published under the following references: CPT/Inf (93) 13 and CPT/Inf (93) 14; CPT/Inf (97) 9 and CPT/Inf (99) 10; CPT/Inf (2003) 20 and CPT/Inf (2003) 21.

B. Establishments visited

3. The delegation visited the following places of detention:

Baden-Württemberg

- Police Headquarters (*Polizeidirektion*), Römerstrasse 2, Heidelberg
- Nordbaden Psychiatric Centre, Wiesloch*

Berlin

- Police Station, Wedekindstrasse 6
- Federal Police Station, Central Railway Station (*Zoologischer Garten*)
- Tegel Prison** (Unit for secure custody (*Sicherungsverwahrung*) and Special Security Unit (*Besondere Sicherungsstation*))

Brandenburg

- Regional Police Headquarters (*Polizeipräsidium*), Nuhnenstrasse 40, Frankfurt an der Oder
- Police Station, Halbe Stadt 9, Frankfurt an der Oder
- Eisenhüttenstadt Detention Centre for Foreigners*

Hamburg

- Regional Police Headquarters (*Polizeipräsidium*), Bruno-Georges-Platz 1, Hamburg-Winterhude
- Fuhlsbüttel Prison (Unit for immigration detainees)
- Hamburg Remand Prison** (immigration detainees)

Niedersachsen

- Police Station, Lohstrasse 25, Hameln
- Hameln Juvenile Prison

Sachsen-Anhalt

- Halle Prison No. 1

Schleswig-Holstein

- Neustadt Psychiatric Centre (*psychatrium GRUPPE*)

Thüringen

- Police Headquarters (*Polizeiinspektion*), Carl-von-Ossietzky-Strasse 60, Weimar
- Detached Unit of Ichtershausen Juvenile Prison, Weimar.

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* Follow-up visit.

** Previously visited.

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

4. The degree of co-operation received by the delegation, both from the federal and *Länder* authorities and from staff at the establishments visited, was very good.

5. The delegation had fruitful discussions with Brigitte ZYPRIES, Federal Minister of Justice, Alfred HARTENBACH, Junior Minister (Federal Ministry of Justice), Christoph FLÜGGE, Secretary of State for Justice (Berlin), Ulrich FREISE, Secretary of State for the Interior (Berlin), Jürgen OEHLERKING, Secretary of State for Justice (Lower Saxony), Paul Uwe SÖKER, Secretary of State for Justice (Saxony-Anhalt), Thomas PLEYE, Secretary of State for the Interior (Saxony-Anhalt), and Bärbel FREUDENBERG-PILSTER, Secretary of State for Health and Social Affairs (Saxony-Anhalt). The delegation also met senior officials from the Federal Ministries of Justice and Family, as well as from various Ministries of the *Länder* visited by the delegation.

The CPT also wishes to express its appreciation of the assistance provided to its delegation, before, during and after the visit, by the members of the Office of the CPT's liaison officer, in particular Thomas DITTMANN, Ministerialdirigent, Almut WITTLING-VOGEL, Ministerial-dirigentin, and Hans-Jörg BEHRENS, Ministerialrat, from the Federal Ministry of Justice.

The delegation also held consultations with representatives of various non-governmental organisations and persons active in areas of concern to the CPT.

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

6. The delegation enjoyed immediate access to all places visited, including those not notified in advance, and was able to interview in private all persons deprived of their liberty with whom the delegation wished to speak. However, the delegation was concerned to learn that in one location management was able to learn what the persons interviewed by the delegation had said to it, owing to the network of informants regularly used in that establishment. Further, in another establishment, the delegation received allegations that a few inmates had been warned by staff that there would be consequences if they passed negative comments to the delegation. <u>The CPT would recall that all communications between the Committee and persons in custody are covered by the principle of confidentiality and that any repercussions for individuals as a result of such communications would be unacceptable</u>.

The delegation was able to gain access to all the information it considered necessary for it to carry out its work, although on one occasion as regards medical information this was only achieved after some delay, during which the delegation found it necessary to recall to its interlocutors the obligations under the Convention with respect to access to information. In general, however, it was clear that information on the CPT's mandate had been circulated to relevant staff in most areas. **The CPT encourages the federal authorities to continue and strengthen their efforts to ensure a uniform level of awareness of the obligations under the Convention which devolve to the *Länder* authorities.**

7. The principle of co-operation set out in the Convention is not limited to steps taken to facilitate the task of a visiting delegation. It also requires that decisive action be taken to improve the situation in the light of the Committee's recommendations. Regrettably, the delegation's findings during the visit suggest that such action has not been taken in relation to long-standing past recommendations, in particular as regards legal safeguards for persons in police custody and conditions of detention of both foreign nationals detained pending deportation and remand prisoners.

<u>The CPT calls upon the German authorities to make continued efforts to improve the situation in the light of the Committee's recommendations, in accordance with the principle of co-operation which lies at the heart of the Convention</u>.

8. Finally, the CPT noted the recent constitutional changes which resulted in the transfer of the responsibility for the prison legislation from the federal level to the *Länder*. In this regard, the Committee recalls the important positive developments in prison law achieved by the federal German authorities, reflecting the implementation of recommendations made by the CPT on a number of issues. It would be a matter of concern for the CPT if the above-mentioned constitutional changes were to adversely affect these positive achievements. **The federal authorities should ensure that the standards and safeguards already achieved are maintained in future.**

D. <u>Immediate observation under Article 8, paragraph 5, of the Convention</u>

9. At the end of the visit, the CPT's delegation held a meeting with the German authorities, in order to acquaint them with the main facts found during the visit.

The delegation had serious concerns regarding various aspects surrounding the physical fixing, usually by the arm(s), leg(s) and/or trunk, of a person lying supine on a bed/mattress, the fixing being accomplished by means of straps or metal cuffs, in all the psychiatric hospitals, prisons and the detention centre for foreigners visited. This is known in the German context as *Fixierung*. In particular, as described more fully later in the report, there was particular concern about a lack of appropriate staff supervision of the persons concerned, resulting in their being left alone with no adequate means to communicate their needs, on occasion, for prolonged periods. Additionally, in some cases, medical involvement was inadequate; inappropriate and potentially harmful equipment (i.e. police-style cuffs) was used; the care of the persons concerned lacked dignity; and they were restrained in full view of others in addition to staff.

Therefore, on this occasion, the delegation communicated an immediate observation pursuant to Article 8, paragraph 5, of the Convention concerning the above-mentioned establishments and requested all relevant authorities to ensure that the situation of any person who is subject to *Fixierung* is urgently reviewed by a doctor and that the person concerned is not restrained with police-style cuffs and is always subject to continuous, direct, personal supervision by a member of staff (*Sitzwache*).

10. The above-mentioned immediate observation was subsequently confirmed in a letter of 22 December 2005 from the President of the CPT, in which the German authorities were requested to transmit within one month an account of the steps taken in response.

By letter of 20 January 2006, the federal and *Länder* authorities concerned communicated their responses to the above-mentioned immediate observation. Excerpts from the German authorities' letter are reproduced in Appendix I to this report.

11. The CPT takes note of the information provided by the federal and *Länder* authorities concerned. The Committee considers that, as a general principle, means of restraint should only be used as a last resort. It acknowledges that it may, on occasion, be deemed necessary to resort to *Fixierung*. However, bearing in mind the inherent risks for the person concerned**,** it has elaborated the following principles and minimum standards in relation to *Fixierung*:

- Regarding its <u>appropriate use</u>, *Fixierung* should only be used as a last resort to prevent the risk of harm to the individual or others and only when all other reasonable options would fail to satisfactorily contain those risks; it should never be used as a punishment or to compensate for shortages of trained staff; it should not be used in a non-medical setting at police establishments, prisons, detention centres for foreigners and other places of detention, when hospitalisation would be a more appropriate intervention.
- Any resort to *Fixierung* should always be either <u>expressly ordered by a doctor or immediately brought to the attention of a doctor</u>.
- The <u>equipment</u> used should be properly designed to limit harmful effects, discomfort and pain during restraint. Staff must be trained in the use of the equipment.
- The <u>duration</u> of *Fixierung* should be for the shortest possible time (usually minutes or a few hours). The exceptional prolongation of restraint should warrant a further review

by a doctor. Restraint for periods of days at a time cannot have any justification and would amount to ill-treatment.

- *Fixierung* should normally take place out of the sight of persons other than staff, unless there are clear benefits to the person concerned.
- Every instance of *Fixierung* of an individual must be recorded in a specific register established for that purpose, in addition to the individual's file (and running record). The entry should include the times at which the measure began and ended, the circumstances of the case, the reasons for resorting to the measure, the name of the doctor who ordered or approved it, and an account of any injuries sustained by the person or staff. This will greatly facilitate both the management of such incidents and oversight into the extent of their occurrence.
- Persons subject to *Fixierung* should receive full information on the reasons for the intervention.
- The management of any establishment which might use *Fixierung* should issue formal written guidelines, taking account of the above criteria, to all staff who may be involved.

As regards the supervision of persons subject to *Fixierung* the following additional safeguard should apply, bearing in mind the potential risks associated with recourse to this measure:

- In *medical settings*, an individual subject to *Fixierung* should, at all times, have his/her mental and physical state continuously and directly monitored by an identified member of the health-care staff, who can offer immediate human contact to the person concerned, reduce his/her anxiety, communicate with the individual and rapidly respond, including to the individual's personal needs regarding oral intake, hygiene and urination and defecation. Such individualised staff supervision should be performed from within the room (*Sitzwache*) or, if the patient so wishes, very near the door (within hearing and so that personal contact can be established immediately). The supervising staff member should be required to maintain a written running record. Further, the person concerned should be given the opportunity to discuss his/her experience, during and, in any event, as soon as possible after the end of a period of restraint. This debriefing should always be carried out by a member of health-care staff or another member of staff with appropriate training.

- In *non-medical settings*, an individual subject to *Fixierung* should, in principle, benefit from analogous safeguards, supervision only by means of CCTV and/or microphone not being sufficient[2]. Given the different context in which supervision is to be carried out, the person concerned should be continuously and directly monitored either by an identified member of health-care staff or by another suitably trained member of staff who has not been involved in the circumstances which gave rise to the application of *Fixierung.*

In the CPT's opinion, the long-term goal should be to reduce resort to *Fixierung* in all types of establishment and eventually to abandon its use in non-medical settings. For so long as *Fixierung* is used in practice, **the Committee recommends that the federal and all *Länder* authorities take the necessary steps to ensure that all the principles and minimum safeguards set out above are applied in all establishments in Germany resorting to *Fixierung.***

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2 Such a practice was observed by the delegation in various non-medical settings visited.

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Police establishments

1. Preliminary remarks

12. In the course of the visit, the CPT's delegation visited one establishment of the Federal Police in Berlin and seven establishments of the *Länder* police services in Baden-Württemberg, Berlin, Brandenburg, Hamburg, Niedersachsen and Thüringen.

13. The legislative framework governing the deprivation of liberty of criminal suspects by the police was summarised in the report drawn up after the CPT's first periodic visit and has not fundamentally changed since then[3]. It is recalled that a criminal suspect can be detained by the police on their own authority until the expiry of the day following that of his/her apprehension.[4] A person can also be detained by the police for the purpose of establishing his/her identity, in which case a time limit of twelve hours is provided for in Section 163c of the Code of Criminal Procedure (*Strafprozessordnung - StPO*) and of six to twelve hours in the police laws of the *Länder* visited.

According to the respective police laws of the *Länder*, persons can with judicial authorisation be detained in police establishments for longer periods, ranging from four days to two weeks, for reasons other than the investigation of criminal offences (e.g. for administrative offences).[5]

Foreign nationals may be detained (with judicial authorisation) in police establishments pending their removal from Germany (*Abschiebehaft*), on the basis of the aliens legislation. In practice, such persons are usually transferred at the earliest opportunity to a designated detention facility for foreign nationals (i.e. a detention centre for foreigners or a special unit in a prison establishment) (cf. paragraph 45).

2. Ill-treatment

14. As was the case in 2000, the delegation received no allegations of recent physical ill-treatment of persons during their period of custody in police establishments. However, as concerns the time of apprehension (*Festnahme*), a number of allegations were heard of excessive use of force by police officers. These allegations concerned, in particular, punches and kicks after the person concerned had been brought under control, prolonged and tight handcuffing.

Further, some allegations were heard of instances of verbal abuse of detained persons by police officers.

[3] Cf. paragraphs 30 to 45 and Appendix III of document CPT/Inf (93) 13.
[4] Article 104, paragraph 2, of the German Basic Law (*Grundgesetz*).
[5] Four days in Brandenburg; ten days in Lower Saxony and Thüringen; two weeks in Baden-Württemberg and Hamburg.

The CPT recommends that it be made clear to all police officers that the force used when carrying out an apprehension should be no more than is strictly necessary and that, once the persons concerned have been brought under control, there can be no justification for striking them. More generally, **they should be reminded regularly and in an appropriate manner that any form of ill-treatment – including verbal abuse – of detained persons is not acceptable and will be punished accordingly.**

15. The CPT has serious misgivings about the combined use of hand- and ankle-cuffs (so-called "*hogtie-Fesselung*"), which, according to police officers met by the delegation, was, on occasion, resorted to.

The Committee notes that this painful and potentially harmful technique of restraining a violent/recalcitrant person is prohibited by an internal order of the police in the *Land* of Berlin.[6] **It recommends that this positive approach be followed by the Federal Police and the police services of all other *Länder*.**

3. Safeguards

a. introduction

16. The CPT has repeatedly stressed that the period immediately following deprivation of liberty is when the risk of intimidation and ill-treatment is at its greatest. It follows that it is essential for persons apprehended by the police to enjoy during that period the rights to inform a family member or a third party of their choice about their situation as well as to have access to a lawyer and a doctor (including to one of their own choice). It is equally essential that persons detained by law enforcement agencies be informed without delay of their rights.

The above-mentioned fundamental rights should be enjoyed by all categories of persons deprived of their liberty by law enforcement agencies (i.e. not only by criminal suspects, but also by persons who are deprived of their liberty by the police for other reasons). Further, these rights should apply *from the very outset of their deprivation of liberty* (i.e. from the moment when the persons concerned are obliged to remain with the police).

17. The CPT is concerned to note that the situation in this regard has, to a large extent, remained unchanged since the 2000 visit. A number of necessary improvements concerning fundamental safeguards have still not been implemented, despite specific recommendations repeatedly made by the Committee in previous visit reports.

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6 Section 3.2.4.2 of the Order on the Proceedings Regarding the Deprivation of Liberty and the Transportation of Detained Persons by the Police (*PDV* 359).

b. information to a close relative or other third party

18. In the course of the visit, numerous allegations were heard from detained persons that, whilst in the custody of the police, they had not been able at all - or at least not from the outset of their deprivation of liberty - to inform a close relative or a third person of their choice about their situation.

In the case of criminal suspects, the right of notification of custody usually only applied from the moment when officers of the criminal police began formal questioning (*Vernehmung*). In practice, such questioning only took place after a certain period of time (sometimes several hours after apprehension).

19. The CPT is also concerned by the fact that criminal suspects who are provisionally apprehended (*vorläufig festgenommen*) by the police according to sections 127[7] and 127 b, paragraph 1[8], *StPO* still do not have a formal right to inform a close relative or a third party of their choice about their situation until they have been brought before a judge to decide on the imposition of remand detention (i.e. not later than the end of the day following that of their apprehension).

In their response[9] to the report on the 2000 visit, the German authorities stated that "[a]t least according to the opinion prevalent here, the provisional arrest does not give rise to a right of the arrested person to inform. The reason for this is the provisional nature of the measure which must soon be terminated or be converted into an "arrest" within the meaning of section 114 b of the Code of Criminal Procedure. It should be pointed out in this context that section 128 subsection 1 first sentence of the Code of Criminal Procedure requires the arrested person to be brought before a judge "without delay", so that the maximum time ("at the latest on the day after his apprehension") is unlikely virtually ever to be exhausted - especially with today's technical possibilities." The German authorities added that a survey among the *Länder* had revealed that a provisionally arrested person was, in practice, able to inform his/her family or other persons, in accordance with existing internal instructions of the *Länder* police services. By way of example, the German authorities referred to the relevant provisions of the police service regulations of Hamburg (PDV 350) which stipulate that "if not contradicted by criminal tactical considerations according to the decision of the criminal agency processing the case (…), in particular where there is no danger of collusion, apprehended persons are to be afforded the opportunity to notify relatives or persons enjoying their trust without delay".

In the CPT's view, the arguments advanced by the German authorities in their above-mentioned response are not convincing. The fact that the issue of notification of custody is addressed in police regulations makes clear that there can be no fundamental objection to providing the right of notification to persons who are provisionally apprehended. At the same time, a provision which allows the police to delay notification whenever "criminal tactical considerations are contradicted" offers the police a degree of discretion that is far too wide and may lead to abuse.

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7 In the case of imminent danger (*Gefahr im Verzug*).

8 In the case of apprehension « in flagranti » if a decision is likely to be taken instantly in an accelerated criminal procedure and if there are reasons to believe that the person concerned will not appear in court.

9 Cf. CPT/Inf (2003) 21, page 18.

20. As regards preventive police custody, the right of notification is embodied in the Federal Police Act[10] and the Act on the Federal Criminal Police Office[11], according to which "a person in police custody is to be given the opportunity without delay to inform a relative or a person trusted by him provided the purpose of the deprivation of liberty is not thereby endangered". Further, an almost identical provision is contained in the police laws/regulations of the *Länder*[12].

In their response[13] to the report on the 2000 visit, the German authorities stated that, in this connection, the right of notification "only fails to apply if by means of notification of the person selected by the persons concerned the purpose of the deprivation of liberty, meaning in particular prevention of the criminal offence, would be placed at risk. In which cases this precondition is met cannot be described in detail since there is a large number of conceivable circumstances. Primarily, these are likely to be cases in which a person is to be informed where it cannot be ruled out that they are an accomplice to the planned criminal offence, or that they are at least in contact with probable accomplices."

21. The CPT noted that, both in the case of a provisional apprehension of criminal suspects and preventive police custody, decisions on restricting the notification of custody were usually taken by the officers dealing with the case. Further, officers did not systematically record in writing specific reasons for the restriction imposed. In some establishments, they only had to confirm with their signature a pre-printed statement on the detention form that the notification was delayed, "since the purpose of the investigations could be jeopardised".

22. In the light of the above, **the CPT calls upon the federal and all *Länder* authorities to ensure without further delay that all persons deprived of their liberty by any federal or *Länder* police service, for whatever reason, are granted the right to notify a close relative or third party of their choice about their situation as from the very outset of their deprivation of liberty (that is, from the moment when they are obliged to remain with the police). The exercise of this right could be made subject to certain exceptions designed to protect the legitimate interests of the police investigation, provided those exceptions are clearly circumscribed in law and made subject to appropriate safeguards (*e.g.* any delay in notification of custody to be recorded in writing with the specific reasons therefor and to require the approval of a senior police officer unconnected with the case at hand or a public prosecutor).**

10 Section 41, paragraph 2.
11 Section 21, paragraph 7.
12 Section 4.3 of the Internal Order on Police Custody (*Gewahrsamsordnung*) of Baden-Württemberg (District of Karlsruhe Police Headquarters); Section 32, paragraph 2, of the General Law on the Protection of Public Security and Order (*ASOG*) of Berlin; Section 19, paragraph 2, of the Police Law (*BbgPolG*) of Brandenburg; Section 13b, paragraph 2, of the Law on the Protection of Public Security and Order (*SOG*) of Hamburg; Section 20, paragraph 2, of the Law on the Protection of Public Security and Order (*SOG*) of Niedersachsen; Section 21, paragraph 2, of the Law on the Duties of the Police (*PAG*) of Thüringen.
13 Cf. CPT/Inf (2003) 21, page 18.

c. access to a lawyer

23. The CPT notes with concern that criminal suspects still did not enjoy the right of access to a lawyer as from the very outset of their detention, despite the specific recommendation made by the CPT in all previous visit reports[14]. According to the relevant legislation[15], criminal suspects were granted the right of access to a lawyer only from the moment such persons became accused (*Beschuldigter*). In practice, this right only became effective when an officer of the criminal police arrived, to carry out formal questioning (*Vernehmung*). Usually, such questioning only took place after a certain period of time (sometimes several hours after apprehension) and, in a number of cases, only after the person concerned had been subjected to informal questioning by the police.

For some 15 years now, the CPT has been explaining the importance of granting detained persons a right of access to a lawyer as from the very outset of deprivation of liberty. **The Committee calls upon the federal and all *Länder* authorities to ensure that the right of access to a lawyer is guaranteed to all persons deprived of their liberty on suspicion of having committed a criminal offence, as from the very outset of their deprivation of liberty (that is, from the moment when they are obliged to remain with the police).**

24. As regards preventive police custody, the German authorities, in their response[16] to the 2000 report, stated that "the police laws of the *Länder* do not contain provisions relating to consulting a lawyer. Such a right may however be based on section 14 of the Administrative Procedure Acts (*Verwaltungsverfahrensgesetze - VwVfG*) of the *Länder*. In accordance with section 14 subsection 1, a person involved in an administrative procedure may be represented by counsel, who in accordance with section 3 subsection 3 of the Federal Code of Lawyers (*Bundesrechtsanwaltsordnung*) may also be a lawyer. Independently of this, in accordance with section 14 subsection 4 of the Administrative Procedure Act (*VwVfG*), it is possible to appear at hearings and discussions accompanied by counsel. These provisions are applicable in addition to the police law regulations on notification of trusted persons in cases of police custody. Whilst the latter is intended to prevent persons being subject to state power with no possibility for third parties to be aware of this fact, the provision contained in section 14 of the Administrative Procedure Act gives concrete form to the rule-of-law principle of 'equality of weapons', which characterises a fair administrative procedure and is rooted in the right to a legal hearing and in the general right to privacy from Article 2 paragraph 1 in conjunction with Article 1 paragraph 1 of the Basic Law.

If […] a person taken in police custody not for criminal law reasons also has the right to be represented by counsel in the proceedings with the police, he/she must on principle be afforded the right in order to assert this right to talk to a lawyer in private. Further, in accordance with section 14 subsection 4 of the Administrative Procedure Act, they have the right to consult a lawyer or other person as counsel if they are given a legal hearing in connection with their deprivation of liberty".

25. The delegation which carried out the 2005 visit gained the impression that requests to contact a lawyer by persons other than criminal suspects who had been deprived of their liberty under the *Länder* police legislation were usually respected. However, it became apparent that the persons concerned were not systematically informed of such a possibility. In this connection, reference is made to the remarks and recommendations made in paragraph 33.

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[14] Cf., most recently, CPT/Inf (2003) 20, paragraphs 39 to 41.
[15] Sections 136, paragraph 1, 137, paragraph 1, 148, paragraph 1, and 163a, paragraph 4, *StPO*.
[16] Cf. CPT/Inf (2003) 21, page 20.

d. access to a doctor

26. As in 2000, the delegation received no complaints about access to a doctor in police custody. In all establishments visited, whenever medical assistance was needed, recourse was had to emergency doctors or police doctors on call.

27. The right of access to a doctor was formally guaranteed in all *Länder* visited. However, with the notable exception of Hamburg[17], in none of the *Länder* visited did the relevant police regulations contain a specific provision concerning the right of detained persons to be examined by a doctor of their own choice. Although such requests appeared to be respected in practice, **it would still be desirable that this right also be expressly guaranteed in all other *Länder* (it being understood that an examination by a doctor of the detained person's own choice may be carried out at his/her own expense).**

28. As regards medical confidentiality, the CPT is concerned by the fact that, according to police officers, they were, as a rule, present during medical examinations at Frankfurt an der Oder Regional Police Headquarters. This was not the case in all other police establishments visited.

The CPT acknowledges that special security measures may be required in a particular case, when a security threat is perceived by medical staff. However, there can be no justification for police officers being *systematically* present during medical examinations; their presence is detrimental to the establishment of a proper doctor-patient relationship and usually unnecessary from a security standpoint. Alternative solutions can and should be found to reconcile legitimate security requirements with the principle of medical confidentiality. One possibility might be the installation of a call system, whereby a doctor would be in a position to rapidly alert police officers in those exceptional cases when a detained person becomes agitated or threatening during a medical examination.

The CPT recommends that steps be taken at Frankfurt an der Oder Regional Police Headquarters and, if appropriate, in other police establishments in Germany, to ensure that all medical examinations are conducted out of the hearing and – unless the doctor concerned expressly requests otherwise in a given case – out of the sight of police staff.

29. The CPT also has serious misgivings about the approach observed at Berlin-Wedekindstrasse that medical data (e.g. details of whether a detained person suffered from infectious diseases such as tuberculosis, hepatitis or HIV) were recorded by doctors on forms which were routinely accessible to police officers. **In principle, such information should be available to police officers only on a need-to-know basis.**

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17 Cf. Section 21.1000.1 of the Internal Order *PDV* 350 (*Vorschrift "Täglicher Dienst" der Polizei der Freien und Hansestadt Hamburg*).

e. information on rights

30. In all establishments visited, the situation regarding the provision of information on the rights of detained persons remained unsatisfactory (as regards juveniles, cf. paragraphs 34 to 36).

31. In many cases, criminal suspects detained by the police were not informed at all of their right to have access to a doctor, and information on the other fundamental rights (notification of custody and access to a lawyer) was frequently not provided at the outset of deprivation of liberty. Further, with the notable exception of the Federal Police Station at Berlin Central Railway Station and Hameln Police Station, none of the establishments visited provided an information sheet to detained persons.

The provision of information (*Rechtsbelehrung*) at the outset of the formal questioning (*Vernehmung*) by the criminal police focused upon the detained person's right to contact a lawyer, including the possibility to forego that right. However, the declaration[18] to be signed by the person concerned did not contain a specific reference to notification of a third person about the fact of custody or access to a doctor.

The CPT welcomes the fact that, at Berlin Central Railway Station and Hameln Police Station, information sheets on the rights of detained persons were available in a variety of foreign languages (at the Federal Police Station, in more than 60 languages). It is also noteworthy that, at Hameln, the information sheet was not only given to criminal suspects, but also to persons deprived of their liberty by the police for other reasons. That said, the latter information sheet made no reference to the right of access to a doctor.

32. As regards persons other than criminal suspects who had been deprived of their liberty under the *Länder* police legislation, the delegation noted that they were not systematically informed of their right to have access to a lawyer and a doctor.

33. **The CPT calls upon the federal and all *Länder* authorities to ensure without further delay that all persons detained by the police – for whatever reason – are fully informed of their above-mentioned fundamental rights <u>as from the very outset of their deprivation of liberty</u> (that is, from the moment when they are obliged to remain with the police). This should be ensured by provision of clear oral information at the very outset, to be supplemented at the earliest opportunity (that is, immediately upon first entry into police premises) by provision of a written form setting out their rights in a straightforward manner. This form should be available in an appropriate range of languages.** Further, **the persons concerned should be asked to sign a statement attesting that they have been informed of their rights.**

18 In all establishments visited, this declaration was available in several foreign languages.

f. specific issues related to juveniles

34. The delegation paid particular attention to the application of specific safeguards concerning juveniles apprehended in relation to criminal offences.

German legislation makes special provision for juveniles apprehended in relation to a criminal offence. According to Section 67, paragraph 1, of the Law on Juvenile Justice (*Jugendgerichtsgesetz - JGG*), parents and/or legal representatives have the right to be present during any questioning by the police. Further, the police laws of the *Länder* usually contain a specific provision concerning the notification of custody. It is stated that in any case of a juvenile being detained, the person who is in charge of him/her has to be informed without delay (*unverzüglich*).

More specific provisions are contained in an internal order of the Federal Ministry of the Interior on the "processing of juvenile cases" (*PDV* 382) and similar instructions issued by the Ministries of the *Länder* concerning the *Länder* police services. According to these instructions, juveniles have to be informed, prior to the first questioning, in a manner which corresponds to their stage of development, of their rights, amongst other things, to consult a lawyer, even before the first questioning, and to remain silent. Further, they have to be given an opportunity to speak with a parent and/or legal representative before taking a decision in this regard. The above-mentioned instructions make explicit reference to Section 67 *JGG*, but also add that, in order to avoid any influence upon the juvenile, it may be appropriate, with the agreement of the parent/legal representative, "to interview the juvenile alone" (emphasised in bold in the text of the instructions).

35. The delegation found that, although in many cases parents had been informed of the detention of their child, it appeared to be exceptional that parents had been able to be present during the questioning of their child by the police.[19] The police appeared not to consider it their duty to explain to parents that they could be present during important proceedings such as the taking of a statement, and some officers frankly expressed the view that such a presence could be counter-productive to their work.

In the CPT's view, it is unacceptable that juveniles (some as young as 15) were subjected to formal questioning and "invited" to sign statements admitting criminal offences without the benefit of the presence of either a trusted person or a defence lawyer. The point of special provisions for juveniles is to protect this age group and to provide them with adult support so that they do not have to make decisions with important legal implications on their own. If the onus is placed on the juvenile to request the presence of a trusted person, this defeats the object; <u>such a presence should be obligatory</u> (cf. also Section 15 of the Recommendation Rec(2003)20 of the Council of Europe's Committee of Ministers concerning new ways of dealing with juvenile delinquency and the role of juvenile justice[20]).

[19] At Heidelberg Police Headquarters, the police officers present appeared to be unaware of the existing legal provisions when stating that parents had no such right.

[20] "(…) While being questioned by the police they should, in principle, be accompanied by their parent/legal guardian or other appropriate adult…"

The CPT recommends that steps be taken throughout Germany to ensure that juveniles do not make any statement or sign any document related to the offence of which they are suspected without the benefit of a trusted person and/or a lawyer being present and assisting them. The relevant legal provisions should be amended accordingly.

36. As was the case for adult detained persons, information forms setting out detained persons' rights were rarely provided to juveniles upon apprehension in the establishments visited (except at the Federal Police Station at Berlin Central Railway Station and Hameln Police Station).

The information form provided to persons in police custody at Hameln contained a special section concerning the rights of juveniles. However, the text was written in convoluted legal language which would certainly be difficult for juveniles to understand.

The CPT recommends that a specific version of the information form setting out the particular position of juveniles detained by the police be developed and given to all such persons in all police establishments, at the very outset of their deprivation of liberty. For this age group especially, the information form should be easy to understand and available in a variety of languages. Special care should be taken to ensure that the information provided is fully understood[21].

g. custody records

37. In general, the custody registers inspected by the delegation were correctly maintained and contained detailed information on a wide range of aspects of detention conditions. However, no comprehensive custody record was kept at Frankfurt an der Oder Police Station; **steps should be taken to remedy this shortcoming.**

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21 In this connection, reference should be made to Section 15 of Recommendation Rec(2003)20 of the Council of Europe's Committee of Ministers concerning new ways of dealing with juvenile delinquency and the role of juvenile justice, which reads as follows: "Where juveniles are detained in police custody, account should be taken of their status as a minor, their age and their vulnerability and level of maturity. They should be promptly informed of their rights and safeguards in a manner that ensures their full understanding (…)".

4. Conditions of detention

38. In all police establishments visited, persons detained by the police had usually been held in custody for only a relatively short period of time before being released or transferred to another custodial facility. Although, according to the *Länder* police laws, persons may, under certain circumstances, be held in custody for more than 48 hours (cf. paragraph 13), no such cases were observed by the delegation.

39. Material conditions in all police establishments visited were, on the whole, adequate for short-term custody.

That said, despite the specific recommendation repeatedly made by the CPT since its first visit to Germany in 1991, in several establishments visited (Berlin-Wedekindstrasse, Hamburg-Winterhude, Heidelberg), no mattresses, and sometimes not even blankets, were being provided to detained persons held in custody overnight[22]. Such a state of affairs is not acceptable. **The CPT calls upon the police authorities of Baden-Württemberg, Berlin and Hamburg, and, if appropriate, of other *Länder* to implement, without any further delay, the longstanding recommendation that all persons detained overnight be provided with a clean mattress and clean blankets.**

Further, at Weimar Police Headquarters, some of the cells were inadequately lit (with very limited access to natural light and insufficient artificial lighting), and, at Berlin-Wedekindstrasse, the call system did not function in all cells. **Steps should be taken to remedy these shortcomings.**

40. In several establishments visited, no or only limited personal hygiene products were provided to detained persons. **The CPT recommends that, in all police establishments in Germany, basic personal hygiene products are made available as required to detained persons.**

41. Finally, **the CPT must stress that, due to their specific design (cells with very limited or no access to natural light; lack of outdoor exercise facilities), most if not all of the police detention facilities visited are unsuitable for accommodating persons for prolonged periods.**

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22 Mattresses were provided at the Federal Police Station at Berlin Central Railway Station as well as in the police establishments in Frankfurt an der Oder (including in the cell used for sobering-up purposes, which was fitted with a washable plastic mattress), Hameln and Weimar.

B. Detention of foreign nationals under aliens legislation

1. Preliminary remarks

42. Various issues related to the detention of foreign nationals under aliens legislation have for many years occupied a major place in the ongoing dialogue between the CPT and the German authorities. During the 2005 visit, the CPT, once again, paid particular attention to the conditions under which immigration detainees were detained pending their removal. For this purpose, the delegation carried out targeted visits to Hamburg-Fuhlsbüttel Prison and Hamburg Remand Prison and also visited the unit for juvenile immigration detainees at Hameln Juvenile Prison in the context of its visit to the latter establishment. Further, it went to Eisenhüttenstadt Detention Centre for Foreigners for a follow-up visit, focusing on the main concerns raised in the report on the 2000 visit; it also examined certain issues relating to the involvement of staff of a private security company in the daily running of the detention centre.

43. A new federal Aliens Act[23] came into force on 1 January 2005. However, the principal rules of detention pending deportation remained to a large extent unchanged. Thus, under section 62 of the Act, foreign nationals may be detained in order to ensure the enforcement of an expulsion order. Detention must be ordered by a judge; it may be ordered as a preparatory measure (pending the decision on the expulsion, *Vorbereitungshaft*) for a maximum term of six weeks, or as a preventive measure (to ensure the enforcement of an expulsion order, *Sicherungshaft*) for a term of up to eighteen months (including the total period spent in preparatory detention).

44. In certain *Länder* (for example, Brandenburg), the detention of foreign nationals pending their deportation is governed by a specific legal framework reflecting their particular status.[24] However, in a number of *Länder* (including Hamburg), no such legal framework exists. As a result, immigration detainees are subjected to the rules applicable to remand or sentenced prisoners. Such a state of affairs is not acceptable. **The CPT recommends that, in all *Länder* in Germany, the detention of immigration detainees be governed by specific rules reflecting their particular status.**

45. Federal aliens legislation does not specify the type of establishment in which foreign nationals should be detained under Section 62 of the Aliens Act. The CPT welcomes the fact that in several *Länder* (for instance, Brandenburg) specific detention centres for foreigners have been set up. However, in a number of *Länder* (including Hamburg and Niedersachsen), immigration detainees are still being held in prison, sometimes even together with sentenced or remand prisoners. In this connection, reference is made to the remarks and recommendations made in paragraph 56.

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23 2004 Act on the Residence, Gainful Activities and Integration of Foreigners in the Federal Territory (*AufenthG*).

24 Cf. 1996 Act on the Enforcement of Detention Pending Deportation Outside Prison Establishments (*Abschiebehaftvollzugsgesetz - AbschhVG*), as amended in 2005, and the 1998 Ordinance on the implementation of the law (*Gewahrsamsordnung*).

2. Immigration detainees held in prison

a. introduction

46. **Hamburg Remand Prison** was the only detention facility for female immigration detainees in Hamburg. Male immigration detainees were usually kept there only temporarily, pending their transfer to Fuhlsbüttel Prison. In practice, the length of stay varied considerably for male immigration detainees from just a few hours to several weeks and, on occasion, up to two months. Female immigration detainees were usually held for periods of up to several months. At the time of the visit, Hamburg Remand Prison was holding 13 immigration detainees (nine male and four female).

Hamburg-Fuhlsbüttel Prison had a designated unit for immigration detainees in Block no. 1 (since 2003). With an official capacity of 56 places, it was operating at full capacity on the day of the visit. The delegation was informed that the usual length of stay in the section was six weeks; the longest stay of a foreign national at the time of the visit was five months. The unit for immigration detainees only accommodated male adults, while juveniles were placed in Hamburg Juvenile Prison. As a result, members of the same family could detained under aliens legislation in three different establishments in Hamburg. In this connection, reference is made to the recommendation made in paragraph 56.

Hameln Juvenile Prison had a unit for male juvenile immigration detainees in House no. 9. At the time of the visit, the unit was also being used for the accommodation of remand prisoners. With an official capacity of seven places, at the time of the visit, it had been holding one immigration detainee (aged 17) for almost two months; it was also holding four remand prisoners. It is also noteworthy that in Niedersachsen adult immigration detainees (male and female) were being held in a prison establishment[25].

b. ill-treatment

47. The delegation heard no allegations – and gathered no other evidence – of <u>physical ill-treatment</u> by staff of immigration detainees at *Hamburg Remand Prison, Hamburg-Fuhlsbüttel Prison* and *Hameln Juvenile Prison*.

However, a number of foreign nationals who were, or who had recently been, detained in *Hamburg Remand Prison*, complained that the staff behaved towards them and addressed them in a <u>disrespectful, scornful and/or racist manner</u>. A few allegations of this kind were also heard about *Hamburg-Fuhlsbüttel Prison*. **The CPT recommends that the staff of Hamburg Remand Prison and Fuhlsbüttel Prison be reminded that such behaviour is unacceptable and will be punished accordingly.**

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[25] Detached Unit of Hannover Prison at Langenhagen.

c. conditions of detention

48. The CPT recalls that centres intended for holding immigration detainees should provide accommodation which is adequately furnished, clean and in a good state of repair, and which offers sufficient living space for the number of persons involved. Further, care should be taken in the design and layout of the premises to avoid as far as possible any impression of a carceral environment. As regards regime activities, they should include outdoor exercise, access to a communal room and to radio/television and newspapers/magazines, as well as other appropriate means of recreation (e.g. board games, table tennis). The longer the period for which persons are detained, the more developed should be the activities which are offered to them[26].

49. At *Hamburg Remand Prison*, all male immigration detainees were placed in a separate corridor located in the basement of Block B1, while all female detainees were accommodated together with remand prisoners. Material conditions in nearly all cells used for immigration detainees were very poor. Many of the cells were sparsely equipped, dilapidated and filthy. In addition, cells for male detainees had no hot water, nor access to electricity. Some of the cells were also overcrowded (three detainees in a cell of 10 m²).

Further, foreign nationals were deprived of anything remotely resembling a regime of activities. Apart from one-hour's outdoor exercise, foreign nationals were locked up in their cells (mostly in pairs or alone) for 23 hours a day. There were no television sets, radios[27] or board games and only limited reading material[28].

In short, the conditions under which immigration detainees were being held at Hamburg Remand Prison were unacceptable.

50. On 27 April 2006, the Senate of Justice of Hamburg announced in a press release that work carried out at Fuhlsbüttel Prison had been completed with a view to increasing the capacity of the unit for immigration detainees from 56 to 98 places. As a result, (male) immigration detainees would no longer be (temporarily) held in Hamburg Remand Prison. It was further stated that, in future, female immigration detainees, after an initial placement in Hamburg Remand Prison, would be transferred to Hahnöfersand Prison, where ten places had been made available for this purpose.

The CPT welcomes these developments, which nevertheless represent only a first step in the right direction. **The Committee recommends that the authorities of Hamburg take, without delay, the necessary measures to put an end to any placement – even temporary – of immigration detainees (including female) in Hamburg Remand Prison.**

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26 Cf. CPT/Inf (2003) 20, paragraph 59.

27 In theory, immigration detainees were allowed to use a battery-run radio.

28 The delegation was informed that, during the week before the CPT's visit, efforts had been made to allow female inmates to spend more time outside their cells, with cell doors remaining open for one hour at the end of each afternoon, and that female inmates (both remand prisoners and immigration detainees) had been allowed to associate. This hour of association had, however, been stopped owing to the misbehaviour of two female remand prisoners.

51. At *Fuhlsbüttel Prison*, the unit for immigration detainees was located on one level of Block no. 1, with eight rooms, opening onto a broad corridor. All rooms were of a reasonable size (some 35m² for seven inmates) and had good access to natural light. That said, they were sparsely furnished, poorly maintained and dirty.

Further, several immigration detainees with whom the delegation spoke complained about the food. In particular, it was said that the meals, prepared in the prison kitchen, sometimes arrived cold at the unit. **The CPT would like to receive the comments of the authorities of Hamburg on this matter**.

52. Although the regime offered to immigration detainees at Fuhlsbüttel was clearly better than that in Hamburg Remand Prison, it was still far from satisfactory. The most striking differences were that the unit had a communal room and that every cell was equipped with a television set.

That said, activities both inside and outside the cells were very limited. There were no radios nor board games, and scarcely any reading material in foreign languages. All immigration detainees were confined to their cells for 21 hours a day from Wednesday to Sunday and 22 hours a day on Mondays and Tuesdays (the two visit days). When they were allowed to leave their cells, they had access (for one or two hours) to an outdoor exercise area and to the communal room. The latter room was large but very bleak and was only equipped with two table-tennis tables. **The communal room – as well as the broad corridor mentioned in paragraph 51 – could usefully be fitted out to provide communal living areas and a range of varied, purposeful activities**.

53. According to the above-mentioned press release of the Senate of Justice of Hamburg (cf. paragraph 50), immigration detainees were authorised, with immediate effect, to spend an additional 30 minutes each day outside their cells (longer on Sundays and public holidays, and an additional two-and-a-half hours on Fridays). The CPT takes note of this development, which should, however, be followed by additional appropriate measures (cf. paragraph 57).

54. The unit for immigration detainees at *Hameln Juvenile Prison* had six cells in use. The cell occupied by the only juvenile immigration detainee was of a reasonable size, had adequate access to natural light (although the upper part of the window was covered by wire mesh) and was very clean. That said, it was sparsely furnished. Further, the worn state of the furniture and the lack of decoration combined with the bars and the wire mesh on the window gave the room the grim appearance of a prison cell. The unit also comprised a scruffy kitchenette and a sitting area equipped with a few pieces of dilapidated furniture, a television set and a table-tennis table.

55. The juvenile immigration detainee was entitled to one hour of outdoor exercise per day, and had access to the unit's kitchenette and sitting area for four-and-a-half hours a day. However, there was no activity organised for him (although he had been assessed as fit for work and sport activities), and the prison library had no books in Albanian (apparently the only language he understood). As a result, he spent the majority of the day alone in his cell idling away the time, without television, radio or reading material.

In response to the observations made by the delegation at the end of its visit to the establishment, the prison management stated that it would take immediate steps to provide the juvenile immigration detainee with reading matter in Albanian.

56. The facts found by the delegation during the 2005 visit clearly demonstrated once again that it is a fundamentally flawed approach to hold immigration detainees in prison, even if the actual conditions of detention for the persons concerned in a given prison establishment were adequate. The CPT has repeatedly stressed that a prison is by definition not an appropriate place in which to detain someone who is neither suspected nor convicted of a criminal offence[29]. The Committee also notes that the Federal Government shares its view on this matter[30]. However, it remains concerned that such limited progress has been made in this respect at the level of the *Länder*.

Therefore, **the CPT must recommend once again that the authorities of Hamburg and Niedersachsen, as well as of all other *Länder* in Germany, take the necessary measures to ensure that immigration detainees are accommodated in centres specifically designed for that purpose, meeting the criteria set out by the Committee in its 7th General Report[31]. Moreover, if members of the same family are detained under aliens legislation, every effort should be made to avoid splitting up the family.**

57. For so long as the units for immigration detainees at Hamburg-Fuhlsbüttel Prison and Hameln Juvenile Prison remain in use, **the CPT recommends that the necessary steps be taken by the relevant authorities to ensure that:**

- **the premises of the unit for immigration detainees at Fuhlsbüttel Prison are kept in a good state of repair and cleanliness;**

- **the cells in the units for immigration detainees at Fuhlsbüttel Prison and Hameln Juvenile Prison are adequately furnished and decorated, in order to relieve as far as possible their prison-like appearance;**

- **an open-door regime is introduced for most of the day in the units for immigration detainees at Fuhlsbüttel Prison and Hameln Juvenile Prison and that a range of purposeful activities is offered to such detainees (including reading material in most commonly used languages, radios, board games, etc.); the longer the period for which foreign nationals are detained, the more developed should be the activities which are offered to them; further, juveniles should be offered activities suitable for their age.**

29 Cf., most recently, CPT/Inf (2003) 20, paragraph 51.
30 Cf. CPT/Inf (2003) 21, page 23.
31 Cf. CPT/Inf (97) 10, paragraph 29.

d. health care[32]

58. Due to the specific objectives of the visits to *Hamburg Remand Prison* (scrutiny of the general conditions under which immigration detainees were being detained), the delegation did not examine the health-care services in this establishment. The examination of the medical files of the immigration detainees at *Fuhlsbüttel Prison*, where the health care appeared to be generally adequate, revealed that the medical check at admittance which was due for the first day at Hamburg Remand Prison, was often delayed for several days and sometimes persons even arrived at Fuhlsbüttel Prison without having had a thorough medical check at the Remand Prison.

59. When visiting the Unit for immigration detainees at Fuhlsbüttel Prison, the delegation was informed that a medical examination was not routinely made on the re-admission of a foreign national following a failed deportation attempt.

In its 13th and 15th General Reports, the CPT stressed the importance that should be attached to medical examinations in the context of deportation operations, all the more so when such operations have been interrupted due to the resistance of the foreign national concerned[33]. Therefore, **the CPT recommends that steps be taken by the federal authorities and all relevant *Länder* authorities (including those of Hamburg) to ensure that all foreign nationals who have been the subject of an abortive deportation operation undergo a medical examination as soon as they are returned to detention** (whether in a police station, a prison or a detention centre for foreigners). In this way it will be possible to verify the state of health of the person concerned and, if necessary, establish a certificate attesting any injuries. Such a measure could also protect escort staff against unfounded allegations.

e. staff

60. In none of the three establishments visited had prison staff working in the units for immigration detainees received any specialised training in dealing with this category of inmate. Further, staffing levels were not sufficient to provide an adequate level of out-of-cell activities (for instance, at Fuhlsbüttel Prison, only the head of unit and two prison officers were in general present during the day for a total of 56 immigration detainees). The delegation also observed in all establishments visited that there was scarcely any communication/interaction between staff and immigration detainees (which was, to a certain extent, also due to language barriers). In short, the role of staff appeared to be confined to warehousing immigration detainees.

For so long as the units for immigration detainees at Fuhlsbüttel Prison and Hameln Juvenile Prison are in use, **the CPT recommends that special attention be devoted to the training of the staff employed in these units. The staff concerned should possess well-developed interpersonal communication skills, and at least some of them should have relevant language skills.**

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32 As regards the provision of health care at Hameln Juvenile Prison, reference is made to paragraphs 125 to 139.

33 CPT/Inf (2003) 35, paragraph 39, and CPT/Inf (2005) 17, paragraph 47; see also Guideline 16 of the Guidelines on Forced Return adopted by the Committee of Ministers of the Council of Europe (CM (2005) 40).

In addition, **introducing an open-door regime for most of the day and offering a greater range of purposeful activities for the immigration detainees placed in these units, as recommended in paragraph 57, will necessitate an increased number of staff.**

61. At Fuhlsbüttel Prison, the delegation was informed that there were no female staff on the core team (of eight men) working in the unit for immigration detainees. In the CPT's view, the employment of female staff in detention areas for men may contribute to improving the general atmosphere in those areas. Therefore, **the Committee invites the authorities of Hamburg to explore the possibility of deploying female staff to the unit for immigration detainees at Fuhlsbüttel Prison.**

f. means of restraint

62. Both Hamburg-Fuhlsbüttel Prison and Hamburg Remand Prison had several special security cells (*besonders gesicherte Hafträume*)[34], some of which were used for the physical restraint (*Fixierung*) of inmates (so-called "*schwere Beruhigungszellen*" - *SBZ*)[35].

In both establishments visited, *SBZ* cells were equipped with a plastic-covered foam mattress placed on a wooden platform to which various restraint devices (broad metal wrist-cuffs and ankle-cuffs, as well as leather waist belts) were attached. Cell doors were very solid, with no latched window. The only *SBZ* cell seen at Fuhlsbüttel Prison was very oppressive with only limited access to natural light. **Steps should be taken to remedy this shortcoming**.

The *SBZ* cell at Fuhlsbüttel Prison and one *SBZ* at Hamburg Remand Prison were also equipped with CCTV, with continuous monitoring from a central office. At Hamburg Remand Prison, there were another two *SBZ* cells (nos. 11 and 35) with neither CCTV nor any call system installed. The delegation was told by staff that inmates who were subjected to *Fixierung* in the latter cells would be checked "from time to time" by a prison officer.

The CPT wishes to stress - once again - that it is not acceptable for distressed and agitated inmates to be left alone, attached to a bed behind a locked door, where they can harm themselves, with only the possibility of nodding their heads at a CCTV camera, in the hope that it is being watched and that their movements are being correctly interpreted, or of calling out for assistance if someone is by chance in earshot. **In this connection, the remarks and recommendation made in paragraph 11 above apply equally to Hamburg-Fuhlsbüttel Prison and Hamburg Remand Prison.**

63. In both establishments visited, instances of *Fixierung* were recorded in a special register on the use of physical restraint. A spot check of the registers revealed that *Fixierung* was used infrequently and usually for a short duration[36].

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34 These security cells were used both for prisoners and immigration detainees.
35 As regards Hameln Juvenile Prison, cf. paragraphs 147 and 148.
36 According to the register, cells nos. 11 and 35 had not been in use in recent times.

g. contact with the outside world

64. At *Hamburg Remand Prison*, immigration detainees were subjected to the same restrictions as remand prisoners[37]. Their correspondence was usually opened, they were not allowed to make telephone calls, and could receive visits for only thirty minutes every fortnight. **Such restrictions on contacts with the outside world in the case of persons who are neither suspected nor convicted of a criminal offence are indefensible**.

65. At *Hamburg-Fuhlsbüttel Prison*, the situation was on the whole satisfactory with regard to correspondence, use of the telephone and visits. However, some immigration detainees met by the delegation claimed that correspondence from their lawyers had been opened by staff. **The CPT would like to receive the comments of the authorities of Hamburg on this issue**.

66. As regards the unit for immigration detainees at *Hameln Juvenile Prison*, reference is made to paragraphs 149 and 150.

h. information provided to foreign nationals

67. The information provided to immigration detainees upon admission varied from one establishment to the other. At *Hamburg Remand Prison*, all inmates (immigration detainees and remand prisoners) received the same information sheet on the house rules, which was available in several foreign languages. At *Hamburg-Fuhlsbüttel Prison* and *Hameln Juvenile Prison*, information on the house rules was usually only provided orally.

That said, in none of the establishments visited were immigration detainees provided with information regarding their legal status and the procedures applicable to them.

For so long as the units for immigration detainees at Fuhlsbüttel Prison and Hameln Juvenile Prison are in use, **the CPT recommends that written information on the house rules and the legal status of and the procedure applicable to immigration detainees be provided to all foreign nationals at Fuhlsbüttel Prison and Hameln Juvenile Prison, upon their admission to these establishments. Such information should be available in the most commonly used languages.**

[37] As regards the visit entitlement and access to the telephone for remand prisoners at Hamburg Remand Prison, reference is made to the remarks and recommendations made in paragraphs 149 and 150.

3. Eisenhüttenstadt Detention Centre for Foreigners

a. ill-treatment

68. The delegation heard no allegations of ill-treatment by staff, nor was any other evidence of such treatment found by the delegation during the visit.

b. conditions of detention

69. The official capacity (108 places) of Eisenhüttenstadt Detention Centre was unchanged since the 2000 visit. At the time of the 2005 visit, it was accommodating 48 foreign nationals (including 17 females). The majority of inmates had been in the detention centre for less than a month; the longest duration of stay observed was about six months.

70. The material conditions, already considered good at the time of the 2000, had since improved even further. In particular, efforts had been made to relieve the prison-like atmosphere of the premises (walls repainted in pastel shades or decorated with murals or pictures; and arrangements of indoor plants). The CPT welcomes these developments.

The CPT also commends the measures taken - despite budgetary constraints - to develop the activities offered to foreign nationals held at the detention centre. Foreign nationals were able to move around freely within their unit during the day, had access to a small library containing newspapers and books in a variety of languages, and could use a video recorder, video games and a table-tennis table. Further, foreign nationals had been engaged in decorating the premises and some of them were involved in maintenance work.

c. health care

71. As regards the provision of general health care, the situation remained satisfactory on the whole at Eisenhüttenstadt Detention Centre[38].

However, the CPT remains concerned about the inadequate psychological care of foreign nationals in the detention centre, taking into account the substantial needs of inmates, many of whom may be in a state of deep anxiety as a result of their detention and their future deportation. **The Committee recommends that the authorities of Brandenburg take steps to ensure the regular presence of a psychologist at Eisenhüttenstadt Detention Centre and to develop programmes for the provision of psychosocial care to foreign nationals held there.**

Further, in the light of the information gathered by the delegation, the Committee must stress that, **whenever the intervention of an external medical team is required**, **steps should be taken to ensure that a report is provided to the medical service of the detention centre and is kept in the medical file of the foreign national concerned.**

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38 The detention centre was visited twice a week by a general practitioner, and a nurse was present during work days.

72. In its report on the 2000 visit[39], the CPT recommended that a psychiatric and psychological service, adapted to the needs of immigration inmates, be established at Eisenhüttenstadt Detention Centre. The information gathered during the 2005 visit indicated that the provision of psychiatric care was adequate. Psychiatric consultations could be requested at Eisenhüttenstadt Hospital, which also employed Russian- and Arabic-speaking psychiatrists, and no problems were encountered as regards waiting periods for consultations or a transfer to the hospital.

73. As in 2000[40], the delegation observed that there were considerable communication difficulties, due to language barriers, between the medical or nursing staff and foreign nationals. Although health-care staff, in principle, had access to the assistance of interpreters at all times (cf. paragraph 82), the delegation noted that the doctor had hardly ever made use of such a possibility, despite the fact that some foreign nationals were scarcely able to communicate with him. **Steps should be taken to remedy this shortcoming.**

74. As regards medical confidentiality, the CPT is concerned that medical examinations regularly took place in the presence of security staff. **In this connection, the remarks and recommendation made in paragraph 28 equally apply to Eisenhüttenstadt Detention Centre.**

d. staff

75. As was the case in 2000, the daily running of Eisenhüttenstadt Detention Centre was in the hands of staff deployed by a contracted private security company. Many of the private security staff met by the delegation had already been present at the time of the previous visit. The delegation observed that their general attitude towards foreign detainees had significantly improved. They were ready to communicate and were described by most inmates as sympathetic. This is a welcome development.

76. The care and custody of foreign nationals whom the State deprives of liberty under immigration law is an important public responsibility. When a public authority delegates its custodial functions to a private entity, the public authority should maintain a presence, to ensure compliance with standards and timely corrections of any breaches. Otherwise a complete absence would amount to an abdication of responsibility.

The CPT notes that, in principle, during the day, two members of staff employed by the Ministry of the Interior and ten staff employed by the private security company were in attendance at the detention centre.

[39] Cf. CPT/Inf (2003) 20, paragraph 69.
[40] Cf. CPT/Inf (2003) 20, paragraph 70.

However, contrary to what the delegation had been told by staff at the beginning of the visit, certain sensitive activities, such as searching and other security measures, including means of restraint, were frequently performed exclusively by private security staff. In this connection, the Committee must stress that private security staff working at Eisenhűttenstadt should be held to the same standards in the execution of their duties as apply to staff employed by the Ministry of the Interior. In order to safeguard the rights of immigration detainees and prevent ill-treatment, special arrangements should be made to ensure that the standards recommended by the CPT in relation to this inmate population are applied to the performance of tasks which might involve a higher risk of ill-treatment, such as searching and other security measures, including means of restraint. This has implications for the qualifications and training of its staff, which should, in principle, be equivalent to those of staff working in the public sector, as well as for the monitoring of the service provided by the private security company.

As regards training, the delegation was informed that staff members employed by the Ministry of the Interior had attended an initial six-week course at a police training school and were subsequently provided with various in-service training courses (for example, management/reduction of aggression and intercultural sensitivity). The CPT welcomes these measures, which are in line with the recommendations made after the 2000 visit[41].

The Committee would like to receive detailed information on the training provided to members of the private security staff working at the detention centre. Further, **it would like to be informed of whether any safeguards exist to guarantee adequate accountability and monitoring of the service provided by the staff of the private security company**.

e. security measures

77. The CPT welcomes the fact that the furnishing and equipment of the security cells (nos. 2007 and 2008) used for the segregation and/or physical restraint (*Fixierung*) of agitated foreign nationals at Eisenhüttenstadt Detention Centre have been improved in the light of the recommendations made by the CPT after the 2000 visit[42]. Cell no. 2007 was fitted with a mattress surrounded by a metal frame, well covered with foam rubber and equipped with devices for five-point *Fixierung*. In cell no. 2008, the metal bars dividing the room were covered with rounded fittings to reduce self-harm and a plastic mattress was placed on the floor. Further, the four metal rings which had previously been anchored to the floor, in order to secure a person hand and foot while lying prone and spread-eagled, were unscrewed; however, the anchorage points still remained there. **It would be desirable that these anchorage points also be removed.**

78. It is a matter of grave concern that the establishment’s health-care staff were rarely involved when security measures - including *Fixierung* - were applied, despite the fact that such instances often occurred during the working hours of health-care staff. Further, the delegation found no evidence (copy of a medical report or entry in the medical file/special register) of any intervention by an external emergency service when means of physical restraint had been applied outside the working hours of health-care staff. Such a lack of medical involvement in situations of physical restraint is unacceptable – all the more so when, as was confirmed by staff, physical restraint was applied to seriously disturbed or suicidal inmates. In such cases, there should be an immediate psychiatric assessment, as well as the possibility of transfer to a psychiatric hospital. In this connection, **the remarks and recommendation made in paragraph 11 apply equally to Eisenhüttenstadt Detention Centre.**

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41 Cf. CPT/Inf (2003) 20, paragraphs 71 and 80.
42 Cf. CPT/Inf (2003) 20, paragraphs 73 to 75.

79. As regards the supervision of foreign nationals who are subject to *Fixierung* via CCTV in a remote central office, **the remarks and recommendation made in paragraph 11 apply equally to Eisenhüttenstadt Detention Centre.**

80. Following the 2000 visit, a special register had been established on the use of means of restraint. A spot check of the register revealed a marked decrease in the resort to *Fixierung* since the end of 2004 (following the arrival of a new Director and an agreement between the Ministry of the Interior and the central authority for foreign nationals to lower the incidence and duration of such placements by 20% in 2005)[43]. The CPT welcomes these developments.

f. information and assistance

81. The provision of information to foreign nationals at Eisenhüttenstadt Detention Centre appeared to be satisfactory. The house rules as well as information sheets on issues related to asylum/immigration procedures (including deportations) were available to all inmates[44].

82. The CPT welcomes the steps taken by the authorities of Brandenburg to improve the provision of interpretation services by establishing a contractual relationship with an outside interpretation office. Further, staff could use the services of qualified interpreters at the branch office of the Federal Office for the Recognition of Foreign Refugees which was located on the same premises[45] (cf., however, paragraph 73).

83. Moreover, by letter of 20 September 2005, the German authorities informed the CPT that an agreement had been concluded on 10 August 2005 between the *Land* of Brandenburg and the Office of the Bar Association in Frankfurt an der Oder concerning the setting-up of a legal counselling system at Eisenhüttenstadt Detention Centre. Under the terms of the agreement, the authorities undertook to provide the premises for the regular presence of a lawyer, and to cover the expenses for one consultation per inmate (including, if necessary, interpretation services).

During the visit, the delegation observed - and the foreign nationals with whom it spoke confirmed - that this free legal advice service was operating correctly. All foreign nationals were informed that they could have one consultation in private with a lawyer at no expense, and such consultations took place regularly; thus, according to the registers, 49 consultations had been arranged since 1 September 2005, 26 with interpreters. The CPT welcomes this development; **it invites the authorities of all other *Länder* to establish such free legal counselling in all establishments accommodating immigration detainees.**

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43 Cells nos. 2007 and 2008 had been used on 14 occasions in 2004, and on five in 2005 (until November). *Fixierung* had been applied for a total 41 hours in 2004, and for 19 hours in 2005 (until November).

44 At the time of the visit, only the German version of this information sheet was available, and the printing of information sheets in other languages was in preparation. By letter of 13 December 2005, the Ministry of the Interior of Brandenburg informed the CPT that the printing had been completed and that information sheets were now available in five languages.

45 Cf. CPT/Inf (2003) 21, page 29.

C. <u>Berlin-Tegel Prison</u>

84. The delegation carried out a targeted follow-up visit to Berlin-Tegel Prison, in order to examine the situation of prisoners subject to special security measures (Sections 88 and 89 *StVollzG*) and of persons subject to the measure of secure placement (*Sicherungsverwahrung*) under Sections 66 *et seq*. of the Penal Code (*StGB*). Both categories of inmate were being held in designated units.

1. Ill-treatment

85. The delegation received no allegations - nor any other evidence - of physical ill-treatment of inmates by the staff in either unit.

That said, the CPT is very concerned about the situation of two inmates in the Unit for *Sicherungsverwahrung*, who were found in their cells in serious medical conditions without receiving any assistance from staff (see details in paragraph 98).

2. Special Security Unit (*Besondere Sicherungsstation)*

86. The aim of the Special Security Unit (*Besondere Sicherungsstation* B-1), located in House III (*Teilanstalt* III), was to segregate from the mainstream prison population prisoners who presented an increased risk of violence and/or escape. On occasion, particularly dangerous prisoners were also transferred to Unit B-1 from other *Länder* (there was one such prisoner at the time of the visit). Further, vulnerable prisoners could be held in Unit B-1 for their own protection, when no other safe accommodation was found in the establishment (there were two at the time of the visit).

With an official capacity of ten places, Unit B-1 was holding eight prisoners at the time of the visit. Seven prisoners were subject to segregation (*Absonderung von anderen Gefangenen*) under Section 88, paragraph 2, *StVollzG*, and one prisoner was subject to strict segregation (*Einzelhaft*) under Section 89, paragraph 1, *StVollzG*. The duration of the stay in Unit B-1 could vary considerably. Most prisoners were being held in Unit B-1 for periods of up to several months; however, in exceptional cases, the segregation measure might last for several years[46].

87. <u>Material conditions</u> in the cells were in most respects adequate. That said, due to the fact that windows were covered with metal mesh, access to natural light was limited. At the end of the visit, the management of Tegel Prison indicated that they would immediately explore possibilities to improve access to natural light in the cells. **The Committee would like to be informed of the concrete steps taken in this regard.**

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46 At the time of the visit, the longest stay of a prisoner in Unit B-1 was seven months.

88. All prisoners in Unit B-1 were subject to an impoverished regime. In particular, there was no work or any form of occupational or sports activity on offer[47]. Out-of-cell activities were limited to one hour of outdoor exercise per day, **and the yard used for this purpose lacked any protection against inclement weather.** For the rest of the time (23 hours per day), prisoners were confined to their cells, occupying themselves by reading or listening to the radio. Such a state of affairs is inadmissible.

The delegation was informed that there was no possibility of relaxing the special security measure as such, but that there was some flexibility as to the restrictions imposed. For example, some prisoners were allowed to have cell association with another prisoner (*Umschluss*) or to go out for daily exercise with another prisoner from the Unit. This is a welcome development, but is far from sufficient to render the regime acceptable.

As the CPT has frequently emphasised[48], the existence of a satisfactory programme of activities is just as important - if not more so - in a high-security unit than on normal location. It can do much to counter the deleterious effects upon a prisoner's personality of living in the bubble-like atmosphere of such a unit. The activities provided should be as diverse as possible (education, sport, work of vocational value, etc.). As regards, in particular, work activities, it is clear that security considerations may preclude many types of work which are found on normal prison location. Nevertheless, this should not mean that only work of a tedious nature is provided for prisoners.

The CPT recommends that urgent steps be taken to develop the regime for prisoners in Unit B-1, in the light of the above remarks.

89. As regards outdoor exercise, the CPT welcomes the fact that, in practice, it was never curtailed at Berlin-Tegel Prison, although the possibility of imposing such curtailment had been provided for as regards some of the prisoners met. In this connection, the CPT must stress once again that there can be no justification for denying prisoners their right to daily outdoor exercise. The experience of Berlin-Tegel Prison clearly demonstrates that even in respect of prisoners deemed to warrant the highest security in the prison system, ways can be found to maintain internal security without resorting to such a measure. Therefore, **the CPT reiterates its recommendation that withdrawal of outdoor exercise be abolished from the relevant legislation as a special security measure (in respect of both sentenced and remand prisoners).**

90. The delegation was impressed by the professionalism of the staff working on Unit B-1. The atmosphere within the unit was generally relaxed, including between staff and prisoners, and the number of security incidents had been significantly reduced in recent years. This was clearly the result of the multidisciplinary approach of the team (involving also a social worker) and its focus on dynamic security. That said, **it would be desirable that prisoners also benefit from the regular presence of a psychologist.**

91. The arrangements made to allow prisoners to maintain contacts with the outside world were adequate. All prisoners could receive four half-hour visits per month (this entitlement could also be accumulated). It is noteworthy that prisoners were also granted regular access to the telephone.

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47 Prisoners could apply for distance-learning programmes.
48 Cf. paragraph 32 of the 11th General Report (CPT/Inf (2001) 16).

92. As regards the procedures related to the imposition of special security measures, the CPT notes that in all cases a formal reasoned decision was taken by the Prison Governor or one of the House Governors[49]. The decision was usually delivered in writing to the prisoner concerned and contained information on the avenues and deadlines of appeal (*Rechtsmittelbelehrung*)[50]. Whilst the *StVollzG* does not provide for any specific time limit for the imposition of a special security measure, the need for the imposition of such a measure was, in practice, reviewed by the prison administration at three-month intervals and either renewed or discontinued by a new formal decision.

That said, the CPT is particularly concerned about the fact that the prisoner involved was usually not heard on the matter before the decision on the imposition of a special security measure was taken. Further, it appeared that subsequent decisions to renew the application of the measure were not systematically notified in writing to the prisoner.

The CPT recommends that steps be taken to ensure that every prisoner in respect of whom a special security measure is envisaged is given an opportunity to be heard on the matter before a formal decision is taken. Further, **the prisoners concerned should always receive a copy of the decision, not only concerning the initial imposition of a measure but also the subsequent renewals thereof. They should also be required to sign an attestation that they have received the decision.**

3. Unit for Secure Placement (*Sicherungsverwahrung*)

93. The primary aim of the potentially indefinite placement under the measure of secure placement (*Sicherungsverwahrung)* is the protection of the public[51]. Placement orders are executed after a sentence has elapsed, but the order of placement may be made by the court at the time of sentencing, or during the course, or at completion, of a sentence of imprisonment. The criteria and procedures for placement under *Sicherungsverwahrung*, as well as for the review process, are set out in the Penal Code[52].

Berlin-Tegel Prison has a special unit in House V (*Teilanstalt V*) for inmates subject to secure placement (*Sicherungsverwahrte*), with a capacity of 15 places[53]. At the time of the visit, the establishment was accommodating 18 such inmates (of whom 15 were being held in the special unit, two on another floor in same house and one in a socio-therapeutic unit).

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49 Decisions on temporary measures (*kurzfristige Massnahmen*) for periods not exceeding three months could also be taken by the House Governor (*Teilanstaltsleiter*). If special security measures were imposed for more than three months, the prison administration was obliged to report the case to the supervisory authority (*Senatsverwaltung*). If the measure of strict segregation (*Einzelhaft*) was imposed for a total period of more than three months in a year, the approval of the supervisory authority (*Senatsverwaltung*) was required.

50 There are two legal remedies: request for judicial decision (*Antrag auf gerichtliche Entscheidung*) pursuant to Section 109, paragraph 1, *StVollzG*, and a complaint to the supervisory authority (*Dienstaufsichtsbeschwerde*).

51 Section 129 *StVollzG*.

52 Sections 66 *et seq*.

53 Tegel Prison is one of some ten such facilities for holding persons under this special placement measure. At the time of the visit, some 360 inmates were being held in *Sicherungsverwahrung* throughout Germany.

94. Material conditions in the unit were of a good or even very good standard, with several particularly positive elements: well equipped single rooms with sanitary annexes; a light and reasonably spacious communal environment; a small kitchen with equipment for inmates to prepare hot drinks and light snacks, and an area where washing, drying and ironing could be done.

95. In principle, inmates had access to the same activities as ordinary prisoners (in terms of work, education, etc.). In addition, in accordance with the relevant legislation[54], inmates benefited from a number of special privileges. In particular, cell doors remained open throughout the day, and inmates were granted additional entitlements for visits (two hours instead of one hour per month), outdoor exercise (four hours instead of one hour on non-working days), the supply of parcels (six rather than three per year) and pocket money (if there was no work). It is also noteworthy that all inmates had unrestricted access to the telephone.

96. In theory, at least, the unit offered opportunities for a positive custodial living environment. However, not all inmates were capable of making the best of these opportunities, which was not surprising if one takes into account that, according to medical staff, most if not all of the inmates were suffering from multiple personality disorders. The vast majority of inmates were completely demotivated, with only two taking any outdoor exercise, three working full-time and one part-time. Twelve inmates were offered work, but were not willing to take part in it. Thus, the vast majority of inmates was idling away their time alone in their cells, occupying themselves with watching TV or playing video games.

Even among those inmates who apparently assumed and coped with the responsibility for their daily lives on the unit, the sense was that the activities were strategies to pass time, without any real purpose. As might be expected, this appeared to be related to their indefinite *Sicherungsverwahrung*. Several inmates interviewed expressed a clear sense that they would never get out and one stated that the only thing he could do was prepare himself to die.

97. According to the prison administration, staff worked according to special treatment criteria, the aim being the individual's release from placement in *Sicherungsverwahrung*; the focus was to minimise the risk to the general public, as well as to deal with the physical and psychological effects of long-term custody. Yet, the delegation observed that in practice, staff (including the social worker) were conspicuous by their absence in this unit, thereby keeping staff-inmate contacts to a minimum.

98. The delegation was particularly concerned by the conditions in which two inmates were found. They were in a state of squalor and abandonment in their cells; both of them had serious medical conditions and one of them appeared to suffer from a serious psychiatric disorder. Indeed, the absence of restrictions in the unit was often combined with a lack of care. For these two inmates, this manifestly amounted to neglect. During the end-of-visit talks, the delegation drew the German authorities’ attention to the two above-mentioned cases. **The CPT would like to receive within one month detailed information on the action subsequently taken by the prison authorities of Berlin.**

[54] Sections 131 to 133 *StVollzG,* in conjunction with the Unified Federal Administrative Regulations (*Bundeseinheitliche Verwaltungsvorschriften zum Strafvollzugsgesetz*).

99. Even for the other inmates who were apparently coping better with their situation, the lack of staff engagement on the unit was not justifiable. Allowing inmates responsibility and a degree of independence does not imply that staff should leave them to their own devices. The duty of care cannot be ignored, particularly in relation to such a special group of inmates. The delegation gained the distinct impression that the staff themselves were not clear as to how to approach their work with these inmates. As well as empowering inmates to take charge of their lives in custody, there is a need for on-going support to deal with indefinite detention, as well as to address the legacy of serious past histories of aberrant behaviour and apparent psychological problems. Psychological care and support appeared to be seriously inadequate; **the CPT recommends that immediate steps be taken to remedy this shortcoming.**

100. The difficult question of how to implement in practice a humane and coherent policy regarding the treatment of persons placed in *Sicherungsverwahrung* needs to be addressed as a matter of urgency at the highest level. Working with this group of inmates is bound to be one of the hardest challenges facing prison staff.

Due to the potentially indefinite stay for the small (but growing) number of inmates held under *Sicherungsverwahrung*, there needs to be a particularly clear vision of the objectives in this unit and of how those objectives can be realistically achieved. The approach requires a high level of care involving a team of multi-disciplinary staff, intensive work with inmates on an individual basis (via promptly-prepared individualised plans), within a coherent framework for progression towards release, which should be a real option. The system should also allow for the maintenance of family contacts, when appropriate.

The CPT recommends that the German authorities institute an immediate review of the approach to *Sicherungsverwahrung* at Tegel Prison and, if appropriate, in other establishments in Germany accommodating persons subject to *Sicherungsverwahrung*, in the light of the above remarks.

101. Both management and staff emphasised that the strict separation of accommodation of inmates subject to *Sicherungsverwahrung* and ordinary prisoners had proved to be counter-productive, but that, for legal reasons, they were not able to change the situation. **The CPT would like to receive the German authorities' comments on this matter.**

102. Further, **the Committee would like to know whether there are any specific rehabilitation programmes at Tegel Prison and, if appropriate, in other prisons in Germany for prisoners for whom a *Sicherungsverwahrung* has been pronounced in the court sentence, with a view to avoiding to the extent possible the implementation of a *Sicherungsverwahrung* immediately following the prison term.**

103. The delegation observed that procedures related to the placement and review (bi-annually), as well as to the relaxation of security measures (*Vollzugslockerungen*), were carried out in compliance with the relevant legal provisions[55]. It is noteworthy, in this connection, that indigent inmates were provided with free legal aid (*ex officio* lawyers).

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[55] Sections 66 to 67e *StGB*.

D. Other prisons visited

1. Preliminary remarks

104. The CPT delegation visited Hameln Juvenile Prison and the Detached Unit of Ichtershausen Juvenile Prison in Weimar (hereinafter "Weimar/Ichtershausen Juvenile Prison") and Halle Prison No. 1.

As regards Hamburg-Fuhlsbüttel Prison and Hamburg Remand Prison, they were visited solely in the context of the delegation's focus upon foreign nationals held under immigration legislation in prison settings (cf. Section B. above).

105. **Hameln Juvenile Prison**, in service since 1980, currently accommodates mainly juveniles and young (male) adults[56] aged from 14 to 24, on remand or serving sentences. It also has a small section for immigration detainees (cf. paragraph 46). It is the largest closed establishment for juveniles in the country, with an official capacity of 727 (including the aforementioned seven-place section for foreign nationals and a 72-place open section). At the time of the visit there were 598 inmates.

Weimar/Ichtershausen Juvenile Prison[57] was built as a high-security prison in 1917 and initially used as an adult remand prison. It currently operates as a male establishment for remand prisoners aged 14 to 21 and for sentenced prisoners aged 14 to 16. The normal capacity of 70 has been increased by administrative act[58] to a maximum of 96. On the first day of the visit there were 81 inmates, the youngest aged 16.

Halle Prison No. 1 consists of various buildings mostly dating from the mid 19th century. With an official capacity of 284 places, at the time of the visit the establishment was accommodating a total population of 355 inmates: 174 adult male sentenced inmates; 120 adult male remand inmates; and 61 female inmates of various ages - eight adults on remand, 33 adults serving sentences and 20 young persons (14 young adults and six juveniles).

106. All three establishments visited were accommodating juveniles and young adults. The practice, which is well established in Germany, of holding juveniles and young adults together can be beneficial to the young persons involved, **but requires careful management to prevent the emergence of negative behaviours such as domination and exploitation, including violence.**

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56 Cf. Section 114 of the Law on Juvenile Justice (*Jugendgerichtsgesetz – JGG*). Exceptionally up to 26 years old, with the court's approval, when therapy/training was in progress.

57 The delegation did not visit the unit for the execution of the educational measure of short-term detention (*Jugendarrest*), which is a separate institution (*Jugendarrestanstalt*) with a capacity of 20 places.

58 Sections 145 and 146, paragraph 2, *StVollzG*.

107. At Halle Prison No. 1, the female section was sealed off from the men's accommodation, ensuring separation by gender but not by age. Within the female accommodation there was mixing of age groups including, on the remand unit, cell sharing on occasion between a juvenile and an adult inmate. Thus, a few days before the CPT’s visit, and even though there were several empty cells in the unit, a juvenile aged 17 was sharing a cell with an adult woman accused of a serious violent offence and in a state of considerable distress.

The Committee acknowledges that exceptional situations may arise in which it is actually in a juvenile's interest not to be separated from certain adults. However, the general requirement for separation of juveniles from adults is a principle enshrined in international treaty law[59]. **The CPT recommends that steps be taken to put an end to the mixed accommodation of juveniles and adults.**

2. Ill-treatment

108. The delegation received no allegations – nor any other evidence – of recent physical ill-treatment of prisoners by the staff of the three establishments visited.

In this connection, several prisoners at Hameln Juvenile Prison made positive comments with regard to the majority of staff. **However, in this establishment, as well as in Weimar/ Ichtershausen Juvenile Prison, a few prisoners complained of rude behaviour and/or the use of insulting or disrespectful language against them by some staff.**

109. The CPT is very concerned about the level of inter-prisoner violence and intimidation observed by the delegation at the three prisons visited.

At *Hameln Juvenile Prison*, a number of prisoners reported threats, extortion, blows and sexual assaults by fellow inmates. The chief doctor kept a register, with photographs, of all the allegations he received from prisoners concerning episodes of inter-prisoner violence. The injuries listed in this register varied from bruises to fractures (nose, metacarpal), and even to wounds caused by stabbing.

At *Weimar/Ichtershausen Juvenile Prison*, interviews with inmates and with a number of staff, as well as the delegation's own findings, disclosed a strong hierarchy - with racial overtones - within the prison population. The prospect of being subjected to threats, extortion, or even physical violence or sexual abuse, was particularly high among the most vulnerable prisoners, in this instance, those who appeared very young or physically weak. Indeed, the delegation became aware of a serious case of physical and sexual abuse of a prisoner by another, older prisoner that had occurred a few days before its visit; medical examination of the victim by the prison doctor had revealed haematomas compatible with the allegations. Several inmates were so afraid that they no longer dared to leave their cells, even refusing to come out for their daily hour of exercise in the open air.

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59 Cf. Article 10, paragraphs 2(b) and 3, of the International Covenant on Civil and Political Rights, and Article 37 (c) of the Convention on the Rights of the Child; Rule 18.8(c) of the Revised European Prison Rules (Recommendation Rec (2006) 2 of the Committee of Ministers of the Council of Europe).

At *Halle Prison No. 1*, interviews with prisoners revealed a culture of threat and intimidation as well as a strong prisoner power structure within the establishment; prisoners talked of "needing to be strong or protected", "fights for power, with bleeding noses and black eyes" and even rape. Prisoners suspected or convicted of sexual offences and homosexuals appeared to be particularly at risk of being assaulted by other prisoners. This was confirmed by some members of staff who expressed concern about sexual exploitation linked to a clear hierarchy among prisoners.

110. At *Hameln*, the management had for a considerable number of years been endeavouring to combat this problem on several fronts, with some success. The most vulnerable prisoners, for example, were placed in one particular building, and powerful groups were broken up by being dispersed throughout the establishment. The reduction in the prison population, during the summer of 2005, had also helped diminish the level of intimidation and violence among prisoners. As the management itself admitted, however, the problem had not been eradicated.

At *Weimar/Ichtershausen*, since the occurrence of a serious incident there in 2001 (when an inmate was murdered in his cell), the administration had focused mainly on cell allocation: a maximum of two prisoners per cell, provided that both agreed to share a cell; and a cell change as soon as any incident was reported to the administration. However, there was no real strategy for dealing with intimidation and violence among prisoners.

At *Halle*, the management was mainly relying on a stricter locked down regime, coupled with a network of informants, to control the problem of inter-prisoner intimidation and violence. However, the situation of fear and distrust thus created was clearly undermining the dynamic security within the prison.

111. In relation to the degree of protection owed by the prison authorities, the delegation was struck in all three establishments by the low level of staffing, particularly at nights and weekends. For example, at Hameln, a ten-member mobile team was on duty at night to cover an establishment of almost 600 inmates, leaving certain accommodation buildings without any staff presence; at Weimar/Ichtershausen, the number of staff was reduced to a minimum at weekends, with the result that visits and activities other than outdoor exercise could not take place and inmates were locked in their cells for two and a half days (from Friday afternoon to Monday morning) (cf. paragraphs 119 and 149).

112. The CPT wishes to recall that the prison authorities' duty of care includes the responsibility to protect inmates from other inmates who might wish to cause them harm. This is all the more important where a group is particularly vulnerable, as are minors. Any strategy for solving the problem of intimidation and violence between prisoners, if it is to be effective, requires prison staff to be in a position, including in sufficient numbers, to exercise their authority in an appropriate manner. Consequently, staff must be alert to signs of trouble and be both resolved and properly trained to intervene when necessary; what is more, prison staffing levels need to be adequate (at night as well as during the daytime). A key component in the management of inter-prisoner relations is the careful assessment, classification and cell allocation of individual prisoners within the population.[60]

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60 Cf. CPT/Inf (2003) 20, paragraph 94.

Another important tool for preventing inter-prisoner violence lies in the diligent examination by the prison administration of all relevant information regarding alleged inter-prisoner violence which may come to its attention, and, where appropriate, the instigation of proceedings. The lack of an appropriate reaction by the prison administration can foster a climate in which inmates minded to ill-treat other inmates can quickly come to believe - with very good reason - that they can do so with impunity. Prison doctors, as well as nursing staff, also have an important part to play in this context, as they are often the first people to whom detainees turn after being ill-treated or threatened by fellow inmates.

113. **The CPT recommends that, at Weimar/Ichtershausen Juvenile Prison, the authorities of Thüringen draw up and implement a comprehensive strategy to address the problem of intimidation and inter-prisoner violence, in the light of the above remarks[61], and that, at Hameln Juvenile Prison and Halle Prison No. 1, the authorities of Niedersachsen and Sachsen-Anhalt review their existing strategies to that same end and vigorously pursue the implementation of those strategies.**

3. Conditions of detention at Hameln and Weimar/Ichtershausen Juvenile Prisons

114. In the CPT's view, all juvenile prisoners, whether on remand or serving sentences, should be accommodated in detention centres specifically designed and designated for persons of this age group, offering regimes tailored to their needs and staffed by persons trained in dealing with the young.

As previously noted[62], young persons up to the age of 24 (or, exceptionally 26) were held at Hameln Juvenile Prison, and up to the age of 21 at Weimar/Ichtershausen Juvenile Prison. In such cases, the same standards should apply *mutatis mutandis* to young adults.

115. As regards material conditions, at *Hameln Juvenile Prison*, the buildings were in need of continuing repair despite relatively recent construction and ongoing renovation, with persisting problems of rain penetration and sewage leaks.

Cells were of a reasonable size for single occupancy (measuring 7 - 10m^2), with doubling in cells reportedly possible only with the consent of the prisoners concerned. The cells had a fully-partitioned toilet.

The delegation observed that the windows in some cells had coverings of various kinds (for example, on the top floor of House 9). Despite the explanation that the shutters were added to protect vulnerable prisoners from intimidation by other prisoners nearby, the CPT remains concerned about the adverse effects on light and ventilation in the cells. Furthermore, the cells in House 2 had been fitted with new windows, only a small part of which could be opened, reportedly permitting insufficient airing of the cells, particularly when prisoners smoked.

Access to showers appeared to be good, but there was room for improvement in the general hygiene of some accommodation areas.

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61 The authorities might also refer to the remarks made in paragraph 27 of the CPT's 11th General Report (CPT/Inf (2001) 16).

62 Cf. paragraph 105.

116. At *Weimar/Ichtershausen Juvenile Prison*, despite substantial refurbishment during the period 1995 to 1997, material conditions were not satisfactory, due in large part to the incompatibility of the original design as a high-security prison with its current use as a juvenile establishment. The delegation was informed of plans for construction of a new prison, specifically designed for juvenile inmates, to replace Weimar/Ichtershausen Juvenile Prison. **The CPT would like to receive precise information regarding these plans (which should be given a high priority).**

Cells varied in size from $8m^2$ and $17.8m^2$. Some cells were not adequate for the double occupancy observed during the visit (for example, two inmates in a cell measuring $8.4m^2$ including the toilet area). Cell sharing was rendered more problematic by the fact that the in-cell toilet areas were not fully partitioned.

The delegation saw cells with a variety of window coverings (made of Plexiglas and metal) causing problems of access to natural light and ventilation. The coverings gave rise to additional difficulties in certain cells where young non-smokers had been placed with heavy smokers. A recurrent problem of passive smoking was reported by the medical staff and observed by the delegation, who shared the medical staff's concern about this matter.

The cells were sparsely decorated, impersonal and austere. Dirty mattresses and bedding were seen in some cells and the general hygiene in some areas left something to be desired.

117. With regard to conditions at both prisons visited, **the CPT recommends that steps be taken to ensure that:**

- **all cells have adequate access to daylight and good ventilation; any devices affixed to cell windows should allow adequate passage of natural light and fresh air;**

- **general hygiene is kept at a consistently acceptable level.**

Further, **the CPT recommends that:**

- **at Hameln Juvenile Prison, sanitary facilities in cells accommodating more than one prisoner be fully partitioned;**

- **for so long as Weimar/Ichtershausen Juvenile Prison continues to be in use, cells measuring less than $8m^2$ (excluding the toilet area) accommodate no more than one prisoner.**

Finally, **the Committee recommends that the allocation policy and practice be reviewed in both establishments visited, taking into account the problem of passive smoking encountered.**

118. At *Hameln Juvenile Prison*, considerable provision was made for activities, with 125 inmates reportedly engaged in education and 176 in vocational basic training or further training at the time of the visit. There was also work for 140 inmates. Thus 441 out of the 598 inmates were reported to be involved in education, training or work.

A differentiated regime was in operation based on allocation of individuals according to their status and behaviour and needs, the latter being assessed on admission and thereafter every four months. Advancement through the progressive levels of regime towards greater relaxation of restrictions and access to facilities, including therapy, depended upon demonstrated willingness to co-operate (*Mitarbeitsbereitschaft*).

A behavioural approach can be beneficial in encouraging young inmates to abide by the norms of living within a group and pursue constructive paths of self-development. However, withdrawal of incentives due to non-compliance can quickly reach a level of deprivation incompatible with minimum requirements. The delegation found that the lock-up regime (*Einschluss*) in House 2 for uncooperative inmates was overly restrictive, with no education, work, association, sports, music, television, radio or ordinary magazines. For young inmates placed there the day consisted of being constantly confined to their cells apart from one hour of outdoor exercise and a shower. This "educational measure" of indefinite duration was akin to a cellular confinement regime offering no purposeful activities and not far removed from total isolation (*Absonderung*). However, whereas solitary confinement was a formal disciplinary punishment, restrictive lock-up (*Einschluss*) was a discretionary educational measure which was imposed by a transfer conference (chaired by the House Governor) with limited formal procedural safeguards. In particular, the inmates concerned were not systematically heard in person by the transfer conference. Further, a number of inmates claimed that they had not been informed about the possibility and the modalities of lodging an appeal against the measure imposed.

119. At *Weimar/Ichtershausen Juvenile Prison*, the situation as regards activities was far less favourable. The layout made it difficult to have separate units for different age groups as well as for inmates of different status, and also precluded a differentiated approach to regime activities. Most of the young inmates were locked in their cells for up to 23 hours a day. In-cell activities were limited to playing cards, reading, listening to the radio or watching television, if an inmate had his own equipment.

The open-air exercise area was equipped with two table-tennis tables and two giant chess sets, but offered no shelter from inclement weather. There were no common living or recreation rooms and no association (*Umschluss*).

As to organised activities, 15 work places existed, all of them related to upkeep of the establishment (housework, maintenance, tasks in the kitchen or library). Basic education was available for up to twelve inmates for a limited number of hours and ten prisoners were reportedly taking computer courses. Group occupational therapy was organised for particularly difficult inmates. There was scant provision of recreational/sport activities and participation depended on staff discretion, inmates being banned from these activities for poor behaviour.

120. **With regard to the educational measure of lock-up (*Einschluss*) at Hameln Juvenile Prison, the CPT recommends that steps be taken to ensure that the prisoners concerned are heard in person concerning the application of the measure, receive a copy of the decision and are informed in writing of the modalities for appeals against that decision. Inmates concerned should also benefit from individual custody plans indicating clearly how they may progress out of the regime.** More generally, **the application of the educational measure of lock-up should be subject to frequent and regular review and the process be carefully overseen by senior managers to protect against the risk of arbitrariness and/or an excessive duration of the measure.**

In relation to Weimar/Ichtershausen Juvenile Prison, the CPT recommends that, pending the entry into service of more suitable premises, the authorities of Thüringen take immediate steps to increase the programme of activities available for inmates, including greater opportunities for work, education and vocational training, as well as for sports and other recreational activities.

4. Conditions of detention at Halle Prison No. 1

121. As regards material conditions, at Halle Prison No. 1, many cells designed as single cells were used for double occupancy, although the toilets in the cells were not or not fully partitioned. The CPT notes the ongoing refurbishment programme, including partitioning of toilets.

The cell accommodation was in other respects satisfactory, as were the outdoor facilities. In addition to the two exercise yards, there was a large area for playing football, basketball and volleyball.

122. The separate closed section for female inmates of all ages had been fully refurbished in recent years and conditions of detention were on the whole good, although the official capacity was slightly exceeded. The cells were of a good size (about $10m^2$) for single occupancy and just about adequate for two inmates, with good access to natural light and ventilation; in addition, there was a multi-occupancy room for four inmates on each of the three floors. The in-cell toilet areas were fully partitioned, but (unlike the rest of the cells) poorly ventilated.

Each floor also had pay-laundering facilities, a recreation room with a television, and a gym room, regrettably without much working equipment. A piano room was located in the adjoining building next to the visits rooms. A very fine garden had been laid out in the grounds, but offered no shelter from inclement weather.

The CPT recommends that:

- **the refurbishment programme be accelerated to ensure that all toilets are fully partitioned and properly ventilated and, pending such refurbishment, cells with toilets which are not fully partitioned not be shared;**

- **outside areas for exercise be provided with shelter from inclement weather and all inmates, and in particular young inmates, be encouraged to take daily exercise.**

123. The number of inmates actually involved in activities was low (for example, only 27% of

the male population had work or education at the time of the visit) despite the fact that more places were in principle available[63], including work therapy and training for men and places in a new workshop, prison work and basic education for women. The unsatisfactorily low rate of activities applied also to the long-term prisoners. Furthermore, there was a total lack of effective preparation for release.

Recreational opportunities included music, library, handicrafts, and gym. There were periods of association during the afternoons (*Umschluss*) involving up to three inmates together in a cell. However, female juvenile inmates who did not go out for daily exercise were reportedly not allowed association.

124. **The CPT recommends that, with a view to providing inmates in all sections of Halle Prison No. 1 with purposeful activities and programmes for a reasonable part of each day, steps be taken to ensure that:**

- **the existing facilities for work, education and training are used to their full potential;**
- **the range of activities is increased;**
- **individual custody plans are introduced.**

Further, **steps should be taken to develop programmes to prepare inmates for release.**

5. Health care

a. introduction

125. Health-care services for persons deprived of their liberty is a subject of direct relevance to the CPT's mandate. An inadequate level of health care can lead rapidly to situations falling within the scope of the term "inhuman and degrading treatment". Further, the health-care service in a given establishment can potentially play an important role in combating the infliction of ill-treatment, both in that establishment and elsewhere (in particular in police establishments). Moreover, it is well placed to make a positive impact on the overall quality of life in the establishment within which it operates.

63 The policy of outsourcing workshops and applying criteria of market profitability contributed to the low level of employment.

b. health-care facilities

126. It should be noted at the outset that, in the three establishments visited, the premises and health-care facilities were of a satisfactory standard. At *Halle Prison No. 1,* the health-care service was accommodated in a separate three-storey building. The first floor, which had been refurbished, contained the consultation unit, the dental surgery and the pharmacy, all fully equipped. The second and third floors were undergoing refurbishment (a seven-bed infirmary was to be opened on the second floor in 2006). Separate facilities and equipment were also available in the building accommodating women prisoners (including an ultrasound scanner and a special bed for gynaecological examinations).

Hameln Juvenile Prison had an impressive health-care centre in terms of premises, facilities and equipment. *Weimar/Ichtershausen Juvenile Prison* also had a well equipped health-care surgery and dental surgery.

c. health-care staff

127. In all the establishments visited, there was insufficient general practitioner time provided within the premises. The most critical situation was observed at *Halle Prison No. 1*, where the post of prison doctor had been vacant since April 2005. In his absence, a temporary general practitioner/internist provided consultations for three to four hours per working day - equivalent to 0.4 of a full-time post - for a population of about 350 prisoners. At *Hameln and Weimar/Ichtershausen Juvenile Prisons,* the situation was slightly better, though not satisfactory. General practitioners were present for the equivalent of 1.1 of a full-time post for almost 600 prisoners and 0.2 for about 80 prisoners respectively. In all three establishments, the insufficient presence of general practitioners had adverse consequences, albeit in varying proportions. At Halle Prison No. 1, for example, in 50% of cases, the admission interview with the doctor did not take place until three or more days after a new arrival’s admission to the establishment (cf. paragraph 135). Lengthy delays were also observed in subsequent access to the doctor (cf. paragraph 136).

In the CPT’s opinion, there should be the equivalent of a full-time post of general practitioner per 300 prisoners. **The CPT recommends that the time spent by general practitioners in the three establishments visited be reviewed accordingly.**

128. The doctors received varying support in terms of the number of nursing and paramedical staff. At *Halle Prison No. 1*, the temporary doctor was assisted by a team of six qualified nurses, who were present in the establishment from 6 a.m. to 7 p.m. on working days. This staffing level is adequate for an establishment accommodating about 300 prisoners[64]. At *Weimar/Ichtershausen Juvenile Prison*, a nurse was present from 6.45 a.m. to 4.15 p.m. on working days, and in addition there was a prison officer with a nursing diploma, working a few hours per week. This nursing staff presence also seems adequate for an establishment accommodating about 80 prisoners.

64 That being said, the number should be slightly increased if the planned seven-bed infirmary is opened in 2006, as indicated to the delegation.

On the other hand, the nursing staff at *Hameln Juvenile Prison* comprised only six nurses (with a 7th post scheduled for 2007) for an establishment accommodating some 600 prisoners at the time of the visit. Nurses were present from 6 a.m. to 8 p.m. during the week and from 8 a.m. to 12 noon at weekends. **The CPT recommends that the number of nursing staff at Hameln Juvenile Prison be increased in due course to the equivalent of twelve full-time nursing posts. A staffing level of this kind would also make it possible to ensure that a nurse is on duty in the establishment round the clock, including nights and weekends.**

129. Over and above the question of staffing levels, the delegation is concerned at the status of nursing staff, who are still public service employees in the prison sector. As indicated above, at Weimar/Ichtershausen Juvenile Prison, a prison officer performed nursing duties and custodial duties alternately. Moreover, the nurse in post had been informed that in 2006 she would have to cut down her nursing activities by 40% and perform the equivalent number of hours as a prison officer in the detention facility.

It should be pointed out that one of the paramount principles that must govern the work of medical and paramedical staff in prison is professional independence. The duty assigned to this staff is to treat patients (i.e. sick prisoners). Consequently, in order to protect the relationship of trust that is essential between health-care staff and patients in prison, and to ensure respect for the medical confidentiality owed to patients in prison, health-care activities and security activities must be kept completely separate. In this case, it is not acceptable that the same staff member should perform both health-care and security duties in the same establishment: a situation of this kind can speedily give rise to ethical dilemmas and irreconcilable choices.

In this respect, the CPT considers it very important that the status of health-care staff be aligned as closely as possible with that of health-care staff working in the community at large. **The Committee recommends that immediate steps be taken at Weimar/Ichtershausen Juvenile Prison (and in any other prisons in Germany in which such dual functions occur) to preserve the principle of independence of health-care staff, in the light of the above remarks.**

130. At *Halle Prison No. 1*, the following <u>specialist</u> posts were filled (in full-time equivalent %): dentist 60%; psychiatrist and surgeon 10%; gynaecologist, dermatologist and drug addiction specialist 5%; ophthalmologist and otorhinolaryngologist 2.5%. The establishment also had two full-time psychologists who, in clinical terms, were involved, among others, in crisis intervention for suicidal and violent prisoners, assessing sexual offenders and individual psychotherapy. This specialist care provision seems satisfactory on the whole, with the exception of psychiatric care and care of drug-addicted prisoners, which were distinctly inadequate.

131. It very soon became apparent that the psychiatrist was in fact present for 3 to 4 hours per month (and not 3 to 4 hours per week as indicated above[65]), which had some serious consequences for prisoners. Examples[66] include the case of a female prisoner who had attempted to kill a relative and then commit suicide on 27 October 2005. Since her arrest and her arrival at the prison two days later (29 October), she had had a short admission interview with the temporary general practitioner and with a psychologist, who had drawn up a brief report on 1 November. During a second contact with the doctor on 15 November, he had apparently told her that "he did not wish to discuss her case". At the time of the delegation's visit to the prison from 22 to 24 November 2005, she had still not seen a psychiatrist or received a psychiatric opinion.

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65 This was because there was only one psychiatrist in post for all the prisons in Sachsen-Anhalt.

66 Among other examples: three prisoners who had been awaiting transfer to a psychiatric establishment

According to the delegation's psychiatrist expert, the prisoner concerned was suffering from serious psychiatric disorders. She described in great detail an acute sense of guilt and lonely thoughts revolving around suicide and disillusion with her victim, neighbours and family. In the CPT's opinion, failing to provide appropriate care to a patient in such a mental state constitutes serious medical negligence and could be considered as amounting to ill-treatment. Upon the intervention of the delegation, the management indicated that it would take immediate steps to remedy this state of affairs.

The CPT recommends that immediate steps be taken at Halle Prison No. 1 to substantially increase the time spent in the establishment by the psychiatrist(s). The time spent there by the drug addiction specialist should also be increased.

132. At *Weimar/Ichtershausen Juvenile Prison*, the specialist medical services provided were limited on account of the small number of prisoners concerned. A temporary dentist was the only specialist regularly visiting the prison (half a day per week). A psychologist was present in the establishment two days a week (from 11 a.m. to 3.30 p.m.) who, in clinical terms, offered individual counselling sessions, though in very limited numbers and solely on request, to young sex offenders. He also worked with prisoners exhibiting suicidal behaviour.

133. At *Hameln Juvenile Prison*, inmates received highly satisfactory specialist care. A psychiatrist, a dermatologist, a dentist and an orthopaedic specialist visited the prison three times a week, and an ophthalmologist twice a week. The health-care team included six psychologists, four of whom exclusively dealt with clinical work in the establishment.

However, serious difficulties were observed with regard to the transfer of prisoners suffering from mental disorders to specialist hospitals. A case in point is that of a 15-year-old juvenile held in the Security Unit who had already made five suicide attempts and for whom the prison doctor and psychiatrist had recommended transfer to a specialist hospital; however, the psychiatric unit for adolescents in Hildersheim psychiatric hospital refused to admit him.

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following a court decision for more than a month had still not seen a psychiatrist; several prisoners interviewed by the delegation said that it was impossible for them to receive care although they were suffering from depression, anxiety or other psychiatric disorders, because the prison's two psychologists were chiefly assigned to non-clinical tasks; the psychiatrist did not appear to be involved in assessment of the use of secure cells for suicidal prisoners; etc.

More generally, it would seem that the application of Article 455 of the Code of Criminal Procedure (*StPO*) – which provides for the possibility of interrupting a sentence for the purpose of receiving medical treatment outside – poses numerous problems with respect to prisoners suffering from psychiatric disorders.

The CPT would like to receive the German authorities' comments on the above-mentioned issues.

d. medical screening

134. Every newly-admitted prisoner should be properly interviewed and physically examined by a medical doctor as soon as possible after his admission; save for exceptional circumstances, the interview/examination should be carried out on the day of admission, especially insofar as remand establishments are concerned. Such medical screening on admission could also be performed by a fully qualified nurse reporting to a doctor. In addition, each newly arrived prisoner should be given an information leaflet/booklet explaining the existence and functioning of the health-care service and listing basic hygiene measures.

135. As regards *Halle Prison No. 1*, the delegation has already drawn attention to the substantial delays observed with regard to medical examinations on admission (cf. paragraph 127). In contrast, at *Weimar/Ichtershausen Juvenile Prison*, the nurse saw all newly arrived prisoners within 24 hours and reported to the doctor. The latter then saw these prisoners during his twice-weekly visits to the prison. Procedures for medical examinations on admission to *Hameln Juvenile Prison* were especially well organised. In particular, all injuries observed on admission of a new prisoner (including digital photographs), together with his allegations concerning them, were recorded in a computerised system, together with the reports to the administrative and judicial authorities. **The CPT invites the German authorities to bring the above-mentioned system for computerised recording of injuries on admission into general use in German prisons.**

With regard to the information obtained during the medical examination on admission, the delegation found that, at Halle Prison No. 1, the health-care service filled in a personal details form (*Personenbeschreibung*) - for the benefit of the prison administration - including information on the prisoner's hair colour, on whether he wore a beard or was tattooed, and so on. **Such an activity has nothing to do with medical tasks and should be assigned to prison administration units.**

At *Weimar/Ichtershausen Juvenile Prison,* information for new arrivals was provided by the nurse, who also distributed a booklet on transmissible diseases. Likewise, at *Hameln Juvenile Prison*, each new arrival was briefed on the functioning of the health-care service and on high-risk behaviour, and a wide range of leaflets were available. However, **no written information on health care or the prevention of transmissible diseases was available at Halle Prison No. 1**.

e. treatment and medical files

136. At *Halle Prison No. 1*, prisoners gained access to treatment through the prison officers of each section. Moreover, the prison officers appeared to monitor correspondence directly addressed to the medical service. This state of affairs had some serious consequences: requests to see the doctor were apparently screened by non-medical staff and often forwarded to the health-care unit with considerable delay; the necessary confidentiality of exchanges between patients and the health-care service was not guaranteed; and medical staff had no way of checking when a prisoner had requested to see the doctor. **The CPT recommends that immediate steps be taken to remedy the above-mentioned deficiencies.**

At *Weimar/Ichtershausen and Hameln Juvenile Prisons*, access to treatment was obtained as it should be, by means of a request to a nurse in the health-care service. That being said, **delays were reported in gaining access to the doctor at Weimar/Ichtershausen Juvenile Prison.**

137. In emergencies, each establishment had clear instructions for calling in a duty doctor or the medical emergency services. For hospitalisation purposes, inmates of *Halle Prison No. 1* were referred to Leipzig Prison Hospital, Fröntenberg Hospital or Halle General Hospital. Young inmates of *Weimar/Ichtershausen Juvenile Prison* were systematically referred to local hospitals. Young inmates of *Hameln Prison* were referred either to local hospitals or to Lingen Prison Hospital.

As regards the transfer of prisoners elsewhere for hospital tests or in-patient treatment, the delegation was informed at *Hameln Juvenile Prison* that the decision to take special security measures with regard to a prisoner (hand- and/or footcuffing) rested exclusively with the prison authorities, and that the prisoners concerned were not systematically hand- or footcuffed, since the procedure was based on individual risk assessment. Further, hand- and footcuffs were said to be removed during medical consultations/examinations. However, at *Halle Prison No. 1*, the delegation was told that whenever prisoners were transferred to the city's general hospital for treatment, they were hand- and footcuffed during transportation. Moreover, prisoners were said to be occasionally handcuffed during medical consultations/examinations and routinely handcuffed to their beds when staying in hospital.

In the CPT's view, handcuffing patients during medical consultations/examinations is not acceptable, since it infringes upon the dignity of the prisoners concerned and certainly prohibits the development of a proper doctor-patient relationship. Further, alternative solutions (e.g. creation of secure rooms) should be found in order to avoid handcuffing patients to their beds in general hospitals. The use of hand- and footcuffs during transportation to hospitals should always be based on an individual risk assessment.

The CPT recommends that current practice concerning the hand-footcuffing of prisoners during their transfer to outside hospitals as well as during medical consultations/examinations or accommodation in these hospitals be reviewed, in the light of the above remarks.

138. The CPT would like to highlight the substantial - and successful - efforts made at *Hameln Juvenile Prison* to reduce suicide risks. These efforts - a special suicide prevention programme - were based on multidisciplinary work by the doctor, the psychiatrist, the psychologists and the prison officers; as a result, there had been no suicides over the past three-and-a-half years, whereas there had previously been at least two successful suicides per year in the establishment. **The CPT invites the authorities of all other *Länder* to consider the introduction of such a programme in all German prisons.**

139. At *Halle Prison No. 1* and *Weimar/Ichtershausen Juvenile Prison*, medical files were on the whole well kept, and data were accessible to medical and paramedical staff only. At *Hameln Juvenile Prison*, medical files were kept to a particularly high standard, and medical confidentiality was respected in all circumstances. Furthermore, in the three establishments visited, no prison officers were present during medical examinations.

6. Other issues

a. staff

140. The CPT has already expressed its concerns about low staffing levels in all establishments visited in the context of inter-prisoner violence (cf. paragraph 109).

141. At *Halle Prison No. 1*, the delegation was informed that, out of a total of 135 posts of prison officer, more than ten were vacant at the time of the visit and that, on average, some 20 staff members were on sick leave. Due to these shortages and the current level of overcrowding (some 25% above capacity), many staff members were required to accumulate a considerable amount of overtime (in some cases, up to 160 days). The delegation was also informed that, due to budgetary restrictions, there was a general freeze on the employment of new staff. Thus, some 15 staff members who were to retire within the next two years would either not be replaced at all or replaced by former police officers with little specialised training in prison matters.

A major police intervention in December 2004, which also targeted a number of staff, and the subsequent inquiries had led not only to a further decrease in the number and motivation of staff[67] but also to a destabilisation in the establishment with serious consequences for both inmates and staff. Even one year later, the prevailing tension and demotivation was tangible.

Further, human contact between staff and prisoners was kept to a minimum. Many prisoners met by the delegation complained about the fact that they had hardly any direct contact with staff, and that they were required to communicate with them mainly in writing (even for minor matters).

In the light of the above, **the CPT recommends that steps be taken by the authorities of Sachsen-Anhalt to significantly increase the number of custodial staff at Halle Prison No. 1.** Further, **all the outstanding issues related to the above-mentioned incident should be concluded as a matter of urgency, for the benefit of all.**

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67 Eight staff members have been (temporarily) suspended from service on suspicion of misconduct.

142. According to an assessment made by the management of *Hameln Juvenile Prison* in 2001, the establishment needed a total of 248 members of staff, while the actual number of staff was 212 at the time of the visit. Due to the internal layout of the house group accommodation reducing opportunities for observation, and the lack of staff presence on all house blocks at night, it appeared to be difficult, if not impossible, to ensure adequate supervision, and thus greater safety, for prisoners within the house groups (cf. paragraph 111). Further, certain activities (e.g. outdoor sports activities) had to be reduced for some of the house groups.

The CPT welcomes the fact that some 25 additional staff members had been recruited shortly before the visit. **The Committee trusts that this staff reinforcement will allow, *inter alia*, for increased staff cover at night.**

143. At *Weimar/Ichtershausen Juvenile Prison*, prisoners were also required to communicate with staff mainly in writing, thereby keeping human contact between staff and prisoners to a minimum. Such a state of affairs is all the more detrimental for juveniles. Further, low staffing levels had serious repercussions on the number of out-of-cell activities as well as on visiting hours. In this connection, reference is made to the remarks and recommendations made in paragraphs 119, 120 and 149.

b. discipline

144. The CPT notes with concern that the legal framework[68] governing disciplinary sanctions remained unchanged, despite the specific recommendations and comments made by the Committee after the 2000 visit.

In particular, prisoners subject to the sanction of cellular confinement were still not allowed access to reading material. **The CPT calls upon the German authorities to abolish this restriction without further delay.**

Further, the sanction of deprivation of outdoor exercise for remand prisoners is still maintained in the relevant legislation[69]. During the visit, the German authorities re-confirmed that this provision was no longer applied in any of the *Länder*. **The CPT trusts that this provision will be formally abolished in the context of the elaboration of draft legislation on remand detention.**

145. In the report on the 2000 visit[70], the CPT invited the German authorities to explore the possibility of abolishing in respect of juvenile prisoners the sanctions of limitation of contact with the outside world (including relatives) to urgent matters for a period not exceeding three months, as well as of deprivation of reading material for a period not exceeding two weeks.

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68 Cf. Section 103, paragraph 1, *StVollzG*, Section 68, paragraph 1, *UVollzO*, Section 87 of the Unified Administrative Regulations on the Imprisonment of Juveniles (*Bundeseinheitliche Verwaltungsvorschriften zum Jugendstrafvollzug - VVJug*).

69 Cf. Section 68, paragraph 1, alinea 7, *UVollzO*.

70 Cf. paragraph 111 of CPT/Inf (2003) 20.

In their response to the above-mentioned report, the German authorities indicated that the *Länder* had diverging views on this matter. At the same time, it was stated that these sanctions were hardly ever imposed (if at all) in a number of *Länder*; this is a welcome development. **The CPT encourages the German authorities to take the necessary steps to ensure that the above-mentioned restrictions are abolished in respect of juvenile prisoners in <u>all</u> *Länder*.**

c. security measures

146. As regards the prohibition of outdoor exercise as a security measure[71], the remarks and recommendation made in paragraph 89 equally apply to Halle Prison No. 1, as well as to Hameln and Weimar/Ichtershausen Juvenile Prisons.

d. means of restraint

147. In all the prisons visited, there was at least one security cell (*besonders gesicherter Haftraum*), in which prisoners could be subjected to means of physical restraint (*Fixierung*). All such cells were equipped with CCTV, in order to ensure visual supervision. However, in none of the establishments visited was continuous and direct monitoring performed by a member of staff.

The CPT is seriously concerned by the fact that prisoners were occasionally subjected to *Fixierung* for prolonged periods (e.g. up to six days at Hameln Juvenile Prison; up to four days at Weimar/Ichtershausen Juvenile Prison). The Committee must stress once again that the duration of any resort to *Fixierung* should be for the shortest possible time (usually minutes or at most a few hours). Restraining prisoners for periods of days at a time cannot have any justification and would amount to ill-treatment.

At Halle Prison No. 1 and Hameln Juvenile Prison, inmates subjected to *Fixierung* were immediately seen by a doctor. However, at Weimar/Ichtershausen, the delegation observed that the doctor was on occasion informed of such incidents only after several days (especially when the resort to *Fixierung* began during or shortly before a weekend). Such a state of affairs is not acceptable.

The case of an 18-year old prisoner met by the delegation at Weimar/Ichtershausen gives rise for particular concern. In September 2005, he was subjected to *Fixierung* on a mattress without blankets, using metal police-style cuffs for wrists and ankles, in order to prevent him from self-harm. Further, he was kept undressed except for his underpants. After some time he passed urine and then soiled himself. When staff became aware of the situation during a routine check, they cut off his underpants and hosed him down with cold water to remove the faeces. According to the documentation available, he spent a total of 84 hours under some form of restraint (initially four-point and, at a later stage, two-point *Fixierung*). For about 24 hours during this period, he was stripped naked, which he found a humiliating experience.

71 Cf. Sections 88, paragraph 2, alinea 4, *StVollzG* and Section 63, paragraph 1, alinea 6, *UVollzO*.

By letter dated 22 December 2005, the Ministry of Justice of Thüringen informed the CPT that Weimar/Ichtershausen Juvenile Prison had already purchased special equipment for *Fixierung* with soft cloth straps prior to the above-mentioned incident, but that, due to technical problems, the anchorages for fixing the straps had not yet been adjusted. Thus, exceptionally, recourse had been had to the use of metal police-style cuffs. It was confirmed that metal cuffs of this kind were no longer used for *Fixierung* at any prison in Thüringen. This is a welcome development.

148. As regards the general issue of resorting to *Fixierung* in a non-medical setting, the duration of such a measure, the involvement of medical staff and the level of supervision of prisoners subject to *Fixierung*, **the remarks and recommendation made in paragraph 11 apply equally to Halle Prison No. 1, as well as to Hameln and Weimar/Ichtershausen Juvenile Prisons.**

e. contacts with the outside world

149. In all establishments visited, sentenced prisoners were usually granted a one-hour visit and remand prisoners two half-hour visits per month. The CPT noted that, at Halle Prison No. 1 and Hameln Juvenile Prison, a number of sentenced prisoners were actually allowed to have two one-hour visits per month. It is also praiseworthy that, at Hameln, inmates who engaged in educational and/or therapeutic activities could benefit from extended visits of up to four hours.

The Committee wishes to stress that a general visit entitlement of a total of one hour per month (as provided for in the relevant legal provisions[72]) is clearly not sufficient to allow inmates to maintain good relations with their families and friends, and this is even more the case as regards juvenile prisoners. It is also a matter of concern that, at Weimar/Ichtershausen, no visits could be received on weekends (due to low staffing levels).

The CPT recommends that the authorities of all *Länder* in Germany take steps to ensure that the general visit entitlement for both sentenced and remand prisoners is increased to a total of at least two hours per month. The entitlement for juvenile prisoners should be even more favourable. Prisoners should also be allowed to accumulate visit entitlements for periods during which no visits have been received.

Further, **steps should be taken by the authorities of Thüringen to ensure that prisoners at Weimar/Ichtershausen Juvenile Prison can also receive visits at weekends.**

150. The CPT welcomes the fact that both sentenced prisoners and (with the approval of the relevant judicial authorities) remand prisoners were usually granted access to a telephone at Halle Prison No.1 (twice a week for ten minutes) and at Hameln Juvenile Prison (every day). That said, the Committee is very concerned by the fact that no such possibility existed for remand prisoners at Weimar/Ichtershausen Juvenile Prison (except in urgent cases).

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72 Cf. Section 24, paragraph 1, *StVollzG* and Sections 24, paragraph 1, and 25 *UVollzO*.

Therefore, **the CPT must recommend once again that steps be taken by the authorities of Thüringen and, if appropriate, of other *Länder* to ensure that remand prisoners (juveniles <u>and</u> adults) are granted regular access to a telephone.** Such access is now guaranteed in many European countries; if there is a perceived risk of collusion in an individual case, a particular phone call could be monitored.

f. internal complaints procedures

151. Both at Halle Prison No. 1 and Hameln Juvenile Prison, there was a formalised system for internal complaints by prisoners to the Prison Governor. In contrast, at Weimar/Ichtershausen Juvenile Prison, prisoners' complaints were usually handled only informally by the head of the detached unit and no record was kept of such complaints. **Steps should be taken at Weimar/Ichtershausen Juvenile Prison to introduce a formalised system which allows prisoners to address complaints in a confidential manner to the Prison Governor.**

152. With regard to Hameln Juvenile Prison, some allegations were received that letters addressed to the Prison Governor or the Ministry of Justice had been opened by prison staff, thus preventing inmates from submitting complaints in a confidential manner. **The CPT would like to receive the comments of the authorities of Niedersachsen on this matter.**

g. information on rights

153. In all establishments visited, newly arrived prisoners received oral information about the house rules and the rights of prisoners. For this purpose, special induction courses were being organised at Hameln Juvenile Prison. In addition, information sheets were provided to prisoners in a variety of foreign languages at Hameln and Weimar/Ichtershausen Juvenile Prisons.

That said, no written information was provided to prisoners at Halle Prison No. 1. Thus, the provision of relevant information to foreign nationals who were not able to understand German appeared to be problematic. Further, the information sheets used at Weimar/Ichtershausen (in German and other languages) appeared to be somewhat out of date (i.e. dating back to the early 1980s).

The CPT recommends that steps be taken by the authorities of Sachsen-Anhalt to ensure that all newly arrived prisoners at Halle Prison No. 1 receive written information describing in a straightforward manner the main features of the prison regime, prisoners' rights and duties, complaints procedures, basic legal information, etc. This leaflet should be translated into an appropriate range of foreign languages.

Further, **steps should be taken at Weimar/Ichtershausen Juvenile Prison to update the existing information sheets.**

h. legal protection of young offenders

154. In paragraph 117 of the report on the 2000 visit, the CPT requested the German authorities' comments on the persistent lack of a specific legislation governing the imprisonment of young offenders.

In their response to the above-mentioned report, the German authorities stated that "[t]he creation of statutory provisions for youth prisons over and above the existing legal framework is an important project. It has however not been possible to implement a legislative procedure because of years of different views on the concept behind the imprisonment of young offenders as these relate to treatment concepts, aspects of security and order and the protection of the public, as well as financial difficulties in the Länder, which are competent for youth prisons. There should therefore be a new concept created by a broad consensus for the regulation of juvenile prisons. […] The Federal Government has asked a group of experts to carry out preparatory work."

During the 2005 visit, the CPT noted that only limited progress had been made in the elaboration of a specific legal framework. The Committee has noted with great interest the judgement[73] of the Federal Constitutional Court of 31 May 2006, in which the German authorities were instructed to establish a proper legal basis for the imprisonment of young offenders by December 2007. **The CPT would like to receive, in due course, a copy of the draft legislation which is being prepared for this purpose.**

[73] 2 BvR 1673/04 and 2 BvR 2402/04.

E. Psychiatric establishments

1. Preliminary remarks

155. Neustadt Psychiatric Centre (*psychatrium GRUPPE*) in Schleswig-Holstein was visited for the first time, while the visit to Nordbaden Psychiatric Centre in Wiesloch (Baden-Württemberg) was a follow-up visit, in order to review the measures taken by the German authorities after the previous visit in 2000.

Neustadt Psychiatric Centre is composed of a forensic psychiatric clinic and a civil psychiatric clinic. In 2002, the former Psychiatric Hospital was totally privatised[74]. It has official capacity of 612 beds (including 56 beds in the day clinic and the rehabilitation unit). At the time of the visit, it was accommodating a total of 585 patients. The forensic psychiatric clinic had 245 patients (male only), with an official capacity of 215 beds (the vast majority of patients having been admitted under Section 63 *StGB*). The delegation focused upon the forensic psychiatric clinic, in particular the most secure units (FM1 and FM2), as well as the units in the civil psychiatric clinic for acute patients, the units for patients with drug related problems and the geriatric unit.

At **Nordbaden Psychiatric Centre**, the delegation once again visited Units 12 to 16 of the forensic psychiatric clinic, as well as Unit 33 (admissions) of the civil psychiatric clinic. It also paid a visit to Units 01 and 02 for acute patients in the general psychiatric clinic. The whole forensic psychiatric clinic had 251 patients for a capacity of 228 at the time of the visit.

2. Ill-treatment

156. At *Nordbaden Psychiatric Centre*, the delegation received no allegations, and did not gather any other evidence, of physical ill-treatment by staff. This constitutes a distinct improvement as compared to the situation observed in 2000.

At *Neustadt Psychiatric Centre*, some allegations were heard of rough treatment (staff pushing and punching patients) in Unit FM1 of the forensic psychiatric clinic, as well as of excessive use of force by staff, during incidents both in the civil psychiatric clinic (units for acute patients) and the forensic psychiatric clinic (several units). Further, in the forensic psychiatric clinic, a number of allegations were received of verbal abuse and inappropriate language.

The CPT recommends that a clear message be delivered to the staff of Neustadt Psychiatric Centre that the force used when restraining a violent/agitated patient should be no more than is strictly necessary and that, once the patients concerned have been brought under control, there can be no justification for striking them. More generally, they should be reminded that any form of ill-treatment – including verbal abuse – of patients is not acceptable and will be dealt with accordingly.

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74 It is now a profit-oriented enterprise, owned by the Swiss group AMEOS Psychiatrie Holding GmbH.

157. The CPT is very concerned about the frequency and seriousness of allegations of inter-patient violence (including instances of sexual coercion) and harassment at *Neustadt Psychiatric Centre* (Unit FM1) and *Nordbaden Psychiatric Centre* (Unit 14). In both of these units, the unsafe environment appeared to be related to deficiencies in staff numbers, the patient mix and the physical environment (cf. also paragraph 167).

The CPT recommends that urgent steps be taken at Neustadt and Nordbaden Psychiatric Centres to develop strategies with a view to addressing the problem of inter-patient violence, in the light of the above remarks.

3. Living conditions

158. At *Neustadt Psychiatric Centre*, living conditions in the civil psychiatric clinic were generally satisfactory and of a modern standard, although there was room for improvement in the older accommodation. The CPT welcomes the fact that the geriatric unit was to be moved shortly to newer premises within the hospital complex, where conditions were more favourable in terms of infrastructure and living space.

That said, the CPT is concerned by the level of overcrowding and the problems of mixed gender units (e.g. general psychiatric unit KA2[75]; units for drug-addicts KS1 and KS2). Consideration must be given as to how to protect women on the mixed acute ward, for instance, by provision of a separate day room and/or zoning. Further, in the Acute Unit, call bells did not function in all patients' rooms.

In the forensic psychiatric clinic, the two most secure units (FM1 and FM2) were operating above capacity[76], and the dayrooms offered insufficient space for the number of patients involved. The CPT welcomes the plan of constructing new buildings, but recognises that this will not solve the overcrowding for some years to come.

The CPT recommends that the living conditions at Neustadt Psychiatric Centre be improved as a matter of priority, in the light of the above remarks.

159. At *Nordbaden Psychiatric Centre*, changes in living conditions since the 2000 visit included improvements in the general furnishings and accommodation in the forensic psychiatric section. Patients' rooms had been equipped with new furniture, including lockable individual cupboards and bedside tables. Further, units had been repainted and lighting had been improved, and the heavy metal barred doors closing off the corridors leading from the central area had been removed in several units. The result of these changes was to remove the prison-like atmosphere.

That said, material conditions remained poor in Unit 12. However, the CPT understands that the forthcoming move to new premises (planned to be completed by August 2006) will resolve this problem and also address the issues of the mixed gender and status of the patient population of this unit. **The Committee would like to receive updated information on this point.**

Further, overcrowding was still observed in all units except, temporarily, in Unit 13, where repairs were underway. At the time of the visit, the whole forensic psychiatry section had 251

75 With 26 patients for a capacity of 21 beds.
76 FM1: up to 33 patients for a capacity of 25 beds; FM2: up to 39 patients with capacity of 28 beds.

patients for a capacity of 228 (110%). As a result, an extra patient had to be added in many single and double rooms, and numerous patients' cupboards had to be placed in the corridors. The CPT notes the plans already in evidence for additional construction and refurbishment (to be completed in 2009), which will help to alleviate the situation. In this connection, the delegation was informed of plans to eventually reduce the total number of beds in the security sector from 90 to 80. At the same time, it was planned to transfer also a number of female patients to that sector, thereby reducing the capacity for male patients even further.

The CPT requests the German authorities to clarify whether the current plans to reduce the capacity of units in the security perimeter of Nordbaden Psychiatric Centre are fully compatible with the likely needs of forensic psychiatric treatment under high security in the *Land* of Baden-Württemberg in the coming years.

160. Similarly, capacities were regularly exceeded in Units 2 and 33[77] of the civil psychiatric clinic. **The CPT would like to receive detailed information on the measures envisaged to resolve the persistent problem of overcrowding in the civil psychiatric clinic of Nordbaden Psychiatric Centre.**

4. Treatment

161. At *Neustadt Psychiatric Centre*, there was good multidisciplinary team working in some of the units and opportunities for activities in the entire civil psychiatric clinic, and patients were positive about staff efforts. However, not all the patients had an individualised written treatment plan and, in a number of cases, no written running records (*Verlaufsberichte*) were kept of the treatment provided. **The CPT recommends that steps be taken to remedy these shortcomings.**

In the geriatric units, there was clear scope for improving the patient care of this very dependent group by increasing the numbers of nursing staff (cf. paragraph 166). The delegation also observed that several geriatric patients were not able to go outside, because there was not sufficient staff to assist them or, in some cases, simply because they did not have suitable shoes or clothes. Further, in the acute general psychiatric units, a number of allegations were heard that patients had been denied outdoor exercise for periods of up to several weeks.

The CPT reiterates its recommendation made in its previous visit report[78] that all patients, whose state of health so permits, be offered at least one hour of outdoor exercise per day, in conditions that enable them to benefit fully from it.

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[77] For example, up to 32 patients in Unit 33, with a capacity of 27 beds.
[78] Cf. CPT/Inf (2003) 20, paragraph 131.

162. In the forensic psychiatric clinic, the delegation gained a generally favourable impression of the quality of the activities and treatment offered to patients in Unit FM2. However, in Unit FM1, there was a regime of control and containment rather than an active therapeutic treatment, and a multi-disciplinary approach was lacking. Further, no opportunities for therapy with a psychologist were available, and access to occupational therapy was limited.

The CPT is also concerned that in all forensic units within the security perimeter, patients were locked in their multi-occupancy rooms at night. It is all the more worrying that, due to reduced staffing levels, lock-up periods at night had recently been further extended (from 10 p.m. to 8 a.m.).

The CPT recommends that steps be taken to develop a multidisciplinary treatment programme for patients in Unit FM1, including greater opportunities for psychological and occupational therapy. Further, **steps should be taken to progressively reduce lock-up periods at night in the forensic psychiatric clinic.**

163. At *Nordbaden Psychiatric Centre*, the provision of a wide range of work therapies and other activities was observed on various units, both in the forensic and general psychiatric clinics. There had also been improvements in the workshops within the security perimeter where patients took part in work therapy. The work was varied, and there was a relaxed atmosphere. Sixty-five patients could take part each day in work therapy for either two or four hours per day. Thus, overall, two patients out of three took part. However, the proportion in Unit 16 was much lower (nine patients out of 26). **Steps should be taken to extend the provision of such activities to all those patients capable of participating.**

During the last visit, problems with the provision of daily outdoor exercise were observed. The CPT welcomes the efforts being made to ensure that all patients, including those under restrictions, benefit from daily outdoor exercise.

164. As regards treatment, no instances of excessive use of medication were noted, in contrast to the delegation’s findings in the forensic clinic on the previous visit. The multidisciplinary team seemed to be functioning better than in 2000, contributing to the dynamic security on the units. Further, a “treatment concept” had been developed for each unit. There had also been a combined project to improve treatment quality and effectiveness, led by external consultants, in which all staff had been involved.

165. Individual computerised patient records were carefully kept. However, when medication was given without the consent of the patient concerned no specific order was made (unlike the situation observed in the case of seclusion and fixation). **The CPT recommends that the administration of medication without the patient’s consent in case of emergency be subject to a specific order, countersigned within 24 hours by a senior doctor.**

5. Staff

166. At *Neustadt Psychiatric Centre*, the number of nursing and medical staff appeared to have been significantly reduced following the privatisation of the Centre. According to doctors met by the delegation, the situation had reached a critical level. Nursing staffing levels were particularly insufficient in the geriatric unit of the civil psychiatric clinic, where patients were in need of a high level of care (cf. paragraph 161), as well as in forensic Units FM1 and FM2, where patients required a high level of supervision (in terms of safety and care).

The CPT recommends that the authorities of Schleswig-Holstein review the overall staffing levels at Neustadt Psychiatric Centre, in the light of the above remarks.

167. As already mentioned in paragraph 157, the atmosphere was rather tense in some units (in particular, in forensic Unit FM1). Members of the nursing staff indicated to the delegation that special training in approved methods of control and restraint was not systematically provided to them. **The CPT recommends that steps be taken to enhance the training of nursing staff in dealing with agitated/violent patients (e.g. de-escalation techniques, safe methods of control and restraint, etc.).** The possession of such skills will enable staff to choose the most appropriate response when confronted by difficult situations, thereby significantly reducing the risk of injuries to patients and staff.

168. At *Nordbaden Psychiatric Centre,* an overall improvement in relations between staff and patients was confirmed in the forensic clinic, not only by the delegation's observations, but also by patients who had been there since 2000. The CPT also welcomes the fact that, following the 2000 visit, mandatory training in de-escalation methods had been introduced for nursing staff, which contributed to the enhancement of dynamic security in particular within the forensic psychiatric clinic.

That said, the atmosphere in Unit 13 was still somewhat tense. It certainly contained very difficult patients, **but more could be done to provide a calmer atmosphere and to improve communication between staff and patients.**

6. Seclusion and means of restraint

169. As regards seclusion, the delegation observed a striking improvement in the furnishing of the special secure rooms (*feste Zimmer*) in the forensic psychiatric clinic of *Nordbaden Psychiatric Centre*, ensuring that seclusion was no longer practised in a systematically humiliating way. Rooms had been equipped with “soft” furniture (foam covered in plastic material to make a comfortable chair, table and bed and to screen the toilet). Thus, patients were able to eat more or less normally and not off a plate on the floor, as at the time of the 2000 visit.

The use of seclusion had, in general, been significantly reduced. However, it was still frequently used in Unit 13, sometimes for minor incidents, which would suggest that such a measure was also used for punitive reasons[79]. **Steps should be taken to adopt alternative strategies with a view to reducing the resort to seclusion in Unit 13.**

170. At *Neustadt Psychiatric Centre*, conditions in the intensive crisis intervention room in the forensic psychiatric clinic (Unit FM1), which might accommodate agitated patients for days or even weeks, were totally inadequate. It was only equipped with a thin mattress placed on the floor, and the decor was scruffy, with graffiti on the walls. Further, patients were held in the room in their underwear and were not provided with any reading material.

The CPT recommends that the above-mentioned crisis intervention room be painted and equipped with foam furniture, as was observed at Nordbaden Psychiatric Centre. Consideration should be given to the usage of protective clothing. Patients placed in that room should, in principle, be provided with reading material.

171. The CPT welcomes the fact that, at *Nordbaden Psychiatric Centre*, resort to means of physical restraint, and, in particular, the handcuffing of patients inside the security perimeter of the forensic psychiatric clinic, has been drastically reduced since the 2000 visit. However, it is of concern that, once again, an incident of handcuffing of a patient during his shower was confirmed by staff. Some cases of handcuffing during outdoor exercise were also reported. There is no reason to continue such practices, especially if the patient is alone; **the CPT recommends that their use cease immediately**.

172. In *both psychiatric centres* (civil psychiatric clinics) visited, the delegation was informed that instruments of physical restraint (*Fixierung*) were occasionally used on patients for prolonged periods (up to five days at Nordbaden Psychiatric Centre; in one case, more than a week at Neustadt).

[79] The review of the measures applied during a two-week period revealed that eight patients out of 16 had been subject to at least one seclusion period. Two patients were in permanent seclusion over the entire two-week period. Five other patients had spent at least three days in seclusion.

173. As regards the supervision of the use of means of restraint (*Fixierung*), the CPT notes that, both in the entire Nordbaden Psychiatric Centre and in the forensic psychiatric clinic (Unit FM1) at Neustadt, a nurse (*Sitzwache*) was constantly present whenever a patient was subjected to *Fixierung*.

That said, it is a matter of grave concern that in the civil psychiatric Acute Unit of Neustadt Psychiatric Centre, patients who were fixated to their beds were not always subject to continuous, direct, personal supervision by a nearby member of staff, the routine being 15-minute checks. It is unacceptable that distressed and agitated patients are therefore left alone, fixated in a single room behind a locked door, where they might still harm themselves. The possibility to call out for assistance or, theoretically, to activate a nearby call bell does not guarantee that their potentially urgent needs will be appropriately met.

174. Further, the CPT has serious misgivings about the practice observed in both psychiatric centres to sometimes apply *Fixierung* to patients in full view of other patients. For instance, in the general psychiatric units and forensic unit FM1 at *Neustadt Psychiatric Centre*, as well as in forensic Unit 13 at *Nordbaden Psychiatric Centre*, patients were strapped to their beds in crisis intervention rooms, whilst the doors were kept open.

Further, in the general psychiatric admission unit at Nordbaden Psychiatric Centre, the delegation was informed that, on occasion, up to six patients had been subjected to *Fixierung* at a time. Due to the limited space available (maximum capacity of three beds for *Fixierung* in the crisis intervention room), up to three patients had been subjected to *Fixierung* on hospital beds in the corridor in front of the nurse station (in some cases, for up to twelve hours).

The CPT acknowledges that this allowed more or less direct supervision. However, subjecting patients to *Fixierung* under the gaze of other patients not only infringes upon the privacy of extremely ill and agitated patients, but may also be disturbing for other patients.

175. At *Neustadt Psychiatric Centre*, the use of seclusion and means of restraint were applied in accordance with legal requirements (approval by doctor, time limit of twelve hours, extensions to be countersigned by the head doctor). The measures were also recorded in detail on forms which were subsequently included in the patient files.

That said, there was no specific register on the use of seclusion and means of restraint.

176. As regards the duration of the resort to *Fixierung*, the level of supervision and the respect for privacy of patients subject to *Fixierung* and the recording of instances of *Fixierung* in a specific register, **the remarks and recommendations made in paragraph 11 equally apply to Neustadt and Nordbaden Psychiatric Centres.**

177. Finally, the CPT must express its concern about the difficulties encountered in monitoring the use of seclusion and means of restraint at *Nordbaden Psychiatric Centre*. The method of recording fixation and isolation as a series of separate orders is not conducive to providing clear information to be used by staff and management to reduce recourse to such measures to the absolute irreducible minimum. The data do not readily show how long the freedom of individual patients is being restricted by such extreme measures. Such information is an indispensable tool for effective management and staff monitoring of these measures. The system for data collection and interrogation of the data should be reviewed so as to facilitate regular and systematic monitoring of the use of special coercive measures.

The CPT recommends that steps be taken so that the use of special measures (seclusion, *Fixierung*, medication without consent) can be observed over different periods. This is a vital management tool for senior medical and nursing staff in order to track the effects of the various measures adopted.

7. Safeguards

a. initial placement and discharge procedures

178. In civil cases, involuntary placement is possible on the basis of the mental health laws of the *Länder* concerned[80], as well as under Section 1906, paragraph 1, of the Civil Code. In the latter case, the placement order is made by the guardian (*Betreuer*) and subsequently approved by the court. For both types of civil placement, the procedure is regulated by the (federal) Law on Non-Contentious Procedures (*Gesetz über die Angelegenheiten der freiwilligen Gerichtsbarkeit - FGG*)[81].

Forensic patients may be placed in a psychiatric establishment under Section 63 *StGB* (total or diminished criminal responsibility) or Section 64, paragraph 1, *StGB* (drug addiction). In Schleswig-Holstein, the placement in a forensic psychiatric establishment is regulated by a separate law (*Massregelvollzugsgesetz - MVollzG*), while in Baden-Württemberg such placement was regulated in the general mental health law (*UBG*). Further, according to Section 126a *StPO*, persons who are suspected of having committed a criminal offence may be admitted for the purpose of conducting a psychiatric assessment.

179. At both psychiatric centres visited, the examination of individual patients files revealed that involuntary placement procedures (both civil and forensic) appeared to meet the legal requirements and that the legal document records were generally complete. That said, **some patients who were considered voluntary had not signed a written declaration that they consented to their placement.**

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80 In Schleswig-Holstein, the Law on the assistance and involuntary placement of mentally ill persons (*PsychKG*); in Baden-Württemberg, the Law on involuntary placement of mentally ill persons (*Unterbringungsgesetz – UBG*).

81 Sections 70 *et seq.*

In the case of civil placement, all patients were seen in person by the judge, expert assessments were ordered as required, patients were usually notified of the court's reasoned decision and given a written copy; their rights were explained, including the right to appeal against placement. Emergency admissions were quickly followed by a court placement procedure.

That said, in both psychiatric centres visited, the delegation observed that a number of patients had not received a copy of the court decision (which contained information on the avenues and deadlines of appeal), but the decision was placed directly in the patient file. Generally, patients were not required to sign an attestation that they had received a copy of the court decision. **Steps should be taken to ensure that, as a rule, all involuntary patients are provided with a copy of the placement decision and are asked to sign a statement attesting that they have received it.**

180. At Neustadt Psychiatric Centre, the delegation saw several patients (especially in the geriatric units) trying to leave but being gently but very firmly prevented from doing so, although they had been classified as "voluntary" patients.

Similarly, at Nordbaden Psychiatric Centre, the delegation observed that some patients were having the legal status of voluntary patients, despite the fact that an internal decision had already been taken and recorded in the patients' files that they were not allowed to leave the establishment.

Therefore, the patients concerned were *de facto* deprived of their liberty and could be subjected to involuntary treatment and/or means of physical restraint, without being protected by the legal safeguards applicable to involuntary patients. **The CPT recommends that the legal status of the above-mentioned patients be reviewed, in accordance with the applicable legislation.**

181. At Nordbaden Psychiatric Centre, the delegation was informed by staff that some courts were particularly slow to take a decision in the case of criminal suspects subject to provisional placement, so that a number of patients remained on remand under Section 126a *StPO* for as much as two years, before being discharged or placed under Section 63 *StGB*. **The CPT would like to receive the German authorities' comments on this point.**

182. As regards review of placement decisions, in civil cases, the duration of involuntary placement is always determined by the court, within the time limits provided for by law. Provisional placement orders (in emergency situation) may not exceed six weeks and can be extended by court decision to a total of three months[82]. In ordinary placement procedures, the maximum period is one year at a time, and, in the event of the patient being manifestly in need of involuntary placement, two years at a time[83].

183. The necessity of involuntary placement of forensic patients has to be annually reviewed by the criminal court[84]. It is noteworthy, in this connection, that indigent patients were always provided free legal aid by an *ex officio* lawyer.

82 Section 70h, paragraphs 1 and 2, *FGG*.
83 Section 70f, paragraph 3, *FGG*. Upon expiry of the maximum period, the involuntary placement may be renewed by court order.
84 Section 67e *StGB*.

According to the *MVollzG* of Schleswig-Holstein[85], the court is obliged to request an assessment by an external forensic expert at least every three years. However, no such requirement is provided for in the mental health law (*UBG*) of Baden-Württemberg. At Nordbaden Psychiatric Centre, court decisions were therefore usually taken only on the basis of assessments made by doctors of the Centre.

The CPT invites the authorities of Baden-Württemberg as well as of other *Länder* to explore the possibility of introducing in their mental health legislation a provision that requires the placement of forensic patients to be reviewed at least every three years by a forensic psychiatrist who is independent from the institution accommodating the person concerned.

b. safeguards during placement

184. At *Neustadt and Nordbaden Psychiatric Centres*, patients were informed orally about the internal rules, which were also displayed on notice boards in the units. In addition, specific <u>introductory brochures</u> had been produced for every unit setting out their daily routine[86].

However, the delegation observed that in several units of both centres visited, patients had not received such a brochure. **The CPT recommends that steps be taken to ensure that an introductory brochure is issued to <u>all</u> newly-arrived patients (and, if appropriate, their legal representatives) at Neustadt and Nordbaden Psychiatric Centres.**

185. An effective <u>complaints procedure</u> is a basic safeguard against ill-treatment in psychiatric establishments. Specific arrangements should exist enabling patients to lodge formal complaints with a clearly-designated body, and to communicate on a confidential basis with an appropriate authority outside the establishment.

At *Neustadt and Nordbaden Psychiatric Centres*, patients could address complaints to an outside patient representative (*Patientenfürsprecher*), to the Ministry of Social Affairs of the *Land*, as well as to the competent court[87].

That said, in both psychiatric centres visited, a number of patients appeared to be unaware of the existing avenues of complaints. The delegation observed that in several units the introductory brochures provided upon admission did not refer to the right of patients to lodge a complaint, while in other units the brochures contained detailed information in this regard. Further, in some units, the information sheet on complaints procedures was hidden under a mass of other notices on the units' notice boards.

The CPT recommends that at both psychiatric centres visited, patients be systematically informed in the introductory brochure issued upon admission about their right to lodge complaints as well as about the modalities for doing so.

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85 Section 5, paragraph 4, *MVollzG*.

86 At Nordbaden Psychiatric Centre, patients were required to sign a form that they had taken note of the house rules.

87 Patients may request a judicial decision regarding any measures taken by the administration in the context of their involuntary placement.

186. The CPT has repeatedly stressed the importance it attaches to psychiatric establishments being visited on a regular basis by an independent outside body responsible for the inspection of patients' care[88].

The Committee welcomes the fact that *Neustadt Psychiatric Centre* was being inspected by a visiting commission (*Besuchskommission*)[89], which had been set up under Section 26 of the mental health law of Schleswig-Holstein (*PsychKG*). During the past six years, such visits had taken place in 1999, 2002, 2004 and twice in 2005[90]. Although visits may be carried out without prior notice, in practice, visits were usually announced in advance. According to the documentation available at the psychiatric centre, direct contact between members of visiting delegations appeared to be rather limited.

It would be desirable that the visiting commission visits Neustadt Psychiatric Centre more frequently (i.e. at least once a year) and makes unannounced as well as announced visits. Further, steps should be taken to encourage members of the commission to communicate directly with patients so as to invite their comments.

187. In contrast, no inspections by a visiting commission or a similar independent outside body were being carried out at *Nordbaden Psychiatric Centre*[91].

The CPT recommends that steps be taken by the competent authorities in Baden-Württemberg and other *Länder* to ensure that all psychiatric establishments in Germany are visited on a regular basis by a visiting commission or another independent outside body. This body should be authorised, in particular, to talk privately with patients, receive directly any complaints which they might have and make any necessary recommendations.

188. At both establishments visited, the existing arrangements for contact with the outside world were satisfactory. Patients were able to send and receive correspondence, to have access to the telephone, and to receive visits from their family and friends.

c. other issues

189. The CPT has taken note of the fact that the forensic clinic of Neustadt Psychiatric Centre is the only forensic psychiatric establishment in Schleswig-Holstein and as such has in practice a virtual monopoly on the placement process in relation to forensic psychiatric patients who come from Schleswig-Holstein and will only exceptionally be placed outside the *Land*.

The CPT would like to receive detailed information from the authorities of Schleswig-Holstein on how they ensure appropriate oversight of the placement process (including the review of placement) and the level of health care provided, given the potential conflict of interest.

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88 Cf., most recently, CPT/Inf (2003) 20, paragraph 150.

89 The visiting commission is composed of a doctor, a judge and two representatives of non-governmental organisations. After each visit, it reports to the District (*Kreis*).

90 The second visit in 2005 took place on the day prior to the arrival of the CPT's delegation.

91 The mental-health law of Baden-Württemberg (*UBG*) does not contain any provision to this effect.

APPENDIX I

EXCERPTS FROM THE GERMAN AUTHORITIES' LETTER OF 20 JANUARY 2006

In response to the immediate observation made by the delegation under Article 8, paragraph 5, of the Convention at the end of the visit (cf. paragraph 9), the German authorities provided the following information:

Ministry for Labour and Social Affairs, Baden Württemberg (responsible i.a. for Nordbaden Psychiatric Centre, Wiesloch): "The ministry ... has forwarded CPT's immediate observation to all psychiatric establishments in Baden Württemberg […] and requested compliance with CPT's requirements. […] Concerning the Forensic Section of Nordbaden Psychiatric Centre (ZfP Wiesloch) the ministry points out explicitly that the specifications outlined by CPT have been general practice for a long time and recorded as required. Only a doctor can authorise a fixation and there is continuous medical supervision of the fixated person's situation. The fixation system in use is SEGUFIX as prescribed in the psychiatry standards. No police-style cuffs are used. The fixations are always subject to continuous, direct and personal supervision by a member of staff (Sitzwache) and recorded accordingly."

Senate Department of the Interior, Berlin (responsible i.a. for the police stations in Berlin): "A fixation as found by CPT in some cases during its visit, when prisoners were made immobile for prolonged periods of time is not applied. […] Hand or foot cuffs can be used for cuffing. […] Pursuant to Berlin Police Regulation No 350 (Berliner Polizeidienstvorschrift 350) a person should not be cuffed for longer than 15 minutes and cuffs should be removed instantly once the person has calmed down. Persons are never fixated to the extent of being immobile. The persons remain able to change their position or to sit up. […] In accordance with the terms of reference for the daily work at Section ZA Prisoners, all occupied cells are controlled every 15 minutes. The controls are more frequent for persons requiring special supervision and for persons with hand and foot cuffs. As drastic measures such as the fixation of persons in police custody in Berlin are not implemented, the existing regulations and controls are deemed sufficient."

Senate Department of Justice, Berlin (responsible i.a. for Berlin-Tegel prison): "Prisoners are generally fixated only for medical reasons and following authorisation by a doctor ... Should the fixation be ordered for other reasons or by somebody else than a doctor, the fixated prisoner will be immediately visited by a doctor. There is continuous monitoring of the prisoner via CCTV and several daily visits by nursing staff and a doctor. Continuous, direct and personal supervision by a member of staff (Sitzwache) is provided in crisis intervention rooms in the section for psychiatry and psychotherapy […]".

Ministry of the Interior of Brandenburg (responsible, i.a., for the Detention Centre for Foreigners, Eisenhüttenstadt): "The practice of detention pending deportation (Abschiebungshaft) in Brandenburg largely complies with CPT's requirements. […] Every time a fixation is ordered, a doctor is called at the same time. The doctor examines the situation of the detainee and also the fixation. During the fixation period, a security guard is positioned in front of the detention room. Additionally, the detention room is continuously monitored by video camera/monitor. As a follow up to CPT's visit, the Central Immigration Office has decided to give the doctor the authority to determine further action to taken (placement in the psychiatry section of Eisenhüttenstadt hospital, fixation period, need for further medical care). The doctor will confirm these actions and the duration of his/her presence in writing. Any health hazards for the detainee pending deportation can thus be eliminated to a great extent."

Department of Interior of the Free and Hanseatic City of Hamburg (responsible i.a. for police stations in Hamburg): "[…] Using hand cuffs and also foot cuffs, if the behaviour of the person so requires, does not lead to a fixation of the person to complete immobility. This form of restraint is only used in cases of substantial physical resistance. In our experience, a prolonged cuffing or fixation of persons in police custody is limited to special cases when persons are in an exceptional state of mind due to a mental disorder or can not be controlled in other ways because of the use of mind-altering substances (alcohol, drugs, pharmaceuticals). The existing regulations for such cases stipulate that an psychiatric opinion or medical opinion be obtained immediately to decide on further detention or whether the person is in the condition to be held in custody. […] Pursuant to the existing regulations, persons in police custody need to be visited at least twice per hour. Depending on the situation, shorter intervals may be required and more frequent visits will be arranged accordingly. Should it be necessary to continuously supervise the person visually, this is accounted for by placing the person in a so-called 'secure room' which is in constant view of police staff. This can also used in cases when the persons need to remain cuffed in the detention room because of their behaviour."

Department of Justice of the Free and Hanseatic City of Hamburg (responsible, i.a., for Hamburg-Fuhlsbüttel prison): "In general, an imprisoned person is only fixated under the preconditions outlined in § 88 of the Prison Act […]. Medical supervision of any cuffing takes place in accordance with § 92 of the Prison Act. […] There is no continuous, direct and personal supervision by a member of staff (Sitzwache) at any prison. The immediate presence of a member of staff next to the agitated and therefore cuffed person is considered counter-productive. Such a presence could make the prisoner focus on the symptoms leading to this measure instead of dealing with the causes. It is however considered important that members of staff are available for the prisoner to attract attention if needed. In the remand prison, there is a closely knit supervision system which provides for a monitoring rhythm of 5-10 minute-intervals, sometimes even shorter. It is also important to state that the legal situation as described above requires authorised staff to visit the cuffed prisoner every two hours, in order to check if the cuffing needs to remain or can be removed. Depending on the case, the cuffed person is invited to talk to several members of staff such as psychologists, psychiatrists, doctors or prison management."

Ministry for the Interior and Sports, Lower Saxony (responsible i.a. for the police stations in Lower Saxony): "Lower Saxony will soon ... amend its Police Custody Order of 2 July 2001 ... and incorporate CPT's requirements."

Justice Ministry, Lower Saxony (responsible, i.a., for Hameln Juvenile Prison): "Following the comments by CPT ..., the guidelines for cuffing in Lower Saxony have been amended. […], the provisions require that any cuffing needs to be subject to continuous, direct and personal supervision. This supervision is aimed at visually and acoustically monitoring the general situation of the prisoner and enabling interaction."

Justice Ministry, Saxony Anhalt (responsible i.a. for Halle I Prison): "[…] Cuffed prisoners are usually visited immediately by the prison doctor. Should there be the need to cuff a person outside usual working hours, the prisoner is examined by the medical service or the in-house doctor on call. If it is necessary to keep the person fixated for a longer period of time, the prison doctor visits the prisoner at least once every day. A continuous, direct and personal supervision (Sitzwache) cannot be provided continuously by a member of staff in the prisons under my responsibility. All specially secured cells in the prison are, however, monitored by CCTV; in three prisons there is an additional intercom system which can be switched to 'continuous transmission' so that the prisoner is in constant contact with the monitoring members of staff. In prisons without this technical equipment, the prison regulations call for an on-site inspection every 30 minutes […]".

Ministry for Social Affairs, Health, Family, Youth and Senior Citizens, Schleswig- Holstein (responsible i.a. for Neustadt Psychiatric Hospital, Psychatrium GRUPPE GmbH): "[…] Due to the special situation and the special clientele, all fixations are subject to a continuous, direct and personal supervision by a member of staff (Sitzwache) at the Clinic for Forensic Psychiatry and Psychotherapy (compulsory detention - Maßregelvollzug). In the clinics for psychiatry and psychotherapy (Psychiatric Hospital) a slightly modified procedure is applied: Persons who are only partially fixated are monitored during personal control visits in intervals of at least 15 minutes. Continuous, direct and personal supervision (Sitzwache) is provided for fully fixated persons with above average risk potential. In individual exceptional cases, when the patient ... would be additionally aggravated by the continuous presence of a member of clinical staff, the person is monitored during visits in intervals of at least 15 minutes. Such cases need to be justified and recorded separately."

<u>Justice Ministry, Thuringia (responsible i.a. for the Detached Unit of Ichtershausen Juvenile Prison)</u>: "A ... review of the relevant procedure in all prisons in Thuringia showed that the instructions and regulations in Thuringia meet CPT's requirements. The findings by the CPT delegation have been taken as an opportunity to remind the establishments once again of the regulations applicable in Thuringia. […] The fixated person is continuously monitored visually. If the individual case requires direct supervision, personal controls (Sitzwache) are carried out in short intervals and if necessary continuous, direct and personal supervision is provided in the specially secured detention room."

APPENDIX II

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

Consultations held by the delegation and co-operation encountered

comments

- the CPT encourages the federal authorities to continue and strengthen their efforts to ensure a uniform level of awareness of the obligations under the Convention which devolve to the *Länder* authorities (paragraph 6);

- as regards the recent constitutional changes which resulted in the transfer of the responsibility for the prison legislation from the federal level to the *Länder*, the federal authorities should ensure that the standards and safeguards already achieved in prison law are maintained in future (paragraph 8).

Immediate observation under Article 8, paragraph 5, of the Convention

recommendations

- the federal and all Länder authorities to take the necessary steps to ensure that all the principles and minimum safeguards set out in paragraph 11 are applied in all establishments in Germany resorting to *Fixierung* (paragraph 11).

Police establishments

Ill-treatment

recommendations

- it to be made clear to all police officers that the force used when carrying out an apprehension should be no more than is strictly necessary and that, once the persons concerned have been brought under control, there can be no justification for striking them. More generally, they should be reminded regularly and in an appropriate manner that any form of ill-treatment – including verbal abuse – of detained persons is not acceptable and will be punished accordingly (paragraph 14);

- the Federal Police and the police services of the *Länder* to follow the positive approach of the police authorities of the *Land* of Berlin and prohibit the combined use of hand- and ankle-cuffs (so-called "*hogtie-Fesselung*") (paragraph 15).

Safeguards

<u>recommendations</u>

- the federal and all *Länder* authorities to ensure without further delay that all persons deprived of their liberty by any federal or *Länder* police service, for whatever reason, are granted the right to notify a close relative or third party of their choice about their situation <u>as from the very outset of their deprivation of liberty</u> (that is, from the moment when they are obliged to remain with the police). The exercise of this right could be made subject to certain exceptions designed to protect the legitimate interests of the police investigation, provided those exceptions are clearly circumscribed in law and made subject to appropriate safeguards (e.g. any delay in notification of custody to be recorded in writing with the specific reasons therefor and to require the approval of a senior police officer unconnected with the case at hand or a public prosecutor) (paragraph 22);

- the federal and all *Länder* authorities to ensure that the right of access to a lawyer is guaranteed to all persons deprived of their liberty on suspicion of having committed a criminal offence, <u>as from the very outset of their deprivation of liberty</u> (that is, from the moment when they are obliged to remain with the police) (paragraph 23);

- steps to be taken at Frankfurt an der Oder Regional Police Headquarters and, if appropriate, in other police establishments in Germany, to ensure that all medical examinations are conducted out of the hearing and – unless the doctor concerned expressly requests otherwise in a given case – out of the sight of police staff (paragraph 28);

- the federal and all *Länder* authorities to ensure without further delay that all persons detained by the police – for whatever reason – are fully informed of their fundamental rights <u>as from the very outset of their deprivation of liberty</u> (that is, from the moment when they are obliged to remain with the police). This should be ensured by provision of clear oral information at the very outset, to be supplemented at the earliest opportunity (that is, immediately upon first entry into police premises) by provision of a written form setting out their rights in a straightforward manner. This form should be available in an appropriate range of languages. Further, the persons concerned should be asked to sign a statement attesting that they have been informed of their rights (paragraph 33);

- steps to be taken throughout Germany to ensure that juveniles do not make any statement or sign any document related to the offence of which they are suspected without the benefit of a trusted person and/or a lawyer being present and assisting them. The relevant legal provisions should be amended accordingly (paragraph 35);

- a specific version of the information form referred to in paragraph 33 setting out the particular position of juveniles detained by the police to be developed and given to all such persons in all police establishments, at the very outset of their deprivation of liberty. For this age group especially, the information form should be easy to understand and available in a variety of languages. Special care should be taken to ensure that the information provided is fully understood (paragraph 36).

comments

- it would be desirable that the right of detained persons to be examined by a doctor of their own choice also be expressly guaranteed in all *Länder* (it being understood that an examination by a doctor of the detained person's own choice may be carried out at his/her own expense) (paragraph 27);

- in principle, medical data (e.g. details of whether a detained person suffered from infectious diseases such as tuberculosis, hepatitis or HIV) should be available to police officers only on a need-to-know basis (paragraph 29);

- steps should be taken to establish a comprehensive custody record at Frankfurt an der Oder Police Station (paragraph 37).

Conditions of detention

recommendations

- the police authorities of Baden-Württemberg, Berlin and Hamburg, and, if appropriate, of other *Länder* to implement, without any further delay, the longstanding CPT recommendation that all persons detained overnight be provided with a clean mattress and clean blankets (paragraph 39);

- basic personal hygiene products to be made available as required to detained persons in all police establishments in Germany (paragraph 40).

comments

- steps should be taken to improve lighting at Weimar Police Headquarters and to ensure that the call system functions in all cells at Berlin-Wedekindstrasse (paragraph 39);

- due to their specific design (cells with very limited or no access to natural light; lack of outdoor exercise facilities), most if not all of the police detention facilities visited are unsuitable for accommodating persons for prolonged periods (paragraph 41).

Detention of foreign nationals under aliens legislation

Preliminary remarks

recommendations

- in all *Länder* in Germany, the detention of immigration detainees to be governed by specific rules reflecting their particular status (paragraph 44).

Immigration detainees held in prison

recommendations

- the staff of Hamburg Remand Prison and Fuhlsbüttel Prison to be reminded that disrespectful, scornful and/or racist behaviour is unacceptable and will be punished accordingly (paragraph 47);

- the authorities of Hamburg to take, without delay, the necessary measures to put an end to any placement – even temporary – of immigration detainees (including female) in Hamburg Remand Prison (paragraph 50);

- the authorities of Hamburg and Niedersachsen, as well as of all other *Länder* in Germany, to take the necessary measures to ensure that immigration detainees are accommodated in centres specifically designed for that purpose, meeting the criteria set out by the Committee in its 7th General Report (cf. CPT/Inf (97) 10, paragraph 29). If members of the same family are detained under aliens legislation, every effort should be made to avoid splitting up the family (paragraph 56);

- the necessary steps to be taken by the relevant authorities to ensure that:

    - the premises of the unit for immigration detainees at Hamburg-Fuhlsbüttel Prison are kept in a good state of repair and cleanliness;

    - the cells in the units for immigration detainees at Fuhlsbüttel Prison and Hameln Juvenile Prison are adequately furnished and decorated, in order to relieve as far as possible their prison-like appearance;

    - an open-door regime is introduced for most of the day in the units for immigration detainees at Fuhlsbüttel Prison and Hameln Juvenile Prison and that a range of purposeful activities is offered to such detainees (including reading material in most commonly used languages, radios, board games, etc.); the longer the period for which foreign nationals are detained, the more developed should be the activities which are offered to them; further, juveniles should be offered activities suitable for their age

  (paragraph 57);

- steps to be taken by the federal authorities and all relevant *Länder* authorities (including those of Hamburg) to ensure that all foreign nationals who have been the subject of an abortive deportation operation undergo a medical examination as soon as they are returned to detention (paragraph 59);

- special attention to be devoted to the training of the staff employed in the units for immigration detainees at Fuhlsbüttel Prison and Hameln Juvenile Prison. The staff concerned should possess well-developed interpersonal communication skills, and at least some of them should have relevant language skills (paragraph 60);

- steps to be taken by the authorities of Hamburg to ensure that all the principles and minimum safeguards concerning physical restraint (*Fixierung*) set out in paragraph 11 are applied at Fuhlsbüttel Prison and Hamburg Remand Prison (paragraph 62);

- written information on the house rules and the legal status of and the procedure applicable to immigration detainees to be provided to all foreign nationals at Fuhlsbüttel Prison and Hameln Juvenile Prison, upon their admission to these establishments. Such information should be available in the most commonly used languages (paragraph 67).

<u>comments</u>

- in the unit for immigration detainees at Hamburg-Fuhlsbüttel Prison, the communal room – as well as the broad corridor referred to in paragraph 51 – could usefully be fitted out to provide communal living areas and a range of varied, purposeful activities (paragraph 52);

- introducing an open-door regime for most of the day in the units for immigration detainees at Fuhlsbüttel Prison and Hameln Juvenile Prison and offering a greater range of purposeful activities to such detainees, as recommended in paragraph 57, will necessitate an increased number of staff (paragraph 60);

- the authorities of Hamburg are invited to explore the possibility of deploying female staff to the unit for immigration detainees at Fuhlsbüttel Prison (paragraph 61);

- steps should be taken at Fuhlsbüttel Prison to reduce the very oppressive design of the cell used for the physical restraint *(Fixierung)* of inmates (so-called "*schwere Beruhigungszelle*") and to improve access to natural light in that cell (paragraph 62);

- restrictions on immigration detainees' contacts with the outside world, as observed at Hamburg Remand Prison, are indefensible, taking into account that such persons are neither suspected nor convicted of a criminal offence (paragraph 64).

<u>requests for information</u>

- the comments of the authorities of Hamburg on the complaints received from several immigration detainees at Fuhlsbüttel Prison that the meals, prepared in the prison kitchen, sometimes arrived cold (paragraph 51);

- the comments of the authorities of Hamburg on the allegations received from some immigration detainees at Fuhlsbüttel Prison that correspondence from their lawyers had been opened by staff (paragraph 65).

Eisenhüttenstadt Detention Centre for Foreigners

recommendations

- the authorities of Brandenburg to take steps to ensure the regular presence of a psychologist at Eisenhüttenstadt Detention Centre and to develop programmes for the provision of psychosocial care to foreign nationals held there (paragraph 71);

- steps to be taken at Eisenhüttenstadt Detention Centre to ensure that all medical examinations are conducted out of the hearing and – unless the doctor concerned expressly requests otherwise in a given case – out of the sight of security staff (paragraph 74);

- steps to be taken by the authorities of Brandenburg to ensure that all the principles and minimum safeguards concerning physical restraint (Fixierung) set out in paragraph 11 are applied at Eisenhüttenstadt Detention Centre (paragraphs 78 and 79).

comments

- steps should be taken at Eisenhüttenstadt Detention Centre to ensure that, whenever the intervention of an external medical team is required, a report is provided to the medical service and is kept in the medical file of the foreign national concerned (paragraph 71);

- steps should be taken to overcome communication difficulties, due to language barriers, between the medical/nursing staff and foreign nationals (paragraph 73);

- it would be desirable that the anchorage points on the floor of cell no. 2008 be removed (paragraph 77);

- the authorities of all *Länder* are invited to establish free legal counselling in all establishments accommodating immigration detainees, as has already been done by the authorities of Brandenburg at Eisenhüttenstadt Detention Centre (paragraph 83).

requests for information

- detailed information on the training provided to members of the private security staff working at Eisenhüttenstadt Detention Centre, as well as information on whether any safeguards exist to guarantee adequate accountability and monitoring of the service provided by the staff of the private security company (paragraph 76).

Berlin-Tegel Prison

Special Security Unit (*Besondere Sicherungsstation B-1)*

recommendations

- urgent steps to be taken to develop the regime for prisoners in Unit B-1, in the light of the remarks made in paragraph 88 (paragraph 88);

- withdrawal of outdoor exercise to be abolished from the relevant legislation as a special security measure (in respect of both sentenced and remand prisoners) (paragraph 89);

- steps to be taken to ensure that every prisoner in respect of whom a special security measure is envisaged is given an opportunity to be heard on the matter before a formal decision is taken. Further, the prisoners concerned should always receive a copy of the decision, not only concerning the initial imposition of a measure but also the subsequent renewals thereof. They should also be required to sign an attestation that they have received it (paragraph 92).

comments

- the yard used for outdoor exercise in Unit B-1 lacked any protection against inclement weather (paragraph 88);

- it would be desirable that prisoners in Unit B-1 also benefit from the regular presence of a psychologist (paragraph 90).

requests for information

- the concrete steps taken by the management of Tegel Prison to improve access to natural light in the cells in Unit B-1 (paragraph 87).

Unit for Secure Placement (*Sicherungsverwahrung*)

recommendations

- immediate steps to be taken to improve the psychological care and support for inmates subject to *Sicherungsverwahrung* at Tegel Prison, in the light of the remarks made in paragraph 99 (paragraph 99);
- the German authorities to institute an immediate review of the approach to *Sicherungsverwahrung* at Tegel Prison and, if appropriate, in other establishments in Germany accommodating persons subject to *Sicherungsverwahrung*, in the light of the remarks made in paragraph 100 (paragraph 100).

requests for information

- within one month, detailed information on the action taken by the prison authorities of Berlin regarding the situation of the two inmates referred to in paragraph 98 (paragraph 98);

- the German authorities' comments on the view expressed by both the management and staff of Tegel Prison that the strict separation of accommodation of inmates subject to *Sicherungsverwahrung* and ordinary prisoners had proved to be counter-productive (paragraph 101);

- whether there are any specific rehabilitation programmes at Tegel Prison and, if appropriate, in other prisons in Germany for prisoners for whom a *Sicherungsverwahrung* has been pronounced in the court sentence, with a view to avoiding to the extent possible the implementation of a *Sicherungsverwahrung* immediately following the prison term (paragraph 102).

Other prisons visited

Preliminary remarks

recommendations

- steps to be taken to put an end to the mixed accommodation of juveniles and adults at Halle Prison No. 1 (paragraph 107).

comments

- the practice of holding juveniles and young adults together requires careful management to prevent the emergence of negative behaviours such as domination and exploitation, including violence (paragraph 106).

Ill-treatment

recommendations

- at Weimar/Ichtershausen Juvenile Prison, the authorities of Thüringen to draw up and implement a comprehensive strategy to address the problem of intimidation and inter-prisoner violence, in the light of the remarks made in paragraphs 109 to 112; at Hameln Juvenile Prison and Halle Prison No. 1, the authorities of Niedersachsen and Sachsen-Anhalt to review their existing strategies to that same end and vigorously pursue the implementation of those strategies (paragraph 113).

comments

- at Hameln and Weimar/Ichtershausen Juvenile Prisons, a few prisoners complained of rude behaviour and/or the use of insulting or disrespectful language against them by some staff (paragraph 108).

Conditions of detention at Hameln and Weimar/Ichtershausen Juvenile Prisons

recommendations

- steps to be taken at Hameln and Weimar/Ichtershausen Juvenile Prisons to ensure that:
  - all cells have adequate access to daylight and good ventilation; any devices affixed to cell windows should allow adequate passage of natural light and fresh air;
  - general hygiene is kept at a consistently acceptable level

  (paragraph 117);
- at Hameln Juvenile Prison, sanitary facilities in cells accommodating more than one prisoner to be fully partitioned (paragraph 117);
- for so long as Weimar/Ichtershausen Juvenile Prison continues to be in use, cells in this establishment measuring less than $8m^2$ (excluding the toilet area) to accommodate no more than one prisoner (paragraph 117);
- the allocation policy and practice to be reviewed at Hameln and Weimar/Ichtershausen Juvenile Prisons, taking into account the problem of passive smoking encountered (paragraph 117);
- with regard to the educational measure of lock-up (*Einschluss*) at Hameln Juvenile Prison, steps to be taken to ensure that the prisoners concerned are heard in person concerning the application of the measure, receive a copy of the decision and are informed in writing of the modalities for appeals against that decision. Inmates concerned should also benefit from individual custody plans indicating clearly how they may progress out of the regime. More generally, the application of the educational measure of lock-up should be subject to frequent and regular review and the process be carefully overseen by senior managers to protect against the risk of arbitrariness and/or an excessive duration of the measure (paragraph 120);
- at Weimar/Ichtershausen Juvenile Prison, pending the entry into service of more suitable premises, the authorities of Thüringen to take immediate steps to increase the programme of activities available for inmates, including greater opportunities for work, education and vocational training, as well as for sports and other recreational activities (paragraph 120).

requests for information

- precise information regarding the plans for the construction of a new juvenile prison to replace Weimar/Ichtershausen Juvenile Prison (which should be given a high priority) (paragraph 116).

Conditions of detention at Halle Prison No. 1

recommendations

- the refurbishment programme to be accelerated to ensure that all toilets are fully partitioned and properly ventilated and, pending such refurbishment, cells with toilets which are not fully partitioned not to be shared (paragraph 122);

- outside areas for exercise to be provided with shelter from inclement weather and all inmates, and in particular young inmates, to be encouraged to take daily exercise (paragraph 122);

- with a view to providing inmates in all sections of Halle Prison No. 1 with purposeful activities and programmes for a reasonable part of each day, steps to be taken to ensure that:

  - the existing facilities for work, education and training are used to their full potential;
  - the range of activities is increased;
  - individual custody plans are introduced

  (paragraph 124).

comments

- steps should be taken to develop programmes to prepare inmates for release (paragraph 124).

Health care

recommendations

- the time spent by general practitioners in Halle Prison No. 1 and Hameln and Weimar/Ichtershausen Juvenile Prisons to be reviewed, in the light of the remarks made in paragraph 127 (paragraph 127);

- the number of nursing staff at Hameln Juvenile Prison to be increased in due course to the equivalent of twelve full-time nursing posts. A staffing level of this kind would also make it possible to ensure that a nurse is on duty in the establishment round the clock, including nights and weekends (paragraph 128);

- immediate steps to be taken at Weimar/Ichtershausen Juvenile Prison (and in any other prisons in Germany in which staff members perform both health-care and security duties) to preserve the principle of independence of health-care staff, in the light of the remarks made in paragraph 129 (paragraph 129);

- immediate steps to be taken at Halle Prison No. 1 to substantially increase the time spent in the establishment by the psychiatrist(s). The time spent there by the drug addiction specialist should also be increased (paragraph 131);

- immediate steps to be taken at Halle Prison No. 1 to remedy the deficiencies identified concerning prisoners' access to the health-care service (paragraph 136);

- the current practice concerning the hand-footcuffing of prisoners during their transfer to outside hospitals as well as during medical consultations/examinations or accommodation in these hospitals to be reviewed, in the light of the remarks made in paragraph 137 (paragraph 137).

<u>comments</u>

- the German authorities are invited to bring the system for computerised recording of injuries on admission, as observed at Hameln Juvenile Prison, into general use in German prisons (paragraph 135);

- the filling in of personal details forms (*Personenbeschreibung*) – for the benefit of the prison administration – has nothing to do with medical tasks and should be assigned to prison administration units (paragraph 135);

- no written information on health care or the prevention of transmissible diseases was available at Halle Prison No. 1 (paragraph 135);

- delays were reported in gaining access to the doctor at Weimar/Ichtershausen Juvenile Prison (paragraph 136);

- the authorities of all *Länder* are invited to consider the introduction of a special suicide prevention programme, as was observed at Hameln Juvenile Prison, in all German prisons (paragraph 138).

<u>requests for information</u>

- the German authorities' comments on the issues raised in paragraph 133 concerning the difficulties observed at Hameln Juvenile Prison in transferring prisoners suffering from mental disorders to specialist hospitals (paragraph 133).

Other issues

recommendations

- steps to be taken by the authorities of Sachsen-Anhalt to significantly increase the number of custodial staff at Halle Prison No. 1 (paragraph 141);

- the prohibition of access to reading material for prisoners subject to the sanction of cellular confinement to be abolished without further delay (paragraph 144);

- steps to be taken by the authorities of Sachsen-Anhalt, Niedersachsen and Thüringen to ensure that all the principles and minimum safeguards concerning physical restraint (*Fixierung*) set out in paragraph 11 are applied at Halle Prison No. 1, as well as at Hameln and Weimar/Ichtershausen Juvenile Prisons (paragraph 148);

- the authorities of all *Länder* in Germany to take steps to ensure that the general visit entitlement for both sentenced and remand prisoners is increased to a total of at least two hours per month. The entitlement for juvenile prisoners should be even more favourable. Prisoners should also be allowed to accumulate visit entitlements for periods during which no visits have been received (paragraph 149);

- steps to be taken by the authorities of Thüringen and, if appropriate, of other *Länder* to ensure that remand prisoners (juveniles <u>and</u> adults) are granted regular access to a telephone (paragraph 150);

- steps to be taken by the authorities of Sachsen-Anhalt to ensure that all newly arrived prisoners at Halle Prison No. 1 receive written information describing in a straightforward manner the main features of the prison regime, prisoners' rights and duties, complaints procedures, basic legal information, etc. This leaflet should be translated into an appropriate range of foreign languages (paragraph 153).

comments

- all the outstanding issues related to the incident referred to in paragraph 141 should be concluded as a matter of urgency, for the benefit of all (paragraph 141);

- the CPT trusts that the recent staff reinforcement at Hameln Juvenile Prison will allow, *inter alia*, for increased staff cover at night (paragraph 142);

- the CPT trusts that the disciplinary sanction of deprivation of outdoor exercise for remand prisoners will be formally abolished in the context of the elaboration of draft legislation on remand detention (paragraph 144);

- the CPT encourages the German authorities to take the necessary steps to ensure that in respect of juvenile prisoners, the sanctions of limitations of contact with the outside world (including relatives) to urgent matters for a period not exceeding three months, as well as of deprivation of reading material for a period not exceeding two weeks, are abolished in all *Länder* (paragraph 145);

- steps should be taken by the authorities of Thüringen to ensure that prisoners at

Weimar/Ichtershausen Juvenile Prison can also receive visits at weekends (paragraph 149);

- steps should be taken at Weimar/Ichtershausen Juvenile Prison to introduce a formalised system which allows prisoners to address complaints in a confidential manner to the Prison Governor (paragraph 151);

- steps should be taken at Weimar/Ichtershausen Juvenile Prison to update the existing information sheets (paragraph 153).

<u>requests for information</u>

- the comments of the authorities of Niedersachsen on the allegations received from some prisoners that letters addressed to the Prison Governor or the Ministry of Justice had been opened by prison staff (paragraph 152);

- a copy of the draft legislation governing the imprisonment of young offenders (paragraph 154).

<u>Psychiatric establishments</u>

Ill-treatment

<u>recommendations</u>

- a clear message to be delivered to the staff of Neustadt Psychiatric Centre that the force used when restraining a violent/agitated patient should be no more than is strictly necessary and that, once the patients concerned have been brought under control, there can be no justification for striking them. More generally, they should be reminded that any form of ill-treatment – including verbal abuse – of patients is not acceptable and will be dealt with accordingly (paragraph 156);

- urgent steps to be taken at Neustadt and Nordbaden Psychiatric Centres to develop strategies with a view to addressing the problem of inter-patient violence, in the light of the remarks made in paragraph 157 (paragraph 157).

Living conditions

recommendations

- living conditions at Neustadt Psychiatric Centre to be improved as a matter of priority, in the light of the remarks made in paragraph 158 (paragraph 158).

requests for information

- updated information on plans to move Unit 12 at Nordbaden Psychiatric Centre to new premises (paragraph 159);

- clarification as to whether the current plans to reduce the capacity of units in the security perimeter of Nordbaden Psychiatric Centre are fully compatible with the likely needs of forensic psychiatric treatment under high security in the *Land* of Baden-Württemberg in the coming years (paragraph 159);

- detailed information on the measures envisaged to resolve the persistent problem of overcrowding in the civil psychiatric clinic of Nordbaden Psychiatric Centre (paragraph 160).

Treatment

recommendations

- steps to be taken at Neustadt Psychiatric Centre to ensure that individualised written treatment plans are established for all patients and that written running records (*Verlaufsberichte*) are kept of the treatment provided (paragraph 161);

- all patients, whose state of health so permits, to be offered at least one hour of outdoor exercise per day at Neustadt Psychiatric Centre, in conditions that enable them to benefit fully from it (paragraph 161);

- steps to be taken at Neustadt Psychiatric Centre to develop a multidisciplinary treatment programme for patients in Unit FM1, including greater opportunities for psychological and occupational therapy (paragraph 162);

- steps to be taken at Neustadt Psychiatric Centre to progressively reduce lock-up periods at night in the forensic psychiatric clinic (paragraph 162);

- at Nordbaden Psychiatric Centre, the administration of medication without the patient's consent in case of emergency to be subject to a specific order, countersigned within 24 hours by a senior doctor (paragraph 165).

comments

- steps should be taken at Neustadt Psychiatric Centre to extend the provision of work therapies and other activities to all those patients capable of participating (paragraph 163).

Staff

recommendations

- the authorities of Schleswig-Holstein to review the overall staffing levels at Neustadt Psychiatric Centre**,** in the light of the remarks made in paragraph 166 (paragraph 166);

- steps to be taken at Neustadt Psychiatric Centre to enhance the training of nursing staff in dealing with agitated/violent patients (e.g. de-escalation techniques, safe methods of control and restraint, etc.) (paragraph 167).

comments

- more could be done to provide a calmer atmosphere and to improve communication between staff and patients in Unit 13 at Nordbaden Psychiatric Centre (paragraph 168).

Seclusion and means of restraint

recommendations

- the crisis intervention room in the forensic psychiatric clinic (Unit FM1) at Neustadt Psychiatric Centre to be painted and equipped with foam furniture, as was observed at Nordbaden Psychiatric Centre. Consideration should be given to the usage of protective clothing. Patients placed in that room should, in principle, be provided with reading material (paragraph 170);

- the occasional practice of handcuffing patients during showers or outdoor exercise to cease immediately at Nordbaden Psychiatric Centre (paragraph 171);

- steps to be taken by the authorities of Schleswig-Holstein and Baden-Württemberg to ensure that all the principles and minimum safeguards concerning physical restraint (*Fixierung*) set out in paragraph 11 are applied at Neustadt and Nordbaden Psychiatric Centres (paragraph 176);

- steps to be taken at Nordbaden Psychiatric Centre so that the use of special measures (seclusion, *Fixierung*, medication without consent) can be observed over different periods (paragraph 177).

comments

- steps should be taken to adopt alternative strategies with a view to reducing the resort to seclusion in Unit 13 at Nordbaden Psychiatric Centre (paragraph 169).

Safeguards

recommendations

- at Neustadt and Nordbaden Psychiatric Centres, the legal status of the patients referred to in paragraph 180 to be reviewed, in accordance with the applicable legislation (paragraph 180);

- steps to be taken at Neustadt and Nordbaden Psychiatric Centres to ensure that an introductory brochure is issued to all newly-arrived patients (and, if appropriate, their legal representatives) (paragraph 184);

- at Neustadt and Nordbaden Psychiatric Centres, patients to be systematically informed in the introductory brochure issued upon admission about their right to lodge complaints as well as about the modalities for doing so (paragraph 185);

- steps to be taken by the competent authorities in Baden-Württemberg and other *Länder* to ensure that all psychiatric establishments in Germany are visited on a regular basis by a visiting commission or another independent outside body. This body should be authorised, in particular, to talk privately with patients, receive directly any complaints which they might have and make any necessary recommendations (paragraph 187).

comments

- at Nordbaden and Neustadt Psychiatric Centres, some patients who were considered voluntary had not signed a written declaration that they consented to their placement (paragraph 179);

- steps should be taken at Neustadt and Nordbaden Psychiatric Centres to ensure that, as a rule, all involuntary patients are provided with a copy of the placement decision and are asked to sign a statement attesting that they have received it (paragraph 179);

- the authorities of Baden-Württemberg as well as of other *Länder* are invited to explore the possibility of introducing in their mental health legislation a provision that requires the placement of forensic patients to be reviewed at least every three years by a forensic psychiatrist who is independent from the institution accommodating the person concerned, as was observed in Schleswig-Holstein (paragraph 183);

- it would be desirable that, at Neustadt Psychiatric Centre, the visiting commission (*Besuchskommission*) carries out visits more frequently (i.e. at least once a year) and makes unannounced as well as announced visits. Steps should also be taken to encourage members of the commission to communicate directly with patients so as to invite their comments (paragraph 186).

requests for information

- the German authorities' comments on the information provided by staff at Nordbaden Psychiatric Centre that some courts were particularly slow to take a decision in the case of criminal suspects subject to provisional placement (paragraph 181);

- detailed information from the authorities of Schleswig-Holstein on how they ensure appropriate oversight of the placement process (including the review of placement) and the level of health care provided in the forensic clinic of Neustadt Psychiatric Centre, given the potential conflict of interest (paragraph 189).

APPENDIX III

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

A. National authorities

1. Federal authorities

Federal Ministry of Justice

Ms Brigitte ZYPRIES,	Bundesministerin (Federal Minister)
Mr Alfred HARTENBACH,	Parlamentarischer Staatssekretär (Junior Minister)
Dr Volkmar GIESLER,	Ministerialdirektor
Mr Thomas DITTMANN,	Ministerialdirigent
Dr Almut WITTLING-VOGEL,	Ministerialdirigentin
Dr Hans-Jörg BEHRENS,	Ministerialrat
Ms Gudrun TOLZMANN,	Ministerialrätin
Mr Christian STILLER,	Oberamtsrat

Federal Ministry of Family, Senior Citizens, Women and Youth

Mr Christoph LINZBACH, Verwaltungsangestellter

2. *Länder* authorities

Baden-Württemberg

Mr Manfred VOTTELER,	Regierungsdirektor, Ministry of Labour and Social Affairs
Mr Ulrich FUTTER,	Ministerialdirigent, Ministry of Justice (also on behalf of the Ministry of the Interior)
Mr Justus SCHMID,	Leitender Ministerialrat, Ministry of Justice

Berlin

Mr Christoph FLÜGGE,	Staatssekretär (Secretary of State), Senate Department of Justice
Mr Ulrich FREISE,	Staatssekretär (Secretary of State), Senate Department of the Interior
Dr Axel BUSCHENDORF,	Leitender Senatsrat, Senate Department of the Interior
Dr Gero MEINEN,	Senate Department of Justice
Mr Heinrich BEUSCHER,	Senate Department of Health, Social Affairs and Consumer Protection
Mr Martin MÖLLHOFF-MYLIUS,	Senate Department of Health, Social Affairs and Consumer Protection
Mr Olaf KARRAS,	Polizeidirektor, Police Headquarters
Ms Jutta PORZUCEK,	Kriminaloberrätin, Police Headquarters

Brandenburg

Mr Manfred KOLDEHOFF,	Ministerialdirigent, Ministry of Justice
Mr Gerd KÜNZEL,	Ministerialdirigent, Ministry of Labour, Social Affairs, Health and Family
Mr Robert MÜNDELEIN,	Ministerialrat, Ministry of Justice

Niedersachsen

Dr Jürgen OEHLERKING,	Staatssekretär (Secretary of State), Ministry of Justice
Mr Helmut KRONE,	Ministerialrat, Ministry of Justice
Mr Peter SIEFKEN,	Ministerialrat, Ministry of the Interior
Mr Klaus-Dieter SIMMERT,	Ministry of Social Affairs

Sachsen-Anhalt

Mr Paul Uwe SÖKER,	Staatssekretär (Secretary of State), Ministry of Justice
Mr Thomas PLEYE,	Staatssekretär, Ministry of the Interior
Ms Bärbel FREUDENBERG-PILSTER,	Staatssekretärin (State Secretary), Ministry of Health and Social Affairs
Mr Johannes SPIEKER,	Ministerialdirigent, Ministry of Justice

Schleswig-Holstein

Mr Axel LÜDDERS,	Ministerialdirigent, Ministry of the Interior
Dr Werner BUBLIES,	Ministerialrat, Ministry of Justice, Labour and European Affairs

B. Non-governmental organisations and persons with whom the delegation held consultations

Amnesty International
Brandenburg Refugee Council
Committee for Fundamental Rights and Democracy
CURARE
German Institute for Human Rights
Jesuit Refugee Service

Frieder DÜNKEL,	Professor of Criminology, University of Greifswald
Johannes FEEST,	Professor of Criminology, University of Bremen