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Response

of the German Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Germany

from 13 to 15 August 2018

The German Government has requested the publication of this response. The CPT's report on the August 2018 visit to Germany is set out in document CPT/Inf (2019) 14.

Strasbourg, 9 May 2019



Bundesministerium
der Justiz und
für Verbraucherschutz

Observations by the Federal Government on the recommendations, comments, and requests for information of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on the occasion of the Committee's visit from 13 to 15 August 2018

Berlin, 1 March 2019

Introduction

From 13 to 15 August 2018, a delegation of the CPT visited the Federal Republic of Germany. The primary objective pursued by this ad-hoc visit was to observe and review the treatment of foreign nationals before and during a national return flight from Munich to Kabul (Afghanistan) on 14 August 2018, coordinated by FRONTEX. Moreover, the preparations for the return flight, notably at Eichstätt Prison (centre for detention pending deportation) were monitored, as were the transfer of returnees to the airport by the Bavarian *Land* police and the hand-over to the Federal Police in charge of the boarding procedures. Furthermore, the CPT dealt with several issues related to the situation of returnees held in immigration detention in Eichstätt Prison (centre for detention pending deportation).

By its letter of 3 December 2018, the CPT sent a report (CPT (2018) 60) on its visit that includes a number of recommendations, comments, and requests for information. The CPT has requested that, within three months, the German authorities transmit a reply, in particular in light of the Committee's recommendations, comprehensively addressing the measures taken to implement said recommendations. The Committee furthermore proceeded from the assumption that it would be possible for the German authorities to address the comments and requests for information.

The Federal Government hereby submits its observations on the report. It is noted that the observations follow the sequence of the comments set out in the CPT report. In each case, the recommendations, comments, and requests for information precede the observations.

The Federal Government has approved publication of the report and of its observations.

Paragraph 7

“In a more general perspective, it would be desirable that, when negotiating readmission agreements and/or implementation protocols, an explicit reference be made to the possibility for independent monitoring bodies to observe the handover procedure to the authorities in the country of destination. Moreover, specific monitoring arrangements should be made, as appropriate, as regards readmission agreements already in force.”

EU law mandatorily stipulates the monitoring of such procedures, which accordingly is usual practice in Germany. By contrast, it does not seem to be absolutely necessary to expressly include provisions in readmission agreements or implementation protocols to the effect that independent monitoring bodies are entitled to observe the handover procedure to the authorities of the country of destination.

From the perspective taken by the German authorities, there is the concern that these types of provisions could additionally encumber the negotiations, which are already complex in and of themselves. The destination states could fear intrusions into their sovereignty and could seek to obtain information as to which of the escorting persons are independent monitors. Accordingly, it should be determined in a case-by-case assessment whether or not independent observers are identified in providing the names of the escorting delegation.

Paragraph 14

“The CPT trusts that all *Länder* authorities ensure that no person is removed from Germany while legal proceedings that have suspensive effect are still pending before a court.”

All parties responsible, at the level of the Federation and of the *Länder*, are aware of the requirements that return operations must meet and that result from Article 3 of the European Convention on Human Rights. Improved communications among all parties involved are to warrant that no party affected is removed if, at the time of the departure, legal proceedings that have suspensive effect are still pending before a court. The *Länder* ensure that this is the case within their spheres of responsibilities in a range of different ways.

For example, the *Land* of **Brandenburg** has expressly notified the immigration authorities (*Ausländerbehörden*) within its territory, by enacting a corresponding executive provision (*Erlassregelung*), that complaints have suspensive effect. Moreover, the immigration authorities have been instructed to review, should the parties affected indicate that an asylum procedure is pending, whether the objections are well-founded and to contact the

Federal Office for Migration and Refugees (*Bundesamt für Migration and Flüchtlinge – BAMF*) should there be any unresolved issues.

In **Hamburg**, a detailed process is in place that provides for the exchange of information among all parties involved, also after the return operation has commenced. In the case of collective removal operations, the legal department of the immigration authority will transmit the data of the parties affected to the competent division of the President of the Administrative Court (*Verwaltungsgericht*) of Hamburg, about one week prior to the planned date of the removal, and will provide the scheduled time of the departure flight and the place of departure as well as the scheduled time of arrival and the planned destination of the flight. For each person to be removed, the party authorised to represent the affected person in proceedings and the possibilities of reaching that person using means of telecommunication on the date of departure are provided. Likewise, the names of the competent operative employees of the Hamburg field office of the Federal Office for Migration and Refugees (BAMF) are listed, along with their email address and their telephone number. The mobile number of the responsible escorting employee of the immigration authority, who will be available on site until the airplane takes off, likewise will be provided to the Administrative Court. Finally, the fax number of the competent inspectorate of the Federal Police at the departure airport is also provided, which can be used in case of an emergency. As soon as court proceedings are pending, the immigration authority will coordinate the necessary steps and will make arrangements with the parties involved.

Robust arrangements are in place in **Berlin** between the immigration authority and the Administrative Court of Berlin that govern the manner in which requests for legal protection are handled. In **Bremen**, it is warranted for the entire duration of the removal operation that the escort staff and the immigration authorities are able to enter into contact with one another via the *Land* police authorities of Bremen. The same applies in the **Rhineland-Palatinate**, where the immigration authority is available to be reached during return operations and where any decisions issued as a matter of urgency are notified to other competent authorities immediately upon their having become known. In **Hesse**, both the administrative courts and the attorneys of the *Land* have been made aware of adequate means at their disposal for entering into contact. This is the same in the **Saarland** – it has been usual practice for many years now that the staff escorting detainees to the airport (*Zuführungskräfte*) are available to be reached at all times. In the *Land* of **Saxony-Anhalt**, it is possible to exchange information on pending court proceedings via the contact persons of the Central Return Management Organisation (*Zentrales Rückkehrmanagement*) and the immigration authorities (*Ausländerbehörden*). In **Thuringia**, the Central Removal Office

(*Zentrale Abschiebestelle*) with the *Land* Administrative Authority of Thuringia (*Thüringer Landesverwaltungsamt*) is responsible for coordinating return operations. In those cases in which court decisions have suspensive effect, the court will inform the competent immigration authority. This in turn will inform the *Land* Administrative Authority of Thuringia of the decision. Depending on the status that the implementation of the removal has reached, the Thuringian police forces or the Federal Police will be correspondingly notified. And finally, the authorities and courts of **Bavaria** likewise are instructed to keep each other informed in all cases of the progress that a removal operation is making and of the progress of the decision-making before the court concerning a request for injunctive relief.

Paragraph 15

“The CPT recommends that the competent federal and *Länder* authorities ensure that a “last call procedure” be effectively implemented in practice during all future removal operations by air to guarantee that all relevant actors, notably the escort leader, is at all times fully informed of the state of legal proceedings of the persons to be removed, up to the moment of handover.”

While the Federal Police are competent for performing cross-border removals, it is incumbent on the competent *Land* authorities to inform the Federal Police without undue delay of any requests filed as a matter of urgency with a court, also after the airplane has taken off. The communications channels in aviation allow such a decision to be forwarded to the senior escort officer of the Federal Police at any time.

The *Land* authorities in turn ensure, in a variety of ways, that the required contact data of all competent persons are available to all parties involved. In this way, it is to be safeguarded that the Federal Police escorts, the immigration authorities, and the administrative courts are able to enter into contact with one another also in cases in which a court orders a deportation to be suspended at a late stage of the procedure.

Thus, for example, the *Land* of **Saxony-Anhalt** has provided the Federal Police with the details of contact partners (Central Return Management Organisation (*Zentrales Rückkehrmanagement*), immigration authorities (*Ausländerbehörden*)) with whom it is possible to exchange information on pending court proceedings. In **Hamburg**, contact information is exchanged as described above between the immigration authority, the Administrative Court, the Hamburg field office of the Federal Office for Migration and Refugees (BAMF), and the Federal Police. It is warranted also in the late stages of any given return operation in **Bremen** that the contact necessary between the escort staff of the Federal Police and the immigration authorities can take place via the *Land* police of Bremen. In **Thuringia**, it is stipulated for court decisions with suspensive effect that the competent

immigration authority is to inform the Land Administrative Authority of Thuringia (*Thüringer Landesverwaltungsamt*), which will forward the information to the Federal Police in cases in which a deportation is ordered suspended by a court at a late stage of the procedure. In the **Land of Hesse**, administrative courts and the attorneys in the *Land* have sufficient opportunities of contact. In the rare cases in which injunctive relief is sought only at a very late time, the immigration authorities will instruct that the enforcement measure be aborted.

Paragraph 18

“The CPT recommends that the competent *Länder* authorities take steps to ensure that, as much as possible, all foreign nationals to be removed are given the possibility and sufficient time to collect their personal belongings, including documents and money, upon apprehension by the police and to make the necessary arrangements to prepare for their return prior to their removal.”

This recommendation is already being followed by the majority of the *Länder*. The parties affected by removal are given sufficient time to pack their personal belongings at the time of their arrest. The immigration authorities (*Ausländerbehörden*) and staff of the police authorities escorting detainees to the airport (*Zuführungskräfte*) plan for sufficient time in this regard. Limitations may result from the luggage restrictions in place at the airlines with which the flight has been booked. Moreover, all preparatory measures also depend on the cooperative conduct of the parties affected and must be evaluated, by the police authorities deployed, as part of the latter’s assessment of the situation.

The *Land* of **Brandenburg**, for example, has expressly instructed the immigration authorities (*Ausländerbehörden*), by enacting a corresponding executive provision (*Erlassregelung*), to plan for sufficient time prior to the flight’s departure to allow the parties affected to pack their personal belongings and to prepare for the trip. In the **Rhineland-Palatinate**, the immigration authorities have been provided with a checklist for the implementation of removals. In it, the immigration authorities are expressly instructed to give all persons to be removed sufficient opportunity and time to pack their personal belongings when they are being picked up. Insofar as this is feasible in organisational terms, the parties affected also are given the opportunity to withdraw cash funds from banks. **North-Rhine Westphalia** likewise has sent the immigration authorities a corresponding checklist. This provides, *inter alia*, that the parties affected be given sufficient time to pack their personal belongings. Additionally, the immigration authorities of North-Rhine Westphalia have been instructed by a decree sent by circular letter (*Runderlass*) to not commence removal operations in the time between 9 p.m. and 6 a.m. if they concern families with children under the age of 14.

Also in the *Länder* of **Baden-Württemberg, Bremen, Lower Saxony, Saarland, Schleswig-Holstein, Saxony-Anhalt, Hamburg, Hesse, Thuringia, Bavaria, and Berlin**, it is ensured that the schedule provides for sufficient time to allow personal belongings to be packed, as well as documents and money, as the case may be, and that this time is also granted in practice. In **Hamburg**, it is likewise taken into account in scheduling a removal whether the removal concerns a single individual or a family group, and also whether the removal will be made from collective accommodations for asylum seekers or from a private residence. In **Hesse**, an individual deployment concept is prepared for each individual case in which it is ensured that, fundamentally, sufficient time is available to prepare for the trip. In **Berlin**, tote bags are made available to the parties affected where this is required, and Berlin law stipulates that, under certain circumstances, they are to be paid a token sum of money.

Paragraph 19

“The CPT recommends that the competent *Länder* authorities take the necessary measures to ensure that all returnees who are held in detention pending deportation are in practice officially informed in writing, in a language they understand, at least one week in advance of their scheduled removal, as required by law. All returnees should systematically be prepared for their removal, including through the provision of psycho-social support.”

The parties affected are held in detention in order to safeguard their removal; this is done exclusively on the basis of a court order handed down by a judge. As a rule, the parties affected will already be aware of the time of the removal since this is a matter addressed at the hearing concerning the detention pending deportation. Moreover, the removal will be announced to the parties affected on site in the *Länder*, generally pursuant to section 59 paragraph (5), second sentence, section 58 paragraph (3) number 1 of the Act on the Residence, Gainful Activities and Integration of Foreigners in the Federal Territory (*Aufenthaltsgesetz – AufenthG*). Based on this understanding, the removal is to be announced at least one week previously also to those parties affected who are in detention pending deportation.

Bavaria, by contrast, takes the view that these legal standards refer to cases of detention pursuant to general regulations and not to the detention pending deportation, so that, in the view taken by the authorities of that *Land*, the returnees are not to be informed of the specific date of the removal. In the understanding of the law as given in Bavaria, a returnee in detention pending deportation has already been informed of his or her impending return since the detention serves the sole purpose of safeguarding the removal. From the

perspective of the Bavarian authorities, it is also to be considered in this context that in some cases, the detainees will attempt to avoid removal by inflicting injuries upon themselves and/or others and by way of solidarisation campaigns.

In many of the *Länder*, the parties affected have the opportunity to avail themselves of psycho-social support in order to prepare for the removal. Thus, the residents of the centre for detention pending deportation in Pforzheim in **Baden-Württemberg** have the opportunity to obtain counselling services as well as pastoral care. In **Berlin**, weekly consultation hours are available for psychological and social counselling. In **Bremen**, a person provided by the Bremen police authority is available to the parties affected as a contact person for psycho-social support. This person will inquire regularly about the well-being of the parties affected, and also when certain occasions warrant such an inquiry, and will have conversations with them to prepare them for the return process. In **Hesse**, psycho-social support is likewise assured, *inter alia* from social services and the detention counselling provided by non-governmental organisations (*unabhängige Haftberatung*). In the short-term immigration detention centre at which persons required to leave the federal territory are kept in custody as a preventive measure in Ingelheim in the **Rhineland-Palatinate**, the opportunity likewise is available to obtain social and psychological support. On the basis of an administrative agreement concluded by the **Saarland** and the *Land* of the Rhineland-Palatinate, parties affected from the Saarland are also placed in this centre. In **North-Rhine Westphalia**, the pre-requisites for leaving the country and the course that this process will follow as a general rule will be discussed with the persons detained pending deportation. Moreover, the expert services (social services, psychological services, medical services, operational and administrative staff of the centre) are available to assist with questions or with other matters in which the detainees require assistance. **Bavaria** most recently has seen a significant increase of the capacities in the field of psychological and social-education services. Thus, a total of three permanent positions for psychologists were included in the first Law on the Supplementary Budget for 2018 (*Nachtragshaushaltsgesetz 2018*) and six permanent positions for social educators, in each case for the Eichstätt centre for detention pending deportation. In the centre for processing the return of immigrant detainees (*Rückführungseinrichtung*) in **Hamburg**, it is possible to enter into contact, *inter alia*, with refugee organisations. In **Lower Saxony**, the topics of the mental and social consequences of imprisonment form part of the training afforded to employees of the prison. Professional development measures and work meetings serve to intensify the knowledge of the staff and their awareness is raised on an ongoing basis.

Saxony-Anhalt and **Brandenburg** currently do not operate any centres of their own for detention pending deportation. However, while the centre for detention pending deportation in Eisenhüttenstadt in **Brandenburg** was operational until March of 2017, the psycho-social support of the detainees awaiting deportation had been stipulated by the Brandenburg Law on the Execution of Detention Pending Deportation (*Abschiebungshaftvollzugsgesetz*) and was implemented by a concept of the central immigration authority (*Zentrale Ausländerbehörde*) of the *Land* of Brandenburg.

Paragraph 22

“The CPT recommends that the authorities of Bavaria, as well as of all other *Länder*, take the necessary measures to ensure that all foreign nationals to be removed have in practice access to a lawyer from the outset of their deprivation of liberty.”

For the most part, the *Länder* ensure that parties affected have access to a lawyer. To begin with, it is to be noted that, as a general rule, foreign nationals required to leave the federal territory are warned of the removal at an early stage. This enables the parties affected, *inter alia*, to consult a lawyer early on. Moreover, they will be detained in prison only after having been heard by a judge based on a judicial arrest warrant, whereby several weeks generally will lapse between the arrest warrant and the date of the removal. Thus, even the people placed in prison regularly will have sufficient time to involve a lawyer. In some instances, the *Länder* will support the parties affected.

In the **Rhineland-Palatinate**, the detainees will be informed, when they are admitted into the Ingelheim short-term immigration detention centre, at which persons required to leave the federal territory are kept in custody as a preventive measure – in which parties affected from the **Saarland** are also placed –, that they have the possibility to avail themselves of legal advice; this is done both verbally and with the aid of a form sheet. The detainees have the opportunity, at any given time during their detention, to obtain advice from a lawyer. To this end, a free-of-charge consultancy service is available. In **Berlin** as well, access to a legal adviser is safeguarded. The parties affected are informed of this fact in a multilingual form sheet. Among other information, this includes the telephone number of the association of attorneys *Republikanischer Anwaltsverein*, which will assist in finding a suitable lawyer. Moreover, the opportunity is indicated to them that they may demand the services of an interpreter.

The *Land* of **Brandenburg** has notified the immigration authorities, by enacting a corresponding executive provision (*Erlassregelung*), that, should any person to be removed so desire, he or she must be given the opportunity to contact a lawyer. At present, there is no centre for detention pending deportation in Brandenburg. In the centre for detention pending deportation that was operational until March of 2017 in Eisenhüttenstadt, the detainees awaiting deportation were able to receive visits from attorneys without any limitation. Moreover, a regular legal consultancy service was instituted. A corresponding executive provision (*Erlassregelung*) governing access to a legal adviser also is in place in **Bremen**. The detainees awaiting deportation are given the opportunity to notify a lawyer. Moreover, it is ensured that detainees awaiting deportation are allowed to communicate with their legal adviser both in writing and verbally and that visits are permissible also outside of visiting hours. The confidentiality of the conversations is safeguarded by measures taken in spatial terms. Furthermore, legal consultancy services are offered weekly and free of charge to people in police custody in Bremen. In **North-Rhine Westphalia**, the parties affected are made the offer, at the time their placement commences, to avail themselves of free-of-charge and independent legal consultancy services by lawyers. In this context, it is also indicated to them that they have the possibility of contacting any legal representative they had retained earlier. The opportunity to contact a legal adviser at any time continues to be available also in the further course of the process.

In line with the determinations made in paragraph 21 of the CPT report, the parties affected who are in detention pending deportation in **Bavaria** are given the opportunity to contact a lawyer by telephone. Furthermore, detainees awaiting deportation have the possibility of contacting aid organisations such as Amnesty International or the refugee aid organisation of the Jesuit Order, *Jesuiten Flüchtlingshilfe*, which likewise provide legal consultancy. Insofar as a party affected declares in the course of a removal operation that he or she wishes to seek injunctive relief from a court or to contact a lawyer, the officers deployed will give the person affected the opportunity in this case as well to telephone the corresponding contacts. Where a person affected already has a lawyer representing him or her, the person so authorised will be notified as a matter of principle by the competent immigration authority (*Ausländerbehörde*) of the removal having been executed.

In **Hesse, Sachsen, Hamburg, and Saxony-Anhalt** as well, the parties affected can enter into contact with a lawyer. The detainees awaiting deportation in the **Hamburg** centre for processing the return of immigrant detainees (*Rückführungseinrichtung*) have at their disposal internet access, at no charge, via which they are able to obtain information on opportunities to contact refugee organisations and lawyers. In **Schleswig-Holstein**, the

parties affected likewise are given access to a lawyer. To this end, the use of a mobile telephone is permitted and will be enabled should circumstances require. Also, the contact to persons looking after the detainees and lending support, as well as to people from their social environment, generally will not be prevented. In **Baden-Württemberg**, the police authorities maintain lists of attorneys specialising in the fields of “aliens law” and “asylum law” who can be contacted at short notice.

Paragraph 26

“The CPT recommends that the German authorities ensure that areas designated for carrying out medical examinations of returnees in airports prior to their removal be suitably equipped, including with at least one examination bed and a wash basin.”

The infrastructure called for in the report is available at most airports. Where this was not the case, the Federal Police have taken the recommendation as an occasion to initiate the corresponding changes.

Paragraph 27

“The delegation noted that all returnees were systematically accompanied by their respective police escorts for the flight (up to three) who were present throughout the medical examination, although the large majority of them did not present any risk. The CPT recommends that the German authorities find alternative solutions to reconcile legitimate security requirements with the principle of medical confidentiality.”

For purpose of preventing threats, the German authorities take the view that the presence of police officers (*Polizeivollzugsbeamte*) at these examinations is required. In light of the exceptional situation in which the parties affected find themselves, it is impossible, at any rate, to entirely rule out attacks on the medical staff. Insofar as the physician performing the examination or the returnee wish to have a personal and confidential conversation, this request will be complied with unless it is contravened by reasons of danger prevention.

Paragraph 28

“The CPT recommends that the German authorities ensure that persons at risk of self-harm and/or suicide or with mental health problems undergo a comprehensive medical assessment, including by an independent mental health professional, if appropriate, before a conclusion is drawn on whether these persons be deemed as “fit to travel”.”

The parties affected are presented to a specialist physician already prior to their being escorted to the airport (*Zuführung*). The competent *Land* authorities are to ensure that prior

to their being so escorted to the airport, a notification be made as to whether a party affected has been issued a qualified medical certificate concerning an illness impairing the removal. At the time of the actual return by the *Land* authorities, the physicians deployed will issue a medical opinion, current as of that day, concerning the parties' fitness to travel and will provide immediate medical assistance in the case of an emergency. The effectiveness of proceeding in this manner is illustrated by the case of a certain party affected who was to be returned as part of the return operation of 14 August 2018 that the CPT observed. He was found to not be fit for air travel for medical reasons and the return operation of that person was aborted.

Paragraph 31

“The delegation was also informed by the Federal Police authorities that the procedure had been changed for return operations by charter flight to Afghanistan to allow returnees to access – upon request – their mobile phones to make and/or receive phone calls until the moment of boarding – a measure that reportedly had a calming effect. This is a welcome practice. **The CPT encourages the German authorities to extend this practice to all removal operations by air.**”

In the period preceding the boarding, the Federal Police is the body competent for any and all decisions to be taken in connection with the return operation. As the CPT was able to observe in the course of the return operation it monitored, the Federal Police does not restrict the use of mobile telephones, at the very least to the extent that no reasons contravene such use in an individual case.

For the period preceding the handover of the parties affected to the Federal Police, the *Länder* have also enacted provisions in some cases allowing the use of mobile telephones by the parties affected. Thus, a decree enacted in **Brandenburg** stipulates that telephone calls to trusted persons are to be enabled at return operations. This applies likewise to other personal conversations insofar as these do not prevent or delay the removal. In **North-Rhine Westphalia**, the checklist sent to the immigration authorities (*Ausländerbehörden*) expressly provides that any phone calls desired prior to a removal are to be enabled. As a rule, the parties affected will be given the opportunity to make such a call following their arrival at the airport and prior to being handed over to the Federal Police. Moreover, the Central Authority for Removal Operations by Air (*Zentralstelle für Flugabschiebungen*) in Bielefeld notifies immigration authorities in the notices of the flight date that, as a backup measure, the telephone numbers for imperative telephone calls after handover to the Federal Police should be available to staff, noted separately from the phone memory.

In **Hesse**, the forces competent for the apprehension of the parties affected are under instruction, for reasons of logistics, to temporarily take custody of mobile telephones (as well as of relevant documents and money) so as to hand them over separately to the competent employee of the immigration authority (*Ausländerbehörde*) prior to handover to the Federal Police. At the same time, however, parties affected always are to be given the opportunity to place a call should they so request. In **Berlin**, the parties affected who are being taken directly from their residential address to the airport are informed by a multilingual form sheet of the opportunity, *inter alia*, to use mobile telephones. Depending on the circumstances of the individual case, it may be necessary at the time of arrest and the subsequent transport to limit the time during which mobile telephones may be used. However, insofar as circumstances permit, telephone calls may be made at that time or subsequently at the airport.

In **Bremen**, **Baden-Württemberg**, and in the **Saarland**, the parties affected are allowed to keep their private mobile telephones during the removals, meaning that calls are thus enabled. Also in **Bavaria**, the staff escorting detainees to the airport (*Zuführungskräfte*) fundamentally permit the parties affected to enter into contact with relatives and friends by, provided that this does not jeopardise the removal operation's execution. In **Lower Saxony**, all returnees have the possibility, as a matter of principle, to use the mobile phone. However, the police officers may take the decision, as part of their own competence, that the cell phone is to be seized for purposes of protecting their own safety or of ensuring the removal operation can be performed, and that it is to be returned only at the airport. Finally, the use of the mobile phone generally is permitted in **Thuringia** from the time at which the parties affected are picked up until the handover to the Federal Police. However, since the operations management notice (*Steuerungsschreiben*) of the Federal Police states, as a standard stipulation, that it is permissible to take along mobile telephones only in the large suitcases in order to prevent any operational disruptions to the flight, mobile telephones regularly will be packed into the large travel bags of the parties affected.

Paragraph 32

“The CPT encourages the German authorities and the authorities of all *Länder* to actively facilitate the right of returnees to inform a third person of their removal.”

In **Baden-Württemberg**, returnees generally will be made aware already at the time they are picked up at their residence that they should make the corresponding notifications and provide the information to others. In **Hamburg**, the judge committing the parties affected into

detention (*Haftrichter*) will question them as to whether certain persons should be notified. Such notification as to the persons affected having been detained will be issued by the court. Furthermore, the parties affected have the opportunity to use their mobile telephones at the Hamburg centre for processing the return of immigrant detainees (*Rückführungseinrichtung*) as well as the access to the internet provided free of charge in order to contact others.

In all other regards, reference is made to the observations at paragraph 31, which show that in many cases, the *Länder* enable contact to be entered into with third parties by allowing the parties affected to keep their mobile phones. By way of supplementation, reference is made to the observations at paragraph 22, which show that the parties affected have the possibility of contacting a lawyer, in which context they are also lent support in some instances by the *Länder*.

Paragraph 35

“The CPT recommends that the Bavarian authorities, as well as the authorities of all other *Länder*, ensure that interpretation services are made available, if needed, both throughout the period of detention and when carrying out preparations for removal operations.”

For the most part, the *Länder* warrant that an interpreter can be involved if needed.

In **Bavaria**, asylum seekers are lent support over the course of the entire proceedings, from the time at which they file the request for asylum up to the departure, by interpreters and translators working for the authorities or externally, to assist them at meetings with the authorities; this is the case in particular if they have been accommodated in shared living quarters provided by the state. Insofar as there are any indications in the course of removal operations that interpretation is required, this will be organised by the authorities executing the removal. In Eichstätt Prison, which serves as the centre for detention pending deportation, the intention is to facilitate communications with detainees in future by taking into operation a video-based interpreting tool – for which the technical and contractual prerequisites have already been created – in the medical ward and also in a further consultancy room, so that taking recourse to other detainees as interpreters can be reduced to a minimum.

In **Bremen**, an interpreter will be available to the detainees awaiting deportation both during the removal and while they are in police custody should this be needed. In **Baden-Württemberg**, the Pforzheim centre for detention pending deportation will ensure, within the framework of its possibilities, that the detainees will be given the opportunity to be heard

should there be any problems. If needed, this will also include the deployment of an interpreter. The **Hamburg** centre for processing the return of immigrant detainees (*Rückführungseinrichtung*) has implemented a video-based interpreter system that is deployed as needed also for all other questions pertaining to the detention. Also in the course of the prior processing and when the parties affected are escorted to the airport (*Zuführung*), interpreters will regularly be available in **Hamburg**. In the **Rhineland-Palatinate**, it is possible at any time to involve an interpreter while the persons affected are placed in the Ingelheim short-term immigration detention centre at which persons required to leave the federal territory are kept in custody as a preventive measure, and also prior to their removal, should there be any communications problems. In the **Saarland** as well – the parties affected of which are likewise placed in the Ingelheim detention centre for persons required to leave the federal territory –, the possibility is warranted to involve an interpreter as needed. In the Büren institution at which persons required to leave the federal territory are placed, in **North-Rhine Westphalia**, it is possible to rely, for everyday communications, on a range of linguistic capacities given with the employees of the institution. For official conversations, for example with legal representatives and the authorities, a professional external interpreting services is involved that is available in each case on short notice.

In **Berlin** and **Hesse**, interpreting services are likewise offered on an as-needed basis. In **Saxony-Anhalt**, multilingual information is available in writing at the time the parties affected are picked up from their residence should it not be possible to involve the relevant interpreters when needed.

In **Brandenburg**, a decree stipulates that interpreters are to be involved for return operations. Pursuant to this legal act, wherever an interpreter is requested, this request is to be complied with unless this would prevent or delay the return and provided that the interpreter can be involved without disproportionate expense. When the Eisenhüttenstadt centre for detention pending deportation of the *Land* was still operational, prior to its closure in March of 2017, interpreters were involved on an as-needed basis when conversations were held with the detainees awaiting deportation. In **Schleswig-Holstein**, which at present likewise does not have a centre for detention pending deportation of its own, it is ensured that, in the course of the meeting preparing for the removal, an interpreter is available as needed; where required, such removal meetings will be repeated with an interpreter being involved. In the course of executing the detention pending deportation in **Lower Saxony**, interpreting services are provided by members of staff able to speak the language or by interpreters involved from external services. The award decision on a call for tenders for the introduction of a video-based interpreting service in the correctional services of Lower

Saxony is impending. The *Land Thuringia* likewise does not operate its own centre for detention pending deportation. However, when charter flights take off from Thuringia, interpreters will be present who provide services in the languages needed. For example, when a charter flight was organised and implemented in Thuringia in April of 2017 to Serbia and Macedonia, the Land Administrative Authority (*Landesverwaltungsamt*) of Thuringia awarded a contract to two interpreters who were involved in the ground handling at the airport and who subsequently came along on the flight to the states of origin of the detainees. By contrast, when parties affected are picked up at their residence / accommodation, as a rule no interpreters will be present, and instead an employee of the competent immigration authority (*Ausländerbehörde*).

Paragraph 37

“Having in mind that several returnees had been apprehended in the early morning but had not received any food and water since, **the CPT recommends that detained persons be provided with food and water.**”

As a general rule, the parties responsible at the level of the Federation and of the *Länder* will make preparations to ensure that the parties affected are appropriately given nourishment in the course of return operations. While the parties affected are being escorted to the airport (*Zuführung*), their nourishment is the responsibility of the competent *Land* authorities. The Federal Police will ensure that the persons affected are so nourished after taking them into custody.

In **Brandenburg**, an executive provision (*Erlassregelung*) stipulates that a food package is to be given to the persons to be removed. In **Bremen**, the escort officers ensure that the parties affected are given food and beverages. To this end, travel provisions are obtained in the run-up to the operation and handed out as needed to the parties affected. In the **Rhineland-Palatinate**, a checklist on the implementation of removals has been provided to the immigration authorities (*Ausländerbehörden*) who are responsible for looking after persons required to leave the federal territory in the course of their being transported in the custody of the police task forces. This checklist states, *inter alia*, that it is to be ensured that the parties affected are to be given nourishment with food and beverages in the event of longer travel times and waiting periods. As a rule, a bag of provisions is given to the parties affected for this purpose. In **North-Rhine Westphalia** as well, the immigration authorities are instructed, by way of the checklist sent to them, to warrant that all persons to be removed have nourishment in the event of longer road travel; this applies in particular if

children are affected. This particularly includes food, beverages, toys and, if needed, also medication.

In the **Land of Hesse**, it is standard practice to provide the parties affected in the event of collective measures with lunch packages. The same also applies in the case of individual returns if it is foreseeable that the transport time will be long. The employees of the **Hamburg** immigration authority (*Ausländerbehörde*) who are competent for the execution of returns as a matter of principle will carry water and snacks as nourishment for the parties affected when performing return operations outside of Hamburg. Where the parties affected have money of their own, the employees will purchase beverages, food, or cigarettes for the parties affected should they so wish. In **Schleswig-Holstein**, nourishment with food and beverages is ensured by the State Office for Affairs relating to Foreigners and Immigration (*Landesamt für Ausländerangelegenheiten*) in the case of centrally organised removal operations lasting for several hours. The same applies in **Berlin**, where nourishment appropriate to the situation concerned is ensured for the parties affected up until they are handed over to the Federal Police.

In **Baden-Württemberg**, the persons picked up from the prison where they are serving their sentence or from detention pending deportation, respectively, are given a lunch package from the respective institution in the case of removals. Should a person required to leave the federal territory feel hungry or thirsty in the course of a longer drive, it is fundamentally standard practice for the escort officers to purchase foodstuff at a stopover on behalf of the persons required to leave the federal territory and using their money. Should the person concerned not have any money, the officers will pay from their own funds and will ask to be reimbursed for the costs in the context of settling their deployment with the Regional Administrative Authority (*Regierungspräsidium*) in Karlsruhe. In **Lower Saxony** as well, a lunch package is made available by the prison if removals are performed of inmates of a correctional facility or people placed in same. In the case of removals being performed of persons at liberty, food and beverages will be taken along from the lodgings of the person concerned in an amount corresponding to the transport time; should the returnees become hungry during travel, nourishment will likewise be made available or organised *en route*. The parties affected from the **Saarland** who are being picked up from the prison where they are serving their sentence or from detention pending deportation, respectively, will likewise receive food packages from the respective institution. Moreover, the competent immigration authority (*Ausländerbehörde*) will provide nourishment for longer travel times on the road and for longer escort times should a corresponding request be made by the *Land* police authorities. In **Bavaria**, the operator of accommodations regularly will provide lunch

packages for transports at which greater distances have to be covered. By contrast, no nourishment will be provided for transports to Munich airport in light of the short distances they entail and the consequently short period of time during which the persons affected are escorted to the airport (*Zuführung*). Thus, the parties affected will be given food and drink at the airport by the Federal Police. In **Thuringia**, finally, the parties affected are granted the opportunity to themselves pack food and beverages at their accommodations. Furthermore, the Thuringian immigration authorities pay out a token sum of money in accordance with the Decree on Token Money (*Handgelderlass*), which can be used to buy food and beverages. This token money is also paid out if the party affected is removed from a correctional institution. The parties affected are allowed to leave the transport vehicle for a limited period of time and under supervision. In keeping with the transport time, nourishment also will be issued for the transport if so required by the circumstances.

Paragraph 41

“The CPT recommends that the German authorities take action to increase the overall number of Federal Police escorts who have received prior training on carrying out removal operations by air.”

The Federal Police has already taken action in keeping with the above recommendation. The objective is to increase the number of officers specially trained for returns by air to approximately 2,000 by 2021.

Paragraph 49

“The CPT considers that, as a matter of principle, it is important for all police escorts to undergo a debriefing session.”

The Committee’s recommendation refers to the Federal Police escorts who themselves accompany the actual return by air. The Committee’s recommendation has been forwarded to the Federal Police, which has picked up on it.

By way of supplementation, it should be noted in this context that the *Länder* perform a debriefing of the measures executed previously. An exemplary case in point are the corresponding provisions in place in the *Land* of **Brandenburg**, which stipulate that debriefings of police deployments fundamentally are to take place in close temporal proximity and are to relate to the specific occasion. Debriefings are performed with the

participation of all levels involved and the members of staff and stakeholders taking part in the deployment.

Paragraph 55

“[...] The CPT considers that any use of force must avoid inducing a sensation of asphyxia on the person concerned. As is reflected in the relevant internal instructions of the Federal Police, no control technique which impedes a person’s capacity to breath is authorised for use by escort officers.

[...] To ill-treat a person by squeezing the genitals, a technique which is clearly aimed at inflicting severe pain to gain compliance, is both excessive and inappropriate; this is all the more so given that the person was being restrained by six escorts.

The CPT recommends that the German authorities take immediate action to end the application of these two techniques by Federal Police escort officers.”

The Committee’s recommendation has been forwarded to the Federal Police, which has picked up on it.

Paragraph 56

“The CPT recommends that all police escorts from the Federal Police as well as from all *Länder* police authorities wear a visible identification tag to make them easily identifiable (either by their name or an identification number).”

The Federal Police and the individual *Länder* are pursuing efforts in different ways to ensure that the officers deployed present themselves in a transparent and open manner. However, at present it is not regarded to be necessary to have all officers wear an identification badge. The Federation and the *Länder* are engaged in an ongoing exchange of views and experiences as to how it is best possible to comply with the requirement as to transparent action by police officers. The call for police officers to wear identification badges regularly is brought up in various committees and by different bodies.

For officers of the **Federal Police**, it is not a requirement to wear their name or identification number on their uniform or on the civilian clothes they wear during such deployments. However, the officers are under instruction to provide their name, rank, and the agency they work for. This information may be restricted to the number set out on the duty identity badge if providing further information would jeopardize the purpose of the police measure. It is possible to identify the persons involved using the deployment documentation, and also by

the tactical identification codes used, which permits the officers to be recognised as members of the Federal Police and of the respective units thereof. In actual practice, no case has become known thus far in which it was impossible to identify officers of the Federal Police and thus impossible to in fact investigate allegations.

At the level of the *Länder*, police officers are under obligation to wear identification in **Berlin, Brandenburg, Hesse, Rhineland-Palatinate, Thuringia, Schleswig-Holstein, Bremen, Mecklenburg-Western Pomerania, and Saxony-Anhalt.**

While there is currently no identification obligation in place in the other *Länder*, considerations are being entertained to introduce this duty in some *Länder*. Some of them have taken the decision to introduce an identification tag to be worn on a voluntary basis. However, it is not actually the case that individual officers cannot be identified because of the large number of people wearing the same type of clothing, or because of an only fleeting encounter, since no more than three officers are deployed per person to be removed and since these officers sometimes will spend several hours in the company of the person affected.

Paragraph 58

“The CPT recommends that the German authorities provide adequate information to returnees on how to make a complaint, both orally and in writing, in a language they can understand, prior to the departure of the flight. The complaints mechanism should be made accessible and effective in practice.”

The Federal Police has picked up on this recommendation. In future, it will ensure that information is made available, in the languages offered by FRONTEX, regarding the possibility to make a complaint.

Paragraph 59

“In the light of the above, the CPT would like to receive further information from the German authorities on the follow-up given to complaints forwarded by the European Border and Coast Guard’s (Frontex) Fundamental Rights Officer, in particular as regards the requirements of accessibility, effectiveness and independence.”

It has been agreed between the Federal Police and the European Boarder and Coast Guard Agency Frontex that complaints addressed to the Human Rights Commissioner of Frontex and that have regard to German police officers involved in Frontex operations will be

forwarded to the public relations department of the headquarters of the Federal Police. The complaints department of that body will treat these complaints in accordance with internal regulations, in the same way that complaints filed from within Germany are treated. Following the conclusion of this procedure, Frontex will be provided with feedback on the outcome of the proceedings.

As concerns the specific return operation that is the subject matter of the present observations, the Federal Ministry of the Interior is not aware of any complaints having been forwarded by the Frontex Human Rights Commissioner. Accordingly, no follow-on measures were to be taken.

Paragraph 65

“In the light of the above, the CPT recommends that the Bavarian authorities take the necessary steps to adapt (former) prison establishments to the specific needs of immigration detainees, by ensuring material conditions and a regime that are appropriate for this category of detainees. Training courses should also be provided to custodial staff.”

The Eichstätt centre for detention pending deportation is different in significant ways from the correctional facilities since it must take account of the special needs of immigration detainees. As the CPT was able to determine, the material conditions of the establishment are generally very good in terms of its state of repair, living space, access to natural light, ventilation, and equipment (paragraph 67 of the report). In particular, the cells have been equipped with a modern cell communications system. Furthermore, the inmates are entitled to have telephone communications from their cell for 30 minutes per day, in which context the inmates are free to select the time of their phone calls in light of the time difference that may exist to their home country. The costs of these telephone calls, also those made to recipients located abroad, are borne without limitation by the institution. In urgent cases, the duration of 30 minutes may also be extended. Moreover, it is being reviewed whether the opportunities for communication can be further expanded. Furthermore, a recreational hall was instituted, while a large variety of recreational groups was created. In order to provide the detainees with the greatest degree of liberty possible, they also are granted comprehensive amounts of out-of-cell time.

Insofar as the detention pending deportation is executed by the Bavarian Ministry of Justice by way of providing assistance to the Bavarian Ministry of the Interior, for Sport and Integration, the principle is for comprehensively trained and educated prison staff to be deployed as well as salaried employees specifically hired for this particular field. The

employees receive ongoing professional training in internal courses offered within the institution as well as at the Bavarian Academy for Correctional Services (*Justizvollzugsakademie*) on topics specific to detention pending deportation. Furthermore, the employees of Eichstätt Prison are trained once a week in security and safety methods and in de-escalation techniques. Furthermore, it is planned to expand the training module on “detention pending deportation” – which forms part of the curriculum for prison staff already now – in order to further enhance the competencies of prison staff. By way of accommodating the special needs of immigration detainees, the capacities in the field of psychological and social-education services were significantly increased in the respective institutions. Thus, a total of three permanent positions for psychologists were included in the first Law on the Supplementary Budget for 2018 (*Nachtragshaushaltsgesetz 2018*) and six permanent positions for social educators, in each case for the Eichstätt centre for detention pending deportation.

“The Committee reiterates its recommendation that the German authorities take the necessary steps, without further delay, including by way of legislative amendments, to ensure that, in all *Länder*, detention pending deportation is governed by specific rules reflecting the particular status of immigration detainees.”

In most of the *Länder*, laws have already been promulgated that provide for the execution of detention pending deportation and that take account of the particular status that immigration detainees have while warranting adequate conditions of detention.

Thus, the centre for detention pending deportation in Pforzheim in **Baden-Württemberg** is a special detention facility, as stipulated by the *Land* Law on the Execution of Detention Pending Deportation (*Abschiebungshaftvollzugsgesetz*), in which the detention conditions are significantly different and much better than in the correctional facilities. For example, the parties detained in the centre for detention pending deportation need not work and are paid an allowance. They are free to move about the premises during the entire day up until the general lock-up time of the cells at 10 p.m., they may spend time outside of their rooms, and they have the opportunity to access the Internet free of charge or to avail themselves of any other recreational or sports offerings. The Pforzheim centre for detention pending deportation additionally was structurally modified for the execution of the detention pending deportation. In **Bremen** as well, the detention pending deportation is executed in special prison facilities. The Senator of the Interior of the city has created the legal pre-requisites for execution in the Bremen detention centres by the Law on Immigration Detention pending Deportation (*Gesetz über den Abschiebungsgewahrsam*) and the Immigration Detention Ordinance (*Gewahrsamsordnung*). In the **Rhineland-Palatinate**, the execution of the

detention pending deportation has been provided for in the *Land* Law on the Acceptance of Immigrants (*Landesaufnahmegesetz*). The short-term detention centre in Ingelheim was constructed for the sole purpose of executing detention pending deportation as a preventive measure and was subsequently remodelled in order to ensure appropriate accommodation (*inter alia*, placement in unlocked cells, expansion of the area serving yard exercise). Institution employees are regularly trained in the fields of intercultural competencies and suicide prevention. On the basis of an administrative agreement concluded by the **Saarland** and the *Land* of the Rhineland-Palatinate, parties affected from the Saarland are also placed in this centre in Ingelheim. In **Berlin**, the execution of the detention pending deportation likewise has been provided for by a *Land* law on immigration detention. According to this law, the detention pending deportation fundamentally is to be performed in special institutions. In **Saxony** as well, a *Land* law on the execution of detention pending deportation serves as the basis for the execution of detention pending deportation in the special centre for detention pending deportation of the *Land*.

In **Hamburg**, the Law on the Execution of Detention pending Deportation (*Abschiebungshaftvollzugsgesetz*) likewise has put in place special regulations, which is also the case in the *Land* of **Hesse**, where the Law on the Execution of Measures serving the Deprivation of Liberty under the Laws pertaining to Foreigners (*Gesetz über den Vollzug ausländerrechtlicher Freiheitsentziehungsmassnahmen*) is in place, as well as in **North-Rhine Westphalia**, where the *Land* Law on the Execution of Detention serving Deportation (*Abschiebungshaftvollzugsgesetz NRW*) applies. In **Lower Saxony**, the Ministry of the Interior currently is heading efforts to draft a *Land* law on the execution of detention serving deportation. In **Brandenburg**, the execution of detention pending deportation likewise has been provided for in a law governing the execution of the detention pending deportation. The Brandenburg centre for detention pending deportation in Eisenhüttenstadt has been closed since March of 2017, however.

In **Saxony-Anhalt**, there is currently neither an institution serving detention pending deportation (*Abschiebungshaftanstalt*) nor a short-term immigration detention centre at which persons required to leave the federal territory are kept in custody as a preventive measure (*Ausreisegewahrsamseinrichtung*). Plans are being made to create an institution securing the deportation (*Abschiebungssicherungseinrichtung*) for the *Land*. In order to be able to operate such a facility, a *Land* law will have to be enacted that provides for the details of such an institution. The corresponding law is to ensure that the detention pending deportation is governed by specific regulations taking account of the special status of immigration detainees. **Schleswig-Holstein** as well currently does not have a centre for

detention pending deportation for the *Land*. Here as well, a corresponding institution is being planned, however. Against this backdrop, a draft bill for a *Land* law of Schleswig-Holstein governing the execution of detention pending deportation is in the parliamentary procedure. Finally, **Thuringia** is not operating a centre for detention pending deportation specific to the *Land* at present, either.

Paragraph 67

“The CPT recommends that the Bavarian authorities take steps to further reduce the restrictions that are currently applied at Eichstätt Prison (Centre for detention pending deportation). In particular, all male detainees should be offered the possibility to wear their own clothes during their stay and to have these clothes washed. The Committee also wishes to receive confirmation that the call-bell system at the facility is now functioning properly.”

The call-bell system was replaced in the course of a modernisation of the facility and now corresponds to modern standards. Notwithstanding this fact, it cannot be ruled out that individual disruptions may occur, as was the case on the day the CPT visited. As a matter of course, the system was inspected immediately, and the defects established were remedied promptly following the visit from the CPT. The call-bell system is now working smoothly. Merely by way of supplementation, it should be mentioned that the detainee affected did not suffer any damages and that it was possible to release him from the hospital on the same day.

The suggestion of the CPT that all immigration detainees be permitted to wear their own clothes is not something that can be put into practice where the male detainees are concerned. For the most part, the immigration detainees cannot wear their own clothes because they do not have sufficient clothes. In many cases, they were apprehended on the street and were then escorted directly to the institution. In these cases, the persons to be removed have only one set of clothes with them, which would have to be cleaned regularly for reasons of hygiene. In light of the large number of male immigration detainees, one or several washing machines allowing them to wash their own clothes on site would not suffice for organisational reasons. Additionally, the effort this would require in terms of work to be performed by institution staff does not seem reasonable. In the meantime, the detainees would have to be given clothes provided by the establishment. Against this backdrop, keeping available the own clothes of the detainees for their return has priority. The few women placed in detention pending deportation are permitted to wear their own clothes since it is possible, within the framework of the small ward in which they are placed, to allow the women to independently wash their laundry in a washing machine.

Paragraph 68

“The CPT recommends that an open-door regime at Eichstätt Prison (Centre for detention pending deportation) be applied to all male detainees and that access to the multi- purpose hall be granted to all detainees throughout the day. The outdoor exercise yard should also be equipped with a shelter against inclement weather and be rendered less austere.”

It will be possible to implement the CPT’s recommendation to institute additional opening hours for the recreational hall and to introduce an expansion of the out-of-cell times only once additional staff is available for this purpose. Implementing this recommendation based on the present staff roster is not possible without jeopardizing safety and order in the facility. It is not possible to install a shelter against inclement weather or to plant the courtyard with trees, shrubs and plants for reasons of security, in particular in order to prevent escapes, since such a structure and the plants could be climbed to get over the wall. However, the possibilities of designing the courtyard using artistic means and of installing planters are currently being reviewed.

Paragraph 69

“The CPT recommends that when it is deemed necessary to place a detainee under video surveillance, steps be taken to ensure that the privacy of the person is guaranteed whenever he/she is using a toilet, for example by pixelating the image of the toilet area. Further, the two security cells should be sufficiently ventilated.”

In the *Länder* that run facilities serving detention pending deportation, different provisions have been made in order to guarantee the privacy of the detainees who have been placed under video surveillance. In practice, sufficient ventilation of the cells also is assured.

In **Lower Saxony**, if a detainee is placed in one of the security cells and surveillance has been ordered using technical means, the toilet area is removed from view and any video material is pixelated. Likewise, adequate ventilation is ensured. The same applies in **Baden-Württemberg**: In the event of camera surveillance of a security cell, the toilet area is pixelated. In the Ingelheim short-term immigration detention centre at which persons required to leave the federal territory are kept in custody as a preventive measure, in the **Rhineland-Palatinate**, the affected person will be relocated in certain situations (in particular if there is the suspicion that he or she might be suicidal) to a surveillance cell and the medical services will be notified without undue delay. These spaces are not under surveillance by video cameras and the toilet area cannot be viewed by the employees. In Ingelheim, also parties affected from the **Saarland** are placed in this centre. The Büren institution in which persons required to leave the federal territory are placed, in **North-Rhine**

Westphalia, is currently reviewing possibilities of installing pixelation technology in the toilet area of spaces subject to camera surveillance as part of upcoming technical retrofitting measures. Up until that time, privacy is protected by covering the camera screen, provided that there is no risk of self-harm or suicide risk. Generally, the parties placed in this facility in cells subject to camera surveillance will be given the opportunity to use special items of clothing that are suited to protect their privacy also when they use the sanitary facilities.

In **Berlin**, the cells are not subject to video surveillance. A sufficient ventilation of the cells is warranted. In the prison facility for detainees awaiting deportation in **Bremen**, no video surveillance of the cells has been provided for. The hallways, communal rooms, and the courtyard for open-air exercise are subject to video surveillance. Here as well, the cells are sufficiently ventilated. In **Hamburg**, the Law on the Execution of Detention Pending Deportation (*Abschiebungshaftvollzugsgesetz*) expressly stipulates that where surveillance is performed using optical-electronic systems – which is permissible subject to strict prerequisites – the personal rights, the dignity, and the modesty of the persons placed in the centre for processing the return of immigrant detainees (*Rückführungseinrichtung*) must be respected. Moreover, it is assured that the cells are sufficiently ventilated. The centre for detention pending deportation in **Hessen** likewise already is following the CPT's recommendation. **Saxony-Anhalt** in turn intends to integrate the recommendation made by the CPT into its planning for the detention facility that is to be instituted there. **Brandenburg, Saxony-Anhalt, Thuringia, and Schleswig-Holstein** currently do not operate any centres of their own for detention pending deportation.

From the perspective of the authorities of the *Land* of **Bavaria**, by contrast, video surveillance of the toilet area is an inalienable necessity for security reasons wherever a person is placed in a security cell – which is done only in exceptional cases and following a separate weighing of all interests. Inasmuch, the Bavarian authorities note that, in the past, attempts to commit suicide in the pixelated area have been made in other detention facilities. Also in **Bavaria**, the supply of the security cells with fresh air and their ventilation is in keeping with statutory requirements. Notwithstanding this fact, it is planned to construct three security cells having an even better fresh air supply and ventilation system. The construction measure has already been approved under budgetary law and the necessary funds have been allocated to it.

Paragraph 70

“The CPT recommends that the Bavarian authorities take the necessary steps to ensure that immigration detainees placed in a security cell are offered at least one hour of outdoor exercise per day in a suitably equipped yard. For vulnerable detainees, additional measures should be taken to engage with them, including through the provision of appropriate human contact. Reference is also made to the CPT’s recommendation contained in paragraph 74.”

The Bavarian authorities note that it is not always possible for detainees who are at risk of committing suicide or who are aggressive to attend the outdoor exercise period in the courtyard. The decisions taken in this regard are oriented, however, by the circumstances of the individual case and the implementation of the corresponding measures is instructed following deliberation with the medical and psychological services. The aspects under security law and the treatment aspects that must be weighed against each other in particular comprise the risk of self-harm and the risk of harm to others. The persons detained in a security cell moreover will be comprehensively looked after by prison staff, physicians, psychologists, and the social services. Should the parties placed in such a cell wish to enter into contact with a lawyer, they may turn to the social services, which will assist them in drafting their requests also while they are placed in the security cell.

In order to improve the placement situation of the parties placed in the security cell, it is being reviewed, moreover, whether Eichstätt should procure the multimedia tools that are used in psychiatric wards, which include various opportunities for occupying the patients, which are targeted specifically at persons at risk of harming themselves or others and which already are successfully being used in another Bavarian institution with those placed in security cells

“The Committee once again calls on the German and the Bavarian authorities and, as appropriate, the other *Länder* authorities, that prohibition of outdoor exercise is abolished from the relevant legislation as a special security measure (in respect of all categories of persons deprived of liberty).”

In every one of the centres for detention pending deportation operated by the *Länder*, outdoor exercise is something that is available to every detainee awaiting deportation. However, it is possible also in some other *Länder* to deviate from this principle in exceptional cases if this is mandated for reasons of safety and security in order to protect the other detainees and the institution’s own staff. In all cases, it is to be taken into account that, as a general rule, detainees will be placed in a security cell only on a short-term basis.

The **Hamburg** Law on the Execution of Detention Pending Deportation (*Abschiebungshaftvollzugsgesetz*) does not stipulate any prohibition of outdoor exercise, also not if a detainee is subject to a special security measure. In **Saxony**, persons who are placed in security cells likewise are not fundamentally excluded from participating in outdoor exercise. In the Ingelheim short-term immigration detention centre, at which persons required to leave the federal territory are kept in custody as a preventive measure in the **Rhineland-Palatinate** – and in which parties affected from the **Saarland** are also placed –, regular outdoor exercise is safeguarded for those who are placed, for a short period of time, in the surveillance cell by having them exercise in the courtyard separately and individually.

Also in **Lower Saxony**, outdoor exercise is available as an option in a suitably equipped courtyard available during the cells' open-door times, also to those who have been placed in a security cell. Only in a few individual cases in which every walk outdoors would lead to an incalculable risk or to a painful procedure that is irreconcilable with the dignity of the detainee will outdoor exercise be restricted for a short period of time. In **Berlin**, detainees awaiting deportation are able to take outdoor exercise in a courtyard available during the cells' open-door times for at least 90 minutes in the time from 8 a.m. and 6 p.m., this under supervision. It is possible to deviate from this provision in exceptional cases if this is demanded by the exigencies of maintaining safety, security, and order in the detention facility. The same applies in **Bremen**, where persons held in detention within the facility pending deportation fundamentally have the opportunity to exercise outdoors. Under the law, they are entitled to at least one hour of outdoor exercise daily. In order to afford protection against detainees posing a particular risk of harm to others and to themselves, and in order to protect the other detainees, special security measures are taken as needed in keeping with the law.

For the institution securing the deportation (*Abschiebungssicherungseinrichtung*) that is being planned to be established in **Saxony-Anhalt**, it is planned to enable detainees to spend time outdoors outside of their cells for at least one hour daily. In exceptional cases, however, it may be necessary, in the view of the *Land* authorities, to deviate from this principle for security reasons. In **Hessen**, the Law on the Execution of Measures serving the Deprivation of Liberty under the Laws pertaining to Foreigners (*Gesetz über den Vollzug ausländischer Freiheitsentziehungsmassnahmen*) does provide for special security measures, but in actual practice, these have never been ordered. The restriction of the ability to spend time outdoors would be, in the view taken by the authorities of the *Land* of Hesse, an ancillary consequence of placement in a security cell; the authorities note that, generally, such a placement will be made only over a very short period of time. This is also

the understanding of the *Land of North-Rhine Westphalia* with regard to the detainees placed in a security cell for a short period. In actual practice, such a placement mostly will be enforced for a number of hours in North-Rhine Westphalia, which will exceed 24 hours only in rare cases. Fundamentally, the objective is to restrict such placement to the shortest possible time, which is checked several times per day by several members of staff (including executive functions).

Brandenburg, Thuringia, and Schleswig-Holstein (and the Saarland, on this, see above) currently do not operate centres of their own for detention pending deportation.

Paragraph 71

“In the light of these remarks, the CPT recommends that health-care staff (i.e. the nurse and the three paramedics) working at Eichstätt Prison (Centre for detention pending deportation) no longer perform custodial functions and that they no longer be considered as part of the custodial staff. A system should also be put in place (e.g. written requests to be collected by health-care staff) to enable detainees to directly request consultations with the medical doctor.”

In the facility serving detention pending deportation in Eichstätt, there already is a system in place allowing direct requests for consultations to be made with the medical doctor. As before, the detainees have the possibility to submit a written request for consultations with the medical doctor as suggested by the CPT. No reasons need be cited in doing so.

From the perspective of the Bavarian authorities, by contrast, it is not necessary to release the medical staff from supervisory and custodial functions. Both the employees of the supervisory services and employees of the medical ward pursue the same interests, which is to look after the physical and mental health of the immigration detainees, to recognise any illnesses and to treat them, to prevent them from becoming worse, or to alleviate the symptoms. The staff deployed in the medical field is bound by the duty of confidentiality. Additionally, the deployment of staff members who are already known may serve to create a relationship of trust based on which the detainees can open up, in particular where medical matters are concerned.

Paragraph 72

“The CPT recommends that the necessary steps be taken to remedy these shortcomings as regards medical screening of detainees.”

As a matter of principle, every detainee will be screened by a physician after having been admitted to the Eichstätt institution serving detention pending deportation. This medical check also comprises a complete check of the detainee’s skin, for which purpose the detainee must undress. In this process, any injuries that may exist are established and documented. Insofar as, in the case mentioned by the CPT, this had not been the case where the scars and incisions of one person are concerned, the institution was asked to take the necessary measures in future.

Since health records are available into which psychiatric conditions such as traumata are also entered, the Bavarian authorities do not see a need to maintain a separate trauma register. Carrying out routine medical screenings following an aborted return operation is not considered necessary, either, since detainees are free at any time to turn to the medical staff in order to document any injuries they may have suffered. Any screening for which there is no occasion would also constitute a significant intrusion for the parties affected.

Paragraph 73

“The CPT would like to be informed whether a second psychologist has now been recruited at Eichstätt Prison (Centre for detention pending deportation).”

Since 1 December 2018, a further psychologist has been working at Eichstätt Prison.

Paragraph 74

“The CPT recommends that the Bavarian authorities, and the authorities of all other *Länder*, if appropriate, put in place more effective self-harm and suicide prevention measures for foreign nationals held in detention pending deportation. This would require increasing the availability of psycho-social support for detainees, as well as some mental health input and a greater engagement by custodial staff.”

The correctional services in **Bavaria** always have accorded a very high priority to suicide prevention. Thus, no suicide has been completed in the Eichstätt institution serving detention pending deportation so far. Nonetheless, the special situation in which detainees awaiting deportation find themselves entails an increased risk of self-harm. In Bavaria, a bundled set of measures serves to recognise any suicide risk potentially given for a detainee and to

prevent, from the outset, any self-harm or a suicide as far as possible. Already when the parties affected are admitted to the institution, the specialist services will place a special focus, at the meeting with the detainee in which he is admitted, on recognising any suicide risk and providing special care to detainees at risk of committing suicide; this is likewise done in the course of the medical screening by a physician. In order to raise awareness with prison staff on how to recognise signs of suicidal tendencies with detainees, the topic of suicide prophylaxis is a subject that is repeatedly addressed in the education and ongoing professional training of Bavarian prison staff. Furthermore, a commissioner for suicide prophylaxis was appointed in all correctional facilities. In particular in situations peaking to become a crisis, the detainees will receive psychological care or psychiatric treatment by the specialist services of the institutions or by external psychologists and psychiatrists. Where psychiatric or neurological treatment is required, the detainee may be transferred, depending on the circumstances, to a corresponding institution for the duration of his or her treatment needs. Additionally, special measures may also be ordered so as to protect the detainees. Such measures will be geared to the individual case and may also entail, for example, shared lodgings with particularly reliable fellow inmates, increased supervision by institution staff, placement in a cell with constant video surveillance – which may also take place around the clock under certain circumstances – or placement in a security cell in which there are no hazardous objects. Moreover, detainees are offered sensible and meaningful activities in the context of a well-balanced and comprehensive recreational offering. Furthermore, they have the opportunity to enter into intensive contact with the outside world using the available telephones.

The other *Länder* as well that operate institutions serving the detention pending deportation have made various arrangements in order to prevent self-harm and/or suicide by the parties affected. This includes, for example, the offerings of psycho-social services, a special training afforded to the employees working in the institutions, as well as the cooperation with external consultancy institutions.

Parties affected who are in detention pending deportation in **Bremen** may take recourse to a person made available by the Bremen police as a contact for psycho-social care. This person will inquire regularly about the well-being of the parties affected, and also when certain occasions warrant such an inquiry, and they will have conversations with the detainees to prepare them for the return process. In **Berlin**, psychological services are available during consultation hours. Moreover, counsellors working on call can be involved in the event of a mental crisis. Should the conduct of the inmates permit, they will be granted the greatest possible degree of freedom of movement and occupation opportunities. In

Hamburg, the mental state of the parties affected is assessed by a medical practitioner already when they are admitted to the institution, as part of the screening establishing whether they are able to be held in a correctional facility and in custody. All of the physicians responsible for this task have pursued, at a minimum, supplemental psychiatric training. Insofar as there are indications that self-harm may be inflicted or that suicide may be committed, and/or that thoughts going into these directions exist, the detainees will be monitored around the clock by a member of the security staff. At the centre for detention pending deportation operated by the *Land* of **Saxony**, the institution ensures that the detainees are looked after in terms of their social wellbeing. In the process, the concerns of persons requiring special protection are taken into account. This serves the objective of preventing suicide attempts and attempts at inflicting self-harm.

North-Rhine Westphalia has instituted what is called the “access process” (*Zugangsverfahren*) for detainees awaiting deportation. This process serves to identify the individual basic needs of the detainees, in particular with a view to medical care, as concerns any instances in which they may need to be looked after, and the difficulties the detainees may have with the conditions of their detention. In this context, any risk of their harming themselves or others is also assessed. Moreover, the health and social services staff was augmented by a psychologist hired on a permanent basis in November of 2018.

In the Ingelheim short-term immigration detention centre at which persons required to leave the federal territory are kept in custody as a preventive measure in the **Rhineland-Palatinate** – in which parties affected from the **Saarland** are also placed –, social services and medical services look after the detainees; in addition, a psychotherapeutic consultation hour is offered every week. Moreover, the employees are regularly trained with a view to recognising suicidal tendencies. This is similar in **Lower Saxony**, where topics such as the mental and social consequences of detention, the causes of suicide and other facts about suicide, interventions in the case of suicidal tendencies, and suicide prophylaxis form part of the curriculum of ongoing professional training provided to employees. In the context of ongoing training measures and staff meetings, the knowledge is intensified and the awareness of employees is continually raised. In order to obtain an assessment already at the beginning of the detention as regards a potential suicide risk, a meeting is held on the day of admission with every immigration detainee. The findings are documented and may also include an assessment of the suicidal tendencies. Should there be any indications that the detainee is at risk of committing suicide, the psychological services and/or medical services are informed. They will initiate measures serving to reduce the risk of suicide in keeping with the circumstances given in the individual case.

In **Baden-Württemberg**, counselling institutions are granted free access to the detainees they look after. Thus, Amnesty International and Caritas have been active in this field for a longer time already. The detainees have the opportunity to independently enter into contact with the institutions of their choosing, either by telephone or via the internet; if needed, the management of the institution will take action via the social services or other employees of the institution. In Baden-Württemberg, detainees also will be looked after by a psychiatrist if needed.

In **Hessen**, it is currently still under review which further measures to prevent self-harm and suicide can still be taken.

In **Saxony-Anhalt**, plans are underway for the institution securing the deportation (*Abschiebungssicherungseinrichtung*) that is being planned to be established to include medical and psychological care for the detainees.

Brandenburg, Thuringia, and Schleswig-Holstein (and the Saarland, on this, see above) currently do not operate centres of their own for detention pending deportation.

Paragraph 75

“The CPT recommends that the Bavarian authorities take steps to ensure that foreign nationals detained at Eichstätt Prison (Centre for detention pending deportation) receive, when necessary, the assistance of qualified interpreters, particularly during consultations with the medical doctor and the psychologist. The Committee would also like to be informed when the video-based translation service planned to be introduced in all Bavarian Prison establishments will become operational.”

Parties affected who are placed in state-run shared accommodations in Bavaria as a rule will be supported over the course of the entire process, up until their departure, by interpreters and translators working for the authorities and sourced externally, in order to assist at meetings with the authorities. In Eichstätt Prison, the technical and contractual pre-requisites have already been created for taking into operation the planned video-based interpreting tool. This is to enable communication with the detainees both in the medical ward and in a further consultation room, so that taking recourse to other detainees as interpreters can be reduced to a minimum. In everyday situations, it will be possible, furthermore, to rely on the assistance provided by fellow detainees.

Paragraph 76

“The Bavarian authorities should consider providing immigration detainees held at Eichstätt Prison (Centre for detention pending deportation) with access to computers along with Voice-over-Internet Protocol facilities and basic internet access.”

From the perspective of the Bavarian authorities, the suggestion to allow immigration detainees to use computers with internet access is contravened by reasons of safety and security, since this use would have to be permanently supervised by prison staff in order to prevent abuse (such as the preparation of an escape) – which, however, it is not possible to achieve, neither as regards organisational aspects nor in terms of the staff levels this would require. In light of the increased risk of self-harm, moreover, there is the concern that the parties affected may withdraw and isolate themselves, which could be promoted by the availability of computers with internet access.

By providing generously defined times in which the telephone may be used and visiting hours, along with the unrestricted opportunity to correspond by letter, the detainees are nonetheless given sufficient contact to the outside world. Additionally, it is currently being reviewed whether to expand the opportunities for communication.

Paragraph 77

“The CPT recommends that the Bavarian authorities take the necessary steps to ensure that all immigration detainees who are placed in the security cells at Eichstätt Prison (Centre for detention pending deportation) be allowed to make phone calls and receive visits. Contact with the outside world should be enhanced when it concerns vulnerable detainees at risk of self-harming or committing suicide.”

As is the case for outdoor exercise in the courtyard (see the observations above at paragraph 70), the Bavarian authorities take the view that telephone calls and receiving visits is not always feasible for detainees at risk of self-harming or committing suicide. Here as well, however, the decisions taken in this regard always are oriented by the circumstances of the individual case and are taken after having deliberated the matter with the medical and psychological services.

Paragraph 78

“The CPT recommends that the Bavarian authorities take the necessary steps to ensure that all immigration detainees are systematically informed, including in writing, of their rights and the procedure applicable, in a language they understand. Further, house rules should be issued without delay at Eichstätt Prison (Centre for detention pending deportation), and the CPT would like to receive a copy of them.”

The house rules of Eichstätt Prison as a centre for detention pending deportation, which also provide information on the rights and obligations of detainees, are currently in the process of being revised and will be made available immediately upon completion.