

EXECUTIVE SUMMARY

The main objective of the 2020 periodic visit to Germany was to examine the treatment and conditions of detention of persons deprived of their liberty in various police establishments, prisons and psychiatric establishments in several *Länder*. The co-operation received from both the management and staff in all the establishments visited was excellent. The CPT further acknowledges that considerable progress has been made since the 2015 periodic visit regarding access of its visiting delegations to medical files of detained persons. However, it is most regrettable that access to individual patient files was once again problematic at Uchtspringe Forensic Psychiatric Clinic, and the CPT recommends that the authorities of Saxony Anhalt take the necessary steps without further delay to ensure that its delegations have unrestricted access to files of patients in all psychiatric establishments.

Police custody

As it was the case during several previous visits, no allegations of deliberate physical ill-treatment by police officers were received. However, the delegation received a few isolated allegations of excessive use of force in the context of apprehension, excessively tight handcuffing, verbal abuse and threats of physical ill-treatment.

As regards fundamental safeguards against ill-treatment (i.e. the right of notification of a third person and the rights to have access to a lawyer and a doctor), the delegation received a number of allegations that detained persons had not been promptly informed of their rights. Moreover, the records examined by the delegation in the police establishments visited, contained no information which would have enabled the delegation to verify these allegations or otherwise. The CPT recommends that all detained persons are fully informed of their fundamental rights as from the very outset of their deprivation of liberty and that this is documented accordingly in every police establishment. Despite the affirmation by the German authorities in their response to the report on the 2015 visit that ruling out the right of notification of custody entirely was not permissible, the delegation heard a number of allegations from persons who were or had recently been in police custody that their requests to notify a third person of the fact of their detention had not been granted by police officers. A few allegations were also received that access to a lawyer had been denied during the time of police custody. The CPT recommends that the relevant authorities take further steps to ensure that all persons detained by the police can effectively benefit from the right of notification of custody and, if they so wish, to have access to a lawyer from the outset of their deprivation of liberty.

Despite certain legislative amendments described in the report, it remains the case that juveniles may be questioned without the presence of either a lawyer or a trusted person. This is a matter of serious concern to the Committee. As repeatedly stressed, in order to effectively protect this particular age group, such a presence should be obligatory.

Material conditions in all the police establishments visited were on the whole adequate for short stays. However, mattresses were still not provided to persons held overnight in several of the police stations visited, and, in some others, persons held overnight were not provided with a blanket. Further, detained persons were still sometimes subjected to Fixierung in police establishments in several *Länder* or were handcuffed, sometimes in combination with ankle-cuffs, to fixed objects. The CPT once again recommends that these practices be stopped.

Prisons

The delegation visited for the first time the prisons in Bayreuth (Bavaria) and Gelsenkirchen (North Rhine-Westphalia) as well as Berlin Prison for Women. In addition, it carried out targeted visits to the prisons in Celle and Rosdorf (Lower Saxony), Freiburg (Baden-Württemberg) and Lübeck (Schleswig-Holstein) in order to examine the situation of inmates who had been subjected to the security measure of segregation for prolonged periods.

As was the case during several previous visits, the delegation received no allegations of ill-treatment of prisoners by staff in the establishments visited and inter-prisoner violence was not a major problem. At Gelsenkirchen and Bayreuth Prisons and Berlin Prison for Women, material conditions were very good, and the delegation gained a favourable impression of the regime of activities offered to prisoners. However, given that work opportunities were not available for all prisoners at Gelsenkirchen and Bayreuth Prisons, the CPT encourages the authorities to continue their efforts to provide all prisoners with a full programme of purposeful activities.

As regards the situation of inmates who were held in segregation for prolonged periods due to security reasons, the report highlights positively the varied regime and the extent of human contact offered to an inmate at Rosdorf Prison who had been held in segregation from all other inmates (*Einzelhaft*) for 24 years. That said, inmates held in segregation for prolonged periods at Celle and Lübeck Prisons were usually required to spend about 22 hours per day locked alone in their cells in a solitary confinement regime and were afforded very limited human contact. The Committee recommends that the authorities of all *Länder* take the necessary measures to ensure that inmates subjected to segregation for security reasons can benefit from a programme of purposeful and, as far as possible, out-of-cell activities and that they are provided, on a daily basis, with meaningful human contact. The aim should be that the persons concerned benefit from such contact for at least two hours every day and preferably more.

The CPT makes positive comments about the material conditions of the health-care facilities in the establishments visited, the available medication, access to specialist somatic care and the fact that newly-arrived prisoners were medically examined shortly after their admission. However, recommendations are made to improve the staffing levels, the recording of injuries and to put in place a clear reporting procedure if injuries consistent with allegations of ill-treatment (or indicative of ill-treatment) are detected by health-care staff. In addition, the CPT stresses the importance of respecting medical confidentiality in prisons.

Further, the CPT expresses serious concern as regards the psychiatric care of prisoners at Bayreuth and Gelsenkirchen Prisons. Although both establishments accommodated a number of inmates with severe mental disorders, the attendance of psychiatrists was clearly insufficient and, in both establishments, the management encountered major difficulties in transferring prisoners with acute mental disorders to a suitable therapeutic environment. It is a matter of particular concern that several persons held in prolonged segregation from all other inmates in the high-security units at Celle and Lübeck Prisons were suffering from severe and enduring mental disorders and could not be adequately cared for in prison. Also, in these establishments the management regularly encountered major difficulties in arranging sustainable transfers to a therapeutic environment, mainly due to the lack of capacity in suitable hospital facilities within or outside the prison system. The CPT recommends that the authorities of Bavaria, Lower Saxony, North Rhine-Westphalia and Schleswig-Holstein review the current arrangements for the hospitalisation of prisoners with serious mental disorders in order to ensure that they are effectively treated in a suitable therapeutic environment.

Once again, the delegation observed striking differences between the prisons visited regarding the arrangements for allowing prisoners to maintain contact with the outside world. It is a matter of particular concern that, at Bayreuth Prison, both remand and sentenced prisoners were not allowed to make phone calls, except in urgent cases.

Further, despite the specific recommendation repeatedly made by the Committee, it remains the case that the most severe disciplinary sanction of solitary confinement may be imposed for a period of up to four weeks for adult prisoners and up to two weeks for juveniles and young adults. The CPT reiterates that, given the potentially very damaging effects of solitary confinement on the mental and/or physical well-being of prisoners, its maximum period should be no more than 14 days for a given offence, and preferably less. Further, solitary confinement should never be imposed on juveniles as a disciplinary punishment.

Whilst acknowledging that, at Berlin Prison for Women, mechanical restraint (*Fixierung*) had not been used at all for several years and that, at Bayreuth and Gelsenkirchen Prisons, its use was relatively rare, the CPT recommends that the relevant authorities of all *Länder* abandon the resort to *Fixierung* in all prisons.

The CPT gained a positive impression of the measures taken by the relevant prison authorities in the context of the Covid-19 pandemic. That said, it encourages the authorities to explore ways in which newly-admitted prisoners placed in quarantine could be provided with meaningful human contact every day.

Psychiatric establishments

The delegation visited two forensic psychiatric clinics, namely Asklepios Clinic North - Ochsenzoll (Hamburg) and Uchtsprunge Forensic Psychiatric Clinic (Saxony-Anhalt). In neither clinic were allegations received of deliberate physical ill-treatment of patients by staff, and inter-patient violence did not appear to be a major problem.

Material conditions were generally of a high standard in both clinics. However, the report criticises that in the acute/admission ward at Hamburg Ochsenzoll, where patients could stay between some days and several years, a number of patients were sleeping in their rooms on a mattress placed directly on the floor. Some rooms also lacked other basic furniture (table, chair, cupboard/shelving) and patients were thus keeping their belongings in rubbish bags. The CPT recommends that in case of security concerns adequate safe furniture should be provided.

In both clinics, health-care staffing levels appeared to be on the whole adequate, and the delegation gained a generally favourable impression of the treatment provided to patients. In addition to pharmacotherapy, patients were offered a wide and appropriate range of therapeutic, rehabilitative and recreational activities. That said, the Committee formulates specific recommendations to improve the preparation of individual treatment plans of patients and the procedures for the application of anti-androgen treatment (so-called “chemical castration”) of sex offenders.

As regards the use of means of restraint, the CPT welcomes the fact that, in both clinics, mechanical restraint (*Fixierung*) of patients appeared to be applied only rarely and usually for short periods. That said, the report criticises that seclusion was used in both clinics rather frequently and sometimes for weeks or even months on end. Moreover, patients under *Fixierung* were not always subjected to continuous, direct and personal supervision by a member of health-care staff (*Sitzwache*).

Recommendations are further made to ensure that, in both clinics, patients subject to seclusion are provided with regular, meaningful, daily, face-to-face human contact, are offered daily access to an outdoor area (unless there are clear medical contraindications) and always receive appropriate – and if necessary suicide-proof clothing. For patients who, very exceptionally, require more than a few days in seclusion, there should be a clearly described planned pathway to re-integrate the patients concerned back into association with others. The Committee also stresses the need for introducing an internal written policy on the use of means of restraint and for recording all instances of restraint (including chemical restraint) in a specific restraint register.

The CPT welcomes the fact that the relevant federal legislation had been amended in order to enhance the mandatory involvement of an independent psychiatric expert in the context of the regular reviews of forensic placement decisions and that the new provisions were effectively implemented in practice in both clinics. It is further positive that, in the context of court proceedings, patients were usually heard in person by a judge and were represented by a lawyer.

Involuntary treatment was resorted to very rarely in both clinics. That said, the CPT has misgivings that some patients who were not capable of discernment appeared not to receive the treatment they needed (or received it only after a delay of several weeks or months), due to considerable legal and/or practical obstacles to exceptionally treat patients without their consent. At least in some cases, this state of affairs reportedly extended the patients' suffering from disturbing symptoms and also led to increased restraint of the patients concerned.

The CPT notes that Saxony-Anhalt is one of very few *Länder* in Germany where the relevant mental-health legislation provides for the possibility of imposing disciplinary sanctions on forensic psychiatric patients, including solitary confinement for up to four weeks. Whilst acknowledging that solitary confinement had not been applied at Uchtspringe in recent years, the CPT recommends that this type of sanction be abolished, and it encourages the authorities of Saxony-Anhalt and other *Länder* to fully abolish any disciplinary sanctions vis-à-vis patients with a mental disorder.

At Uchtspringe, newly-arrived patients were subject to a strip-search only upon a concrete suspicion. However, at Hamburg Ochsenzoll, the delegation gained the impression that strip-searches formed part of the standard admission procedure. Given the very intrusive and potentially degrading nature of a strip-search, the CPT recommends that such a measure always be based on an individual risk assessment and carried out in a manner respectful of human dignity.