



Report

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

from 1 to 14 December 2020

The Government of Germany has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2022) 19.

Strasbourg, 14 September 2022

CONTENTS

Executive summary	4
I. INTRODUCTION	8
A. The visit, the report and follow-up	8
B. Consultations held by the delegation and co-operation encountered	9
II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED	11
A. Police establishments	11
1. Preliminary remarks	11
2. Ill-treatment.....	12
3. Safeguards against ill-treatment	14
4. Conditions of detention	18
5. Other issues	19
B. Prison establishments	22
1. Preliminary remarks	22
2. Ill-treatment.....	23
3. Conditions of detention	24
a. material conditions.....	24
b. regime	25
4. Situation of inmates subjected to prolonged segregation from all other inmates	27
5. Health-care services	34
6. Other issues	39
a. prison staff	39
b. contact with the outside world.....	40
c. discipline.....	41
d. security-related issues	44
e. admission procedures.....	46
f. complaints procedures	47
g. Covid-19 pandemic and the measures taken	47
C. Psychiatric establishments	49
1. Preliminary remarks	49

2.	Ill-treatment.....	50
3.	Living conditions	51
4.	Staff and treatment	52
5.	Means of restraint.....	54
6.	Safeguards	59
	a. review of forensic placement decisions.....	59
	b. involuntary treatment.....	60
	c. inspection and complaints procedures	63
7.	Other issues	64
	a. contact with persons outside the hospital	64
	b. disciplinary measures.....	64
	c. security-related issues	65
	d. the use of surgical castration in the context of treatment of sex offenders.....	66

APPENDIX I

List of the establishments visited by the CPT's delegation.....	67
--	-----------

APPENDIX II

List of the federal and <i>Länder</i> authorities and other bodies met by the CPT's delegation	68
---	-----------

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.

I. INTRODUCTION

A. The visit, the report and follow-up

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Convention”), a delegation of the CPT carried out a periodic visit to Germany from 1 to 14 December 2020.¹

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

- Hans Wolff (Head of Delegation)
- Vânia Costa Ramos
- Gergely Fliegauf
- Nico Hirsch
- Julia Kozma
- Chila van der Bas.

They were supported by Petr Hnátík and Almut Schröder of the CPT’s Secretariat and assisted by an expert, Veronica Pimenoff, psychiatrist, former Head of Department at Helsinki University Psychiatric Hospital (Finland).

3. The main objective of the visit was to examine the treatment and conditions of detention of persons held in several police establishments and prisons, as well as the treatment, living conditions and legal safeguards offered to patients in forensic psychiatric hospitals in two *Länder*. In this connection, the CPT’s delegation reviewed the measures taken by the relevant authorities to implement various recommendations made by the Committee after the previous visit carried out in 2015. Particular attention was also paid to the situation of inmates held under a segregation regime for prolonged periods in prisons and to the use of other special security measures, including mechanical restraint (*Fixierung*), in various types of establishment.

A list of all the establishments visited by the delegation is set out in Appendix I to the report.

4. The report on the visit was adopted by the CPT at its 105th meeting, held from 28 June to 2 July 2021, and transmitted to the German authorities on 24 August 2021. The various recommendations, comments and requests for information made by the CPT are set out in bold type in the present report. The CPT requests the German authorities to provide within six months a response containing a full account of action taken by them to implement the Committee’s recommendations and replies to the comments and requests for information formulated in this report.

¹ The CPT has previously carried out six periodic visits (in 1991, 1996, 2000, 2005, 2010 and 2015) and three ad hoc visits (in 1998, 2013 and 2018) to Germany. The reports on these visits and related Government responses are available on the CPT’s website: <https://www.coe.int/en/web/cpt/germany>.

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

5. In the course of the visit, the delegation held consultations with Ms Margaretha Sudhof, State Secretary of the Federal Ministry of Justice and Consumer Protection, Mr Georg Eisenreich, Minister of Justice (Bavaria), Mr Frank Arloth, Head of Office (*Amtschef*) of the Ministry of Justice (Bavaria), Ms Melanie Schlotzhauer, State Councillor of the Office of Labour, Heath, Social Affairs, Family and Integration (Hamburg), Mr Dirk Wedel, State Secretary of the Ministry of Justice (North Rhine-Westphalia), and Ms Beate Bröcker, State Secretary of the Ministry of Labour, Social Affairs and Integration (Saxony-Anhalt). The delegation also met senior officials from the Federal Ministry of Justice and Consumer Protection and the Federal Ministry of the Interior, Building and Community as well as from relevant ministries of different *Länder*.

A list of all federal and *Länder* authorities and other bodies met by the delegation is set out in Appendix II to the report.

6. The co-operation received from both the management and staff at all the establishments visited (including those which had not been notified in advance), was excellent, despite the exceptional circumstances in which the visit took place, due to the ongoing Covid-19 pandemic. The delegation also wishes to express its appreciation for the assistance provided before, during and after the visit by the CPT's Acting Liaison Officer Mr Hans-Jörg Behrens and Ms Claudia Radziwill, Unit for Human Rights, Federal Ministry of Justice and Consumer Protection.

7. In all the prisons and police stations visited, the delegation had ready access to the documentation it needed in order to carry out its mandate. This was also the case at Asklepios Clinic North - Ochsenzoll (Hamburg).

However, it is most regrettable that, despite the very constructive attitude of the management, the delegation once again² encountered problems at Uchtspringe Forensic Psychiatric Clinic, since the authorities of Saxony-Anhalt maintained their position that the individual patient's consent was needed to provide the CPT with access to his/her medical files. This position had in 2015 compelled the delegation to interrupt its visit to the clinic. This time, it was only due to favourable circumstances and the fact that the visit to this hospital had been notified in advance that the delegation decided to refrain from discontinuing its visit once again. The hospital staff had asked all patients prior to the visit for their consent and fortunately not only many patients, but also those whose files were particularly important for the delegation's work, had given their consent.

Notwithstanding that, the CPT must stress that such an approach can clearly not ensure that the Committee will always be provided with access to the information needed to accomplish its tasks. Firstly, it is the CPT's right³ and frequent practice to visit places without prior notification. In such cases, there will be no time for extensive preparations by hospital staff. In addition, it will often not be possible to obtain patients' consent, e.g. due to their inability to give their valid consent, because of language barriers or because the patients concerned might have been transferred, discharged or have died. Other patients might not give their consent due to a lack of sufficient information about the CPT's work and its mandate. Requiring the express consent of each patient is therefore not a viable solution.

² See the report on the CPT's 2015 visit, CPT/Inf (2016)32, paragraphs 7 to 10.

³ See Article 8, paragraph 2 (d), of the Convention.

As emphasised several times in the past, prompt and unrestricted access to all relevant records is crucial to enable delegations to effectively carry out the CPT's mandate and to make a comprehensive and fair assessment of the situation of patients in a given hospital. It is all the more regrettable that this matter was not resolved in Saxony-Anhalt in the context of the amendment to the Law on Forensic Placement (*Maßregelvollzugsgesetz*) in March 2021.

The CPT also notes with concern that the situation remained equally problematic in respect of patients in *civil* psychiatric hospitals in Saxony-Anhalt where the recently adopted Mental Health Law (*PsychKG*) allows access to patient files for international bodies such as the CPT only with the patient's consent "or if a law provides for this". However, according to representatives of the relevant Ministry⁴ met by the delegation in Magdeburg during the visit, such a legal provision did not exist and therefore no access to files would be provided to the CPT without the civil psychiatric patients' consent.

8. On a positive note, it should be mentioned that the Law on the Execution of Sentences in Saxony-Anhalt was amended in 2020, in order to grant CPT delegations access to the administrative/medical files of prisoners.

9. As regards the situation in other *Länder*, the delegation was informed that, since the 2015 visit, amendments to the relevant prison and mental health legislation had been made or were pending in most *Länder* and that legislative procedures were planned in several others.

10. In conclusion, considerable progress has been made since the 2015 visit regarding the issue of access to medical files of detained persons. However, the situation remains particularly problematic in Saxony-Anhalt as far as access to the files of patients in civil and forensic psychiatric hospitals is concerned.

The CPT therefore recommends that the authorities of Saxony-Anhalt take the necessary steps without further delay to ensure that visiting delegations of the Committee henceforth have unrestricted access to the files of patients in all psychiatric establishments.

Further, the Committee would like to receive updated information regarding the recently adopted laws and outstanding legislative procedures in various *Länder* concerning the CPT delegation's access to files.

⁴ Ministry of Labour, Social Affairs and Integration.

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Police establishments

1. Preliminary remarks

11. In the course of the visit, the delegation visited various police establishments in Bavaria, Berlin, Brandenburg, Hamburg and North Rhine-Westphalia. In addition, the delegation carried out a number of interviews with newly-admitted remand prisoners in various *Länder*, including Baden-Württemberg, Lower Saxony and Schleswig-Holstein.

12. As regards time limits for the deprivation of liberty, it remains the case that *criminal suspects* may be detained by the police on their own authority until the end of the day following their apprehension.⁵

Persons may also be detained by the police for the purpose of *establishing their identity*, in which case a time limit of twelve hours is provided for in the Code of Criminal Procedure (*Strafprozessordnung – StPO*)⁶ and the Law on the Federal Police.⁷ The periods of police custody for this purpose authorised by the respective police laws of the *Länder* visited vary, but usually last between six hours (Lower Saxony) and twelve hours.

Further, under the Law on the Federal Police and the respective police laws of the *Länder*, persons may be taken into police custody for their *own protection* or for reasons of *public order* (e.g. prevention of criminal or administrative offences). Detention on these grounds may last until the end of the day following the apprehension and may be extended, under certain conditions, by a judicial decision for periods usually ranging between a few days and two weeks.

In Bavaria, since the visit carried out in 2015, the police law has been amended and the possibility to detain persons (with the approval of a judge) for reasons of public order has been extended from two weeks to three months; this period of time may be repeatedly extended by a judicial decision, always for up to three months.⁸ Nevertheless, the information gathered during the visit, in particular through examination of the relevant registers and through interviews with police officers, indicates that such prolonged periods were not imposed in practice.

The CPT must point out in this respect that although material conditions in the police establishments visited by the delegation in Bavaria were on the whole adequate for short stays (see paragraph 24), they were clearly unsuitable for prolonged detention. More generally, in the CPT's view, police premises should not be used for prolonged detention also from the perspective of provision of suitable regime to detained persons and the prevention of ill-treatment.

⁵ Section 128 of the StPO; see also Articles 104 (2) and (3) of the German Basic Law (*Grundgesetz*). The *Länder* police laws contain corresponding provisions.

⁶ Section 163c (2).

⁷ Section 42 (2).

⁸ See Section 20 (3) of the Police Law of Bavaria.

13. The examination of the relevant registers and the information gathered through interviews with persons who were – or who recently had been – in police custody indicates that the time limits for deprivation of liberty by the police were respected. Further, in practice, detained persons usually spent short periods of time in police custody (i.e. a few hours and, in some cases, up to some 30 hours) and were then released or remanded in custody by a judge.

2. Ill-treatment

14. In the course of the visit, the delegation interviewed many persons who were or had recently been in police custody. Particular attention was paid to the situation of women in police custody. It is positive that, as it was the case during several previous visits, no allegations of deliberate physical ill-treatment by police officers were received. On the contrary, a number of persons interviewed during the visit stated explicitly that they had been treated correctly, respectfully and professionally by police officers. Further, the CPT notes that none of the women interviewed during the visit who had recently been in police custody made any allegations of inappropriate gender-based behaviour or remarks by police officers.

However, the delegation received a few isolated allegations of excessive use of force in the context of apprehension, such as slaps and kicks after the person concerned had been brought under control. A few complaints were also heard from detained persons about excessively tight handcuffing (exceptionally for several hours), verbal abuse and threats of physical ill-treatment (including from a juvenile) by police officers.

The CPT trusts that the authorities of all *Länder* will remain vigilant and will continue to reiterate to police officers that verbal abuse and threats of physical ill-treatment are unlawful and unprofessional and will not be tolerated. It should also be reiterated to police officers that no more force than is strictly necessary should be used when carrying out an apprehension, that, once apprehended persons have been brought under control, there can be no justification for striking or kicking them, and that when it is deemed necessary to handcuff a person, the handcuffs should under no circumstances be excessively tight.⁹

15. The CPT recalls that an essential component of any strategy to prevent ill-treatment lies in the diligent examination by the competent authorities of all complaints of ill-treatment brought before them and, where appropriate, the imposition of a suitable penalty.

Following the 2020 visit, the German authorities provided detailed statistics regarding the number of complaints about misconduct of police officers (“use of force” and “coercion and abuse of authority”) for the period of 1 January 2016 to 31 December 2020.¹⁰

According to these data, a total of twelve complaints were lodged against federal police officers of which in one case, the criminal proceedings were still pending.¹¹ As regards the *Länder* police services, a total of 20,945 complaints were lodged in all *Länder* during the reference period; during the same period, investigations led to an indictment in 196 cases.

⁹ It should be noted that excessively tight handcuffing can have serious medical consequences (for instance, sometimes causing a severe and permanent impairment of the hand(s)).

¹⁰ For Bavaria, the data provided covered the period of 2016 to 2019.

¹¹ In the four other cases, criminal investigations were initiated but were later discontinued.

However, it remains unclear from the information provided to what extent the above-mentioned pending case concerning the federal police and the indictments concerning the *Länder* police services led to criminal and/or disciplinary sanctions being imposed on the police officers concerned. **The CPT would like to receive further information in this regard from the federal police authorities and the relevant authorities of all *Länder*.**

16. In the report on the 2015 visit, the CPT noted with interest that in several *Länder*, the police authorities had introduced (or were considering the introduction of) body-worn cameras for police officers on duty or were testing their use as pilot projects. During the 2020 visit, the delegation was informed that the use of these cameras had been introduced (and positively received) by police officers in North Rhine-Westphalia and that the use of body-worn cameras was tested by patrolling police officers in Berlin. Further, at Bayreuth Police Station, several police officers were using body-worn cameras on a voluntary basis as a pilot project.

The CPT welcomes these developments. It considers that the systematic use during any incidents of body-worn cameras represents an additional safeguard against abuse by officials as well as a protection against unfounded allegations of ill-treatment. **The Committee would like to receive updated information on the use of body-worn cameras by federal police officers and police officers of all *Länder*.**

17. The CPT has repeatedly stressed that appropriate safeguards must be in place in order to ensure that police officers wearing masks/balaclavas or other equipment that may hamper their identification can be held accountable for their actions (e.g. by means of a clearly visible *individual* number on the uniform). Such a requirement is also likely to have a preventive effect and significantly reduce the risk of excessive use of force and other forms of ill-treatment.

According to the information provided by the authorities following the 2020 visit, the obligation to wear means of identification exists in several *Länder* (e.g. Berlin, Brandenburg, Bremen, Hamburg, Hesse, Mecklenburg-Western Pomerania, Saxony-Anhalt, Thuringia) or is being prepared (Saxony).

However, in several *Länder*, including Bavaria, Lower Saxony, North Rhine-Westphalia and Schleswig-Holstein, police officers intervening under a joint command (e.g. during public order and crowd-control operations) merely wear a numerical identification of the unit to which they belong and, in Rhineland-Palatinate, members of special units wear neither a name tag, nor an identification number. In some *Länder*, the wearing of a name tag is voluntary for police officers (federal police, Baden-Württemberg and Saarland).

The CPT recommends that the Federal Ministry of the Interior, Building and Community and the police authorities of all *Länder* concerned take steps to ensure that police officers wearing masks/balaclavas or other equipment that may hamper their identification are obliged to wear clearly visible means of individual identification (e.g. a unique number on the uniform and/or helmet).

3. Safeguards against ill-treatment

18. In all the police establishments visited, information sheets on the rights of detained persons were available in a range of languages.

However, the delegation once again received a number of allegations from detained persons that they had not been informed of their rights or that the information had only been provided when they had been interviewed by police officers (or when they had appeared before a judge), after having spent several hours (or even overnight) in police custody. Further, several persons stated that they had been shown an information sheet but had had to give it back to police officers before their placement in a police custody cell. In some of the police establishments visited, police officers confirmed that this was indeed the case as detained persons were not allowed to keep any “personal items” in the cell and that they were given the information sheet back when they were released from police custody.

The delegation was not in a position to verify these allegations as no relevant information was contained in the custody records. Moreover, in the individual files of detained persons examined by the delegation in some police establishments, there was either no indication as to whether the detained person had received information on his/her rights or the person concerned had not been asked to attest with his/her signature that this had been the case.

In the light of these findings, **the CPT must recommend once again that the federal and all *Länder* authorities take the necessary measures to ensure that:**

- **all persons deprived of their liberty by police officers – for whatever reason – are fully informed of their fundamental rights as from the very outset of their deprivation of liberty (that is, from the moment when they are obliged to remain with the police).¹² This should be ensured by the provision of clear verbal information at the moment of apprehension, to be supplemented at the earliest opportunity (that is, immediately upon the first arrival at a police establishment) by the provision of the relevant information sheet. Further, the persons concerned should be asked to sign a statement attesting that they have been informed of their rights and should always be given and allowed to keep in the cell a copy of the information sheet;**
- **relevant information on the implementation of the fundamental safeguards against ill-treatment (i.e. when the person was informed of his/her rights; when he/she had contacts with and/or visits from close relatives, a lawyer, a doctor or a representative of a consular service or whether they waived these rights) is kept in respect of every police establishment in such a way that it can be retrieved retrospectively (on paper or in electronic form). This will enhance transparency and accountability and facilitate the work of inspection services and monitoring bodies.**

¹² See also Articles 3 and 4 of Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings.

19. In several previous visit reports, the CPT considered that the criterion provided for in Section 114c (1) of the StPO, Section 41 (2) of the Law on the Federal Police and the respective provisions of the *Länder* police laws allowing for the exercise of the right of notification of custody to be delayed was too vague.¹³ Regrettably, these provisions remained virtually unchanged.¹⁴ Moreover, it remains the case that decisions to delay notification may be taken solely by the investigating criminal police officer.

In their response to the 2015 report, the relevant authorities argued that “section 114c (1) of the Code of Criminal Procedure first and foremost permits the investigating authorities to limit the group of persons notified and the manner of their notification; according to predominant opinion, ruling out the right of notification entirely is [...] not permissible.” The authorities further argued that in any case, by virtue of Section 114c (2) of the StPO, once the detained person appears before a judge, i.e. at the latest on the day following his/her apprehension by the police, he/she must be given the opportunity to notify a family member or another trusted person.

However, the findings of the visit indicate that there may be a discrepancy between theory and practice.

In fact, in the course of the visit, the delegation heard a number of allegations from persons who were – or recently had 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 and that the notification had been delayed until the moment that the detained person had appeared before a judge on the day following their apprehension by the police.¹⁵

Some allegations were also received that when the notification of a third person was carried out by police officers, no feedback was provided to detained persons as to whether a third person could be reached. Further, a few allegations were heard that detained persons were not allowed to inform their family of their detention when the family lived abroad.

In the light of these findings, the Committee must once again point out that any exception to the right of notification designed to protect the legitimate interests of the investigation must be clearly defined and surrounded by appropriate safeguards (e.g. any delay to be recorded in writing together with the reasons, and to require the express approval of a senior police officer unconnected with the case at hand or a prosecutor).

Consequently, the CPT once again recommends that the relevant authorities take the necessary steps to ensure that all persons deprived of their liberty by the police effectively benefit from the right of notification of custody from the very outset of their deprivation of liberty. Any exception to this right should be clearly defined by law, duly recorded and the application of any exception in a given case should be notified to the detained person concerned.

¹³ The relevant provisions provide that a detained person “shall be given the immediate opportunity to notify a relative or a person he/she trusts, insofar as the purpose of the investigation is not jeopardised”.

¹⁴ In 2017, the StPO was amended and now provides that the notification may be delayed if it *considerably (erheblich)* jeopardised the purpose of the investigation.

¹⁵ At the same time, these persons were neither informed whether the provision of the relevant legislation, allowing for delaying the notification of custody to a third person, was being applied to them, nor when the notification would be allowed.

Further, **if notification of a third person is carried out by police officers, detained persons should be given feedback on whether it has been possible to notify a close relative or other person of the fact of their detention.**

Steps should also be taken to ensure that detained persons whose family members reside outside Germany can effectively benefit from the right of notification of custody.

20. As regards the right of access to a lawyer, in several previous visit reports, the CPT was critical of the fact that detained persons were not entitled to have a lawyer present during police questioning (as opposed to any questioning by a public prosecutor or a judge).

It is a positive development that Section 163a (4) of the StPO has now been amended and stipulates, in line with the recommendations repeatedly made by the CPT, that the possibility to have a lawyer present as provided for a questioning before a judge¹⁶ also applies to police questioning.¹⁷

The Committee also notes positively that most detained persons interviewed by its delegation confirmed that they had had the possibility to benefit from the assistance of a lawyer whilst in police custody.

However, the delegation still received a few allegations that access to a lawyer had been denied during the time of police custody (or that detained persons were discouraged by police officers to contact their lawyer). Moreover, a few detained persons claimed (and these statements were confirmed by several police officers met during the visit) that they had not been allowed to search for their lawyer's phone number in their mobile phones since the phone had been regarded as evidence.

The CPT encourages the federal and all *Länder* authorities to take further steps to ensure that all persons deprived of their liberty by the police can effectively benefit, if they so wish, from access to a lawyer throughout their police custody. Police officers should facilitate the efforts of detained persons to contact their lawyers.

21. In the report on the 2015 visit, the CPT noted that indigent persons who had been detained by the police were often not in a position to meet a lawyer in a police establishment, let alone benefit from his/her presence during police questioning. The CPT considered in this context that the legal criteria for granting legal aid to persons in police custody were far too restrictive.

¹⁶ Section 168c (1) of the StPO.

¹⁷ The amendments were introduced by the Second Act to Strengthen the Procedural Rights of Accused Persons in Criminal Proceedings and to Amend the Law on Lay Judges of 27 August 2017 (*Zweites Gesetz zur Stärkung der Verfahrensrechte von Beschuldigten im Strafverfahren und zur Änderung des Schöffengerichts*) which was adopted to implement Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.

It is a positive development that by legal amendments adopted in 2019,¹⁸ the criteria of mandatory legal representation have been significantly broadened and now include, for example, cases in which a person appears before a judge to be remanded in custody or temporarily placed in a psychiatric establishment, or if he/she has already been deprived of his/her liberty on the basis of a court decision or a court approval, or if, during a questioning by a judge, the participation of a defence lawyer appears necessary due to the importance of the questioning in order to protect the rights of the person concerned.¹⁹

Furthermore, if the person concerned requests the appointment of an *ex officio* lawyer once he/she has been informed that mandatory legal representation is required in his/her case (and in certain cases irrespective of whether any such request has been made by the person concerned), a lawyer must be appointed before the questioning (by the police).²⁰

The CPT welcomes these developments which it considers to be a step in the right direction. However, it remains the case that indigent persons whose case does not fall under one of the criteria for mandatory legal representation provided for by the relevant provisions of the StPO are not entitled to free legal aid during police custody.

Consequently, **the CPT recommends that the federal and all *Länder* authorities take further steps to ensure that indigent persons can effectively benefit from the assistance of a lawyer free of charge from the beginning of their police custody.**

22. The CPT has repeatedly recommended that detained juveniles should not be subjected to police questioning or be required to sign any statement related to the offence of which they are suspected without the presence of a lawyer and, in principle, a trusted adult.

The CPT notes that the Juvenile Justice Act (*Jugendgerichtsgesetz*), as amended in 2019,²¹ now provides that if the criteria for mandatory legal representation of a juvenile before the court are met, the juvenile concerned should be appointed a lawyer before questioning (by the police).²² However, it follows that where the criteria are not met, the juvenile concerned may still be questioned by the police without the presence of a lawyer.

Moreover, while it remains the case that the police are obliged to notify parents and the juvenile concerned is entitled to have a trusted person present during questioning, the presence of a trusted adult person is still not obligatory.

¹⁸ The amendments were introduced by the Law Reforming Compulsory Legal Representation of 10 December 2019 (*Gesetz zu Neuregelung des Rechts der notwendigen Verteidigung*) which was adopted to implement Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings.

¹⁹ See Section 140 of the StPO.

²⁰ See Section 141 (1) of the StPO. Before the 2019 amendments, the appointment of an *ex officio* lawyer only took place once the person concerned has been served with an indictment pursuant to Section 201 of the StPO.

²¹ The amendments were introduced by the Act to Strengthen the Procedural Rights of the Accused in Criminal Proceedings Relating to Young Offenders 9 December 2019 (*Gesetz zur Stärkung der Verfahrensrechte von Beschuldigten im Jugendstrafverfahren*) which was adopted to implement Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings.

²² See Sections 68 and 68a of the Juvenile Justice Act.

In sum, detained juveniles may still 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, the onus should not be placed on the juvenile to request the presence of a lawyer or a trusted person. *Such a presence should be obligatory.*

The CPT once again calls upon the federal and all *Länder* authorities to take steps without delay to ensure that detained juveniles are not subjected to police questioning or required to sign any statement related to the offence of which they are suspected without the presence of a lawyer and, in principle, a trusted adult.

23. On a positive note, it remains the case that the right of access to a doctor (including of one's own choice) for persons in police custody did not pose a difficulty. At the request of the person concerned or at the initiative of police officers, for example when the detained person complained of health problems, detained persons were usually promptly examined by a medical doctor who was called to the police detention facility or the person was transferred to a health-care facility.

Moreover, the delegation was informed at Düsseldorf and Gelsenkirchen Police Headquarters that detained persons were systematically medically examined to establish their fitness for placement in a police custody cell.

4. Conditions of detention

24. As observed during several previous visits, material conditions in all the police establishments visited were on the whole adequate for short stays (in this context, see also paragraph 13). In particular, the cells seen by the delegation were sufficient in size, were suitably equipped and were in a good state of repair and cleanliness. They were also sufficiently lit and most of them had some access to natural light.

That said, the delegation was struck to find once again, despite the recommendations systematically made in the past by the CPT, that mattresses were still not provided to persons held overnight in several of the police stations visited (for example, at Berlin Tempelhof and Hamburg 11 Police Stations).

Further, in several of the police establishments visited, persons held overnight were not provided with a blanket or, at Munich Police Headquarters, the blankets were taken away at 5 a.m. every day.²³ The CPT does not find convincing the explanation provided by police officers in Munich that this is done as a suicide-prevention measure.

The CPT once again calls upon the police authorities of Berlin and Hamburg, and where relevant, of all other *Länder*, to take immediate steps to implement the long-standing recommendation that all persons held overnight in police custody be provided with a clean (and, if necessary, washable) mattress and clean blankets. Steps should also be taken to ensure that persons in police custody are allowed to keep their blankets during the day.

²³ The delegation heard several complaints from detained persons that they felt cold in the cell once the blanket had been taken away.

25. In none of the police establishments visited were there arrangements in place to offer detained persons the possibility of daily access to fresh air. At best, detained persons were allowed on an *ad hoc* basis to smoke in the car park adjacent to the establishment at Gelsenkirchen and Munich Police Headquarters.

Whilst acknowledging that detained persons usually stayed for short periods of time in police custody, **the CPT recommends that steps be taken by the police authorities of all *Länder* to ensure that all persons held in a police establishment for 24 hours or more are, as far as possible, offered outdoor exercise on a daily basis.**

In this connection, **the Committee wishes to emphasise that the need for outdoor exercise areas for detained persons should be taken into account in the design of any new (or newly-refurbished) police establishments.**

5. Other issues

26. The CPT has repeatedly expressed its misgivings about the use of mechanical restraint to immobilise detained persons (*Fixierung*) in the context of police custody and has recommended that an end be put to this measure in police establishments throughout Germany. Regrettably, according to the information provided by police officers in the establishments visited, detained persons were still sometimes subjected to *Fixierung* in several *Länder* (Brandenburg, Hamburg and North Rhine-Westphalia).²⁴

Further, as observed already during the 2015 visit, at Munich Police Headquarters, detained persons who were agitated or presented a risk of self-harm were occasionally either attached with metal handcuffs on one of their wrists to an iron ring fixed to the wall inside a security/calming-down cell, or handcuffed behind their back and attached to the ring while seated, sometimes in combination with the use of ankle-cuffs. The delegation observed that similar arrangements also existed at Potsdam-West Police Station where all custody cells were fitted with metal bars to which persons could be handcuffed.

In addition, it became clear during the visit that in various police establishments in different *Länder* detained persons were handcuffed to fixed objects, such as benches or staircase railings, albeit for short periods of time, while waiting for police questioning or for placement in a police custody cell.

27. The CPT must once again stress that, in the event of a person in police custody acting in a highly agitated manner, the use of handcuffs may be justified. However, the person concerned should never be shackled to fixed objects but instead be kept under close supervision in a secure setting and, if necessary, police officers should seek medical assistance and act in accordance with the doctor's instructions.²⁵

²⁴ The delegation could not obtain a clear picture of the frequency and duration of the measure as in none of the police establishments visited in which *Fixierung* was used was resort to this measure recorded in a dedicated register.

²⁵ See also the recently adopted [Recommendation](#) CM/Rec(2021)2 of the Committee of Ministers to member States on measures against the trade in goods used for the death penalty, torture and other cruel, inhuman or degrading treatment or punishment which regards, *inter alia*, cuffs for restraining human beings, designed to be anchored

Further, every police facility where persons may be deprived of their liberty should be equipped with one or more rooms designated for detention purposes and offering appropriate security arrangements. Corridors should not be used as *ad hoc* detention facilities.

The CPT once again calls upon the police authorities of Brandenburg, Hamburg and North Rhine-Westphalia and all other *Länder* concerned to put an end to the use of *Fixierung* in police establishments without any further delay.

Further, the Committee reiterates its recommendation that the practice of shackling detained persons to fixed objects be stopped in all *Länder*. In this context, the metal ring in the security cell of Munich Police Headquarters and the metal bars in the cells at Potsdam-West Police Station should be removed.

28. At Bayreuth Police Station, the delegation saw a black padded helmet which was used to protect the head of agitated detained persons who attempted to self-harm by banging their head against the wall. However, according to the police officers, the use of the helmet was not recorded in any register. **The CPT recommends that the police authorities of Bavaria and, where relevant, all other *Länder*, ensure that whenever resort is had to a head protection vis-à-vis agitated detained persons, its use is properly recorded. Moreover, persons at risk of self-harming should be placed under direct supervision by police officers and should promptly be seen by a doctor.**

29. Several persons interviewed during the visit stated that they had been transported in police vehicles while being handcuffed behind their back. **Given the potential to cause unnecessary pain to the person concerned and the risk of injury in the case of accident, the CPT recommends that such a practice be, as far as possible, avoided in all *Länder*.**

30. In the various police establishments visited, people were occasionally subjected to a strip-search before their placement in a police custody cell. The CPT notes positively that resort to this measure was not systematic and appeared to be based on an individual risk assessment.

However, according to the information provided by police officers, detained persons were sometimes asked to undress fully and occasionally also to perform a squat.

The CPT must stress that every strip-search is a very invasive and potentially degrading measure. To minimise embarrassment, detained persons who are being searched should not normally be required to remove all their clothes at the same time, e.g. a person should be allowed to remove clothing above the waist and put it back on before removing further clothing.

The CPT recommends that the police authorities of all *Länder* take steps to ensure that these precepts are effectively implemented in practice in all police establishments.

to a wall, floor or ceiling as “inherently abusive goods and equipment” and requires member States to take measures to prevent and prohibit their import, export or transit, from, to or through their jurisdiction. Further, they should be included on a list of prohibited goods and equipment which should be established by member States and their stock should be destroyed (paragraphs 1.2, 1.3, 1.4 and Appendix 1 to the Recommendation).

31. Several detained women interviewed during the visit stated that they had been obliged to remove their bra before they had been placed in a police custody cell. When asked, some police officers confirmed that this was indeed systematically required as a measure to prevent suicide.

In contrast, at Munich Police Headquarters, the delegation was informed that if, following an individual risk assessment, women were asked to surrender their bra, they were provided with a suicide-proof bra as a replacement. The CPT welcomes this approach.

The CPT invites the police authorities of all *Länder* to ensure that the confiscation of clothing during police custody is only carried out when deemed necessary on the basis of an individual risk assessment.

B. Prison establishments

1. Preliminary remarks

32. 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 held in segregation for prolonged periods and/or to interview recently-admitted remand prisoners.²⁶

33. *Bayreuth Prison*, the third oldest prison in Germany, was opened in 1724 and subsequently extended several times. At the time of the visit, it had an official capacity of 890 places and was accommodating 809 male adult prisoners: 75 were held on remand and the rest were sentenced prisoners (including 22 life-sentenced prisoners²⁷).²⁸

Gelsenkirchen Prison is located in purpose-built premises constructed between 1996 and 1998. The main structure of the prison consists of several inter-connected sections organised in a semi-circular shape, which contain all the accommodation and administrative units. With an official capacity of 555 places (118 for adult women and 437 for adult men), the establishment was accommodating 109 female prisoners (including 37 held on remand) and 309 male sentenced prisoners at the time of the visit.²⁹

Berlin Prison for Women consists of four locations situated in different parts of the city. At the time of the visit, location *Lichtenberg* had a capacity of 71 places and was accommodating 65 adult women (including 21 held on remand) and one female juvenile;³⁰ location *Pankow* was accommodating 43 adult female prisoners (including 19 remand prisoners and five life-sentenced prisoners) for a capacity of 51 places.³¹ Location Pankow also comprised a mother-and-child unit which had the capacity for two mothers and was accommodating one woman with her child at the time of the visit.

²⁶ The situation of inmates who have been held in segregation for prolonged periods is addressed in subchapter 4.
²⁷ Life-sentenced prisoners at Bayreuth Prison and Berlin Prison for Women (see below) were fully integrated in the general prison population and their regime and the security measures applied to them, as well as other aspects of their imprisonment, did not differ from those applied to other inmates.

²⁸ The prison also contained an open unit ("Building J") which was located in a former farmhouse, some 4 km away from the main prison compound. With an official capacity of 37 places, it was accommodating 23 prisoners. This unit was not visited by the CPT's delegation.

²⁹ A separate open unit for female prisoners (capacity: 61 places, occupancy: 35 women) was located in the immediate vicinity of the main prison compound. This unit was not visited by the CPT's delegation.

³⁰ Several other inmates were serving a juvenile prison sentence (i.e. a sentence imposed on a person who had been aged 14 to 21 when committing the crime) but were adults.

³¹ The capacity of the two locations had been decreased due to the Covid-19 pandemic. Their usual capacity had been 87 places (Lichtenberg) and 60 places (Pankow). The other two locations (Neukölln and Reinickendorf) functioned as open units and had a capacity of 21 and 86 places, respectively. These locations were not visited by the CPT's delegation.

34. In the Länder visited, the basic legal framework of the execution of prison sentences and remand detention is laid down by the 2007 Law on the Execution of Prison Sentences of Bavaria (BayStVollzG), the 2011 Law on Remand Detention of Bavaria (BayUVollzG), the 2016 Law on the Execution of Prison Sentences of Berlin (StVollzG Bln), the 2009 Law on Remand Detention of Berlin (UVollzG Bln), the 2015 Law on the Execution of Prison Sentences of North Rhine-Westphalia (StVollzG NRW) and the 2009 Law on Remand Detention of North Rhine-Westphalia (UVollzG NRW).

35. As observed in the past, the prison estate continued to operate below its official capacity and the delegation did not observe any overcrowding during the 2020 visit. According to the official statistics provided by the authorities, in December 2020, the prison estate had an official capacity of 72,385 places and was holding 58,004 inmates, including 12,064 on remand (occupancy rate approximately 80 %).³²

2. Ill-treatment

36. As was the case during several previous visits, the delegation received no allegations – and found no other indications – of ill-treatment of prisoners by staff.³³ On the contrary, many inmates interviewed by the delegation spoke positively of the professionalism demonstrated by staff and their attitude towards prisoners and the delegation observed for itself that staff regularly interacted with inmates.

37. The information gathered during the visit, in particular through interviews with prisoners and staff, indicates that inter-prisoner violence was not a major problem in the establishments visited. When confronted with the occasional instances of minor physical fights or verbal disputes, staff reacted promptly and adequately, separated the inmates involved and attempted to de-escalate the situation.

38. At Berlin Prison for Women, all instances of inter-prisoner violence were registered in an electronic incident register.³⁴

However, no such register existed in the other two establishments visited and the delegation was informed that, at Bayreuth Prison, if the case of inter-prisoner violence was considered a disciplinary offence, it was only registered in the disciplinary register.

³² According to the most recent SPACE I statistics (SPACE I – 2020 – Council of Europe Annual Penal Statistics: Prison Populations, available at <https://wp.unil.ch/space/space-i/annual-reports/>), as at 31 January 2020, the prison estate had an official capacity of 73,008 places and was holding 63,399 prisoners (occupancy rate 86.8 %). The overall prison population rate per 100,000 inhabitants was 76.2, i.e. well below the European average of 124.

³³ In the course of the visit, the delegation paid particular attention to the situation of female prisoners; the CPT notes that none of the female inmates interviewed during the visit made any allegations of inappropriate gender-based behaviour or remarks by members of staff.

³⁴ For example, in 2020, there were seven cases of minor physical and/or verbal fights at Lichtenberg and five such cases at Pankow.

At Gelsenkirchen Prison, only summary figures concerning inter-prisoner violence were included in the quarterly reports drawn up by the prison management for the prison authorities.³⁵ Nevertheless, none of the records presented to the delegation during the visit made it possible to acquire a complete overview of the instances of inter-prisoner violence and it proved impossible during the visit to retrieve the relevant data from the electronic registers maintained in the establishments.

The CPT recommends that the prison authorities of Bavaria and North Rhine-Westphalia as well as of all other *Länder* take steps to ensure that an incident register in which all violent incidents, including instances of inter-prisoner violence, are recorded is introduced in all prisons, so as to facilitate monitoring of the situation and identify potential tensions and risks.

3. Conditions of detention

a. material conditions

39. Material conditions in the establishments visited were very good. All the premises seen by the delegation were in a good state of repair and were clean. This is particularly noteworthy as regards Bayreuth Prison, parts of which had been constructed several centuries previously.

Cells accommodating prisoners were sufficiently lit (including adequate access to natural light), heated, ventilated and were well-equipped (including a call bell). The in-cell sanitary annexes (comprising a toilet and a washbasin, as well as, at Berlin Prison for Women, a shower) were usually fully partitioned from the rest of the cell.³⁶

All the cells visited were sufficient in size for their occupancy.³⁷ At Bayreuth and Gelsenkirchen Prisons, single-occupancy cells measured between 8 and 9 m², cells for three or four persons measured between 17 and 22 m² and the largest cells at Bayreuth with a capacity of six inmates measured some 28 m².

The CPT particularly welcomes the fact that at Berlin Prison for Women, all inmates were accommodated in a single-occupancy cell (which measured between 7 and 12 m²). Each inmate possessed a key to her cell.

40. Material conditions in the mother-and-child unit at Pankow were of a particularly high standard. The unit consisted of an entrance area, two spacious bedrooms, a bathroom, a living room, a kitchen and a separate room with a washing machine and a tumble dryer. The unit was in an excellent state of repair, was nicely decorated with colourful paintings on the walls and was well-equipped (including, for example, with baby cots, changing tables, baby bathtubs, toys and play rugs, as well as armchairs and sofas).

³⁵ The delegation was also informed in all three establishments visited that more serious cases of inter-prisoner violence which would give rise to a suspicion of a criminal offence would be reported to the relevant public prosecutor. Reportedly, there had been no such cases within the recent past.

³⁶ In a few single-occupancy cells at Bayreuth Prison, the sanitary annexes were partially partitioned.

³⁷ All the sizes indicated in this paragraph exclude the space taken by the in-cell sanitary annexes.

41. That said, at Gelsenkirchen Prison, the delegation heard a number of complaints from prisoners about the thin foam mattresses. Following the visit, the relevant authorities of North Rhine-Westphalia informed the Committee that before the end of 2021, prison establishments would start to be equipped with new mattresses. In addition to being thicker and thus providing improved comfort, they will apparently be made of a material with increased resistance to fire and also provide better hygienic characteristics. As an immediate solution, to alleviate back problems, prisoners were provided, upon the recommendation of the prison doctor, with a second mattress to be placed on top of the other.

The CPT welcomes the swift reaction of the prison authorities of North Rhine-Westphalia and would like to receive updated information on this issue.

42. In all three establishments visited, prisoners had daily access (see also paragraph 43) to pleasant and spacious outdoor exercise areas which possessed some sports equipment. However, at Bayreuth Prison, not all the areas were equipped with benches and a shelter against inclement weather and, at Gelsenkirchen and Pankow, there were no shelters.³⁸ **The CPT recommends that these deficiencies be remedied.**

b. regime

43. Overall, the delegation gained a favourable impression of the regime activities offered to prisoners in all three establishments visited.³⁹

44. At Berlin Prison for Women, both remand and sentenced prisoners benefited from generous out of cell time (i.e. at least some six hours every working day and between 6.15 a.m. and 9.15 p.m. on the weekends) during which they could associate with other inmates, watch TV together and cook in communal areas equipped with kitchens. During the association time, they could go to the outdoor yards (for up to three hours a day) where they could practise sports (such as ball games and table tennis). The vast majority of sentenced prisoners and a number of remand prisoners worked (cleaning, gardening, work in the kitchen/laundry/library), participated in educational classes or training modules (e.g. wall painting, cleaning and serving food in social care homes). Inmates also had access to a gym and staff organised a number of leisure activities (yoga classes, art courses and concerts).

The juvenile inmate held in the establishment at the time of the visit could associate with other women accommodated in the same unit,⁴⁰ participated in various leisure activities and attended school classes which were provided by an outside teacher.

³⁸ Following the visit, the management of Berlin Prison for Women confirmed to the delegation that it was planned to equip the yard at Pankow with a shelter.

³⁹ The arrangements described in the following paragraphs do not reflect the restrictions imposed in the context of the Covid-19 pandemic (in this respect, see paragraphs 98 to 103).

⁴⁰ As noted in paragraph 39, all women were accommodated in single-occupancy cells.

The woman accommodated with her five-week-old baby in the mother-and-child unit⁴¹ was offered a German language class (albeit often interrupted by the needs of the baby), had daily access to the outdoor yard for one or two hours, was free to leave the unit and associate with other women and, with the mother's permission, other women were allowed to enter the unit. A midwife from outside the prison and child welfare authority officials visited twice a week. However, as time passed, the interest of the fellow inmates in visiting progressively diminished and the woman concerned felt isolated. **The CPT invites the prison authorities of Berlin to explore ways how mothers accommodated in the mother-and-child unit at Berlin Prison for Women could be offered support and be given opportunity to associate, to a greater extent, with other prisoners and to engage in activities.**

45. At Gelsenkirchen Prison, all inmates benefited from one hour of outdoor exercise a day, at least two hours of association time within their units and were offered a range of leisure activities, including sports in a spacious and well-equipped indoor sports hall and a gym, as well as outdoor sports areas. Some 80 % of female prisoners (both remand and sentenced) and approximately 65 % of male prisoners were engaged in work (including for external companies), school education or vocational training modules and the management of the prison was striving to provide additional employment opportunities.⁴²

At Bayreuth Prison, in addition to several hours a day of association time within their units,⁴³ all prisoners were offered one hour of daily outdoor exercise and a range of sports and leisure activities. The establishment contained a spacious outdoor sports area and a gym; the management was committed to having an indoor sports hall constructed. Approximately two-thirds of sentenced prisoners worked (e.g. housework, laundry, kitchen, bakery or work for external companies), participated in vocational training (bakery, automotive industry work, carpentry), shorter training modules (cleaning, welding) or attended school classes. However, the situation was less positive as regards remand prisoners who were as a general rule not offered work and only 19 (out of 75) of them worked.

The CPT encourages the prison authorities of Bavaria and North Rhine-Westphalia to continue their efforts to provide all prisoners at Bayreuth and Gelsenkirchen Prison with a full programme of activities. The aim should be to ensure that all prisoners, including those on remand, are able to spend a reasonable part of the day (i.e. eight hours or more) outside their cells engaged in purposeful activities of a varied nature (work; vocational training; education; sport; recreation/association).

⁴¹ The decision to place an inmate in this unit was taken in consultation with the child welfare authority was based on the principle of the best interests of the child. The delegation was informed that women could stay in this unit until their child reached one year of age. However, to avoid separation from the child, only women with shorter sentences or women who had the prospect of being placed in an open prison (where they could stay in a dedicated mother-and-child unit until the child reached two or three years of age) were admitted to this unit.

⁴² In November 2020, an external company which had provided work for prisoners moved away.

⁴³ More particularly, remand prisoners benefited from an open-cell policy for three hours on workdays and for four hours at the weekend; sentenced prisoners could associate freely within their units for five hours on workdays and for seven hours at the weekend.

46. Further, at Bayreuth Prison, the delegation received several complaints that, to be allowed to participate in sports activities, prisoners had to buy sports shoes and clothes from a prison catalogue in which prices significantly exceeded external retail prices. It should be noted in this context that prisoners at Bayreuth Prison were not allowed to receive parcels from their families. Allegedly, this arrangement effectively prevented some prisoners from participating in sports.⁴⁴ **The CPT would like to receive the comments of the Bavarian prison authorities on this issue.**

47. The delegation also examined the situation of prisoners held in the socio-therapeutic units for sex offenders and for violent offenders at Bayreuth Prison. These units were intended for inmates with a prison sentence of at least two years and the decision to place inmates in these units was taken by a multidisciplinary team comprising psychologists, social workers and custodial staff. In addition to the above-mentioned regime activities available to the general prison population, prisoners accommodated in these units were offered a range of individual and group therapeutic activities, including interventions focused on the prevention of re-offending and anger management, by multi-disciplinary teams specifically trained to work with these categories of inmate (including several clinical psychologists). Taking into account these findings, the delegation gained a very positive impression of the functioning of these units.

4. Situation of inmates subjected to prolonged segregation from all other inmates

48. In the course of the visit, the delegation paid particular attention to the situation of inmates who were held in segregation from all other inmates for prolonged periods due to security reasons.⁴⁵ Following a specific request for information made by the CPT prior to the visit, the delegation was informed that a total of 23 prisoners in the whole country (including four on remand) and two persons in preventive detention had been held in segregation from all other inmates for more than one year.⁴⁶ The cases with the longest periods of segregation concerned two persons held in preventive detention at Lübeck and Rosdorf Prisons, who had been subjected to the security measure for 22 and 24 years respectively. Most of the other prisoners concerned were being held in segregation in different *Länder* for periods ranging from one to two years. The CPT's delegation carried out targeted visits to Celle and Rosdorf Prisons (Lower Saxony) and Lübeck Prison (Schleswig-Holstein) in order to examine the situation of inmates held under prolonged segregation from all other inmates.

⁴⁴ Reference is made in this context to the comments made by the Committee in its 30th General Report (see, in particular, paragraph 78 of CPT/Inf (2021) 5).

⁴⁵ The most restrictive detention regime for prisoners and persons held in preventive detention in Germany is "segregation from all other inmates" (*unausgesetzte Absonderung* or *Einzelhaft*, see e.g. Section 82 of the Law on the Execution of Sentences of Lower Saxony and Section 87 (2) 3. of the Law on the Execution of Preventive Detention of Schleswig-Holstein). Prisoners and persons in preventive detention may further be held in "segregation from other inmates" (*Absonderung*, see e.g. Section 81 (2) 3. of the Law on the Execution of Sentences of Lower Saxony, Section 86 (2) 4. of the Law on the Execution of Preventive Detention of Lower Saxony and Section 108 (2) 3. of the Schleswig-Holstein Law on the Execution of Sentences) which in practice could also imply the inmate's segregation from all other inmates. Both measures may be imposed by the prison management if there is an increased risk of self-harm, harm to others or escape. In the case of remand prisoners, these types of special security measure may be imposed by the competent court under Section 119 (1) 5. of the StPO (including in case of risk of collusion).

⁴⁶ Formally, the persons concerned were held either under *unausgesetzte Absonderung/Einzelhaft* or *Absonderung* regimes.

49. At the outset, the CPT wishes to highlight that its delegation gained a positive impression of the regime offered to the inmate in preventive detention at Rosdorf Prison, who had been held in segregation for 24 years (“inmate A”).

Inmate A was accommodated in a special unit with three places, assigned to persons in preventive detention who were considered to be particularly challenging, which was fully occupied at the time of the visit. Despite the strict segregation regime, he was allowed to associate with one other inmate in preventive detention at a time (so-called regime “1B”, see below paragraph 51) and the management and unit staff actively encouraged and enabled such contacts within and outside the unit.

From the interview with him and consultations with staff it transpired that, in practice, inmate A concerned usually spent several hours per day with a fellow inmate from the same unit (cooking, talking, playing card or board games, walking in the unit’s yard). During the day, the accommodation rooms were unlocked and the yard was freely accessible. About three times a month he received individual “visits” from other persons held in another preventive detention unit at the prison and he could also occasionally associate with them in their accommodation rooms (both upon approval of the management).⁴⁷ He further participated with other inmates in the prison’s “hiking group” (tour planning, training and hiking excursions outside the prison about twice a year).

In order to further counter the potentially negative consequences of the segregation regime, there were usually enough staff members present in the unit to spend time with the inmates, and inmate A regularly made use of such possibilities (e.g. playing card/board/computer games, table football, table tennis, cooking, watching sports together, talking). A small communal room with armchairs and a television set was used for this purpose and the delegation itself could observe the relaxed and friendly atmosphere in the unit. The inmate also regularly met a social worker and a psychologist.

In addition, inmate A was offered work in the unit (e.g. packing greeting cards), had frequent access to a gym and a computer room and could regularly go to the prison shop. He further benefitted up to five times per year from escorted leave (*Ausführung*) for up to eight hours (e.g. shopping, museum, zoo).

In conclusion, considerable efforts were made by the prison management and unit staff to ensure that inmate A was offered at least two hours of meaningful human contact per day (and usually much more), in line with the requirements set out in the European Prison Rules (as amended in 2020).⁴⁸ This is commendable.

50. The CPT acknowledges the efforts made by the management and staff at Celle and Lübeck Prisons to counter the potentially harmful effects of the isolation by providing the inmates concerned with activities and meaningful human contact. In both prisons, the inmates concerned were offered so-called “relief talks” (*Entlastungsgespräche*), e.g. by a psychologist or a priest, on a weekly basis for one hour in the visitors’ room (usually behind a glass partition).

That said, in practice, the inmate in preventive detention who had been held in segregation at Lübeck Prison for 22 years (“inmate B”) refused virtually all out-of-cell activities and any human contact offered to him (including access to the outdoor yard and “relief talks”). Moreover, offers made by the management to transfer him to another establishment in order to “try a new start” had been repeatedly rejected by the inmate.

⁴⁷ At the time of the visit, a total of 39 persons were being held in preventive detention in the prison.

⁴⁸ See Rule 53A (a).

Given that inmate B may still be held in prison for a prolonged period, the management of Lübeck Prison concurred with the delegation that, despite the persistent deadlock, additional avenues should be explored to provide him with meaningful human contact.

51. At Celle Prison, a total of five prisoners had been held in segregation from all other inmates for more than one year. They were all accommodated in single cells in the prison's high-security unit. Two prisoners were subjected to the stricter regime ("1A") and were not allowed to have contacts with any other prisoner, while the other three were subjected to a less restrictive regime ("1B") and were thus in principle allowed to associate during out-of-cell activities with one designated prisoner from the same unit.

The out-of-cell activities offered to prisoners under regime 1A mainly consisted of one hour of outdoor exercise per day alone in the unit's yard and, on most days, of one hour of individual access to an indoor fitness room. In addition, they could be allowed to cook alone in the unit's kitchenette several times a week (upon permission from the prison management).

The out-of-cell activities offered to prisoners under regime 1B were similar to those under regime 1A. In addition, some of them were offered the possibility to practice sports individually with an instructor in the yard once a week (for 30 minutes to one hour) upon permission from the prison management.⁴⁹

52. In practice, all prisoners in the high-security unit of Celle Prison had to notify their intention to participate in out-of-cell activities every day at 6 a.m. during the staff's wake-up round. The delegation heard complaints about this arrangement from prisoners who said that they rarely made use of out-of-cell activities, including access to the outdoor yard, as they frequently failed to inform staff of their interest in the morning due to the early hour.

As regards the general possibility for prisoners under regime 1B to associate with one other inmate, none of the prisoners concerned was, at the time of the visit, considered by the management suitable or able to associate with a fellow-inmate of the same unit. This was due to various reasons such as one inmate's refusal of any contact and several prisoners' mental health problems (see, also in this regard, paragraph 56).

Thus, at the time of the visit, all out-of-cell activities except from the weekly "relief talks" were to be taken alone and the prisoners under both regimes therefore usually had human contact only with members of staff. In this regard, it is a matter of serious concern that, although staff of this unit had been expressly encouraged by the management to seek opportunities to communicate with the inmates concerned, there appeared to be only few real opportunities for the inmates to talk with staff beyond short verbal exchanges connected to the daily routines (like handing out meals/dishes through the door hatch, escort to the yard and shower, the weekly laundry exchange). Moreover, the delegation was told that most of the inmates concerned did not have contact with persons outside the prison.⁵⁰

⁴⁹ Inside the cells, they could mainly occupy themselves with reading books and newspapers, watching television and listening to the radio.

⁵⁰ Prisoners at the security unit could generally use the telephone four times a week for about 20 minutes each time and receive visits for a total of four hours a month.

53. To sum up, the prisoners under both regimes were usually required to spend about 22 hours per day locked alone in their cells in a solitary confinement regime and generally had very limited meaningful human contact.

The CPT wishes to emphasise that a solitary-confinement-type regime may have a damaging effect on the mental and somatic health of the persons concerned, and could, in certain situations, lead to inhuman and degrading treatment. As mentioned above, the European Prison Rules stipulate that prisoners held under a separation regime for security reasons should be offered at least two hours of meaningful human contact per day (see footnote 48).

Therefore, the Committee recommends that the authorities of Lower Saxony and Schleswig-Holstein as well as of all other *Länder* take the necessary measures to ensure that inmates subjected to segregation from all other inmates for security reasons:

- can benefit from a programme of purposeful and, as far as possible, out-of-cell activities;
- are provided – on a daily basis – with meaningful human contact.⁵¹ The aim should be that the persons concerned benefit from such contact for at least two hours every day and preferably more.

The longer the measure of segregation continues, the more resources should be made available to motivate the inmates concerned and to attempt, as far as possible, to (re)integrate them into the main prison community.

54. The relevant prison legislation of Lower Saxony and Schleswig-Holstein provide for a number of legal safeguards surrounding the special security measures of segregation from (all) other inmates (*unausgesetzte Absonderung/Einzelhaft* and *Absonderung*, see footnote 45). The measures must be ordered by the prison director, reasoned in writing and ended as soon as their preconditions cease to exist. It is further stipulated that the imposition of *Einzelhaft* for more than three months within one year requires the approval of the respective Ministry of Justice. In Schleswig-Holstein, the prison administration must in addition be notified of any segregation from all other inmates lasting longer than three days.⁵²

From the consultation of individual files, it transpired that the above-mentioned requirements were effectively implemented in practice at the establishments visited. Reviews were usually carried out at least every three months and often much more frequently.

⁵¹ See, in this regard, pages 88 and 89 of the Essex paper 3 on the “Initial guidance on the interpretation and implementation of the Nelson Mandela Rules” (Penal Reform International/Human Rights Centre, Essex University, February 2017). The term “meaningful human contact” is referred to as “the amount and quality of social interaction and psychological stimulation which human beings require for their mental health and well-being. Such interaction requires the human contact to be face to face and direct (without physical barriers) and more than fleeting or incidental, enabling empathetic interpersonal communication. Contact must not be limited to those interactions determined by prison routines, the course of (criminal) investigations or medical necessity.”

⁵² See Sections 82 and 84 of the Law on the Execution of Sentences and Section 88 of the Law on the Execution of Preventive Detention of Lower Saxony as well as Sections 19 and 110 of the Law on the Execution of Sentences and Section 88 of the Law on the Execution of Preventive Detention of Schleswig-Holstein.

55. As regards additional security measures, the delegation heard complaints at Celle Prison that (in accordance with the internal regulations of the high-security unit and based on decisions by the management) all prisoners in the high-security unit were obliged, before and after every stay in the unit's outdoor yard, to change all their clothes, including underwear, in the presence of two prison officers.

When the delegation raised this issue with the management, the latter explained that this measure was applied to all inmates of the unit, since, due to the layout of the prison, the unit's outdoor yard was directly overlooked by mainstream prisoners and illicit items could easily be thrown into the yard (despite the yard being covered by a net). Whilst acknowledging the security concerns of the prison management, **the CPT recommends that the authorities of Lower Saxony strive to find alternative security measures which would render the systematic undressing of prisoners before and after their access to the outdoor yard unnecessary (for instance, by reinforcing supervision via CCTV).**

56. Three of the prisoners held for more than one year in segregation from all other inmates at Celle Prison, as well as several other inmates in the high-security units at Celle and Lüneburg Prisons subjected to the same segregation regime, were suffering from severe mental disorders. They had been segregated for prolonged periods because of their disruptive behaviour which was at least partly due to their mental disorders and their related difficulty in coping with life in prison. However, the segregation regime was obviously not an appropriate response to their health needs and was even likely to contribute to a deterioration in their mental-health condition.

In this regard, the following three cases give rise to particular concern:

(i) One prisoner at Lüneburg Prison had been segregated from all other inmates for seven months (and repeatedly before). At the time of the visit, he had been placed in a security cell for almost three and a half months. When the delegation met him, he was obviously in a state of psychosis. He had wrapped himself in a filthy, urine-drenched blanket and was talking rapidly and incoherently. An insufferable stench emanated from his cell, as he had defecated on the floor, and his faeces were smeared all over the cell. He was extremely unwell and in urgent need of psychiatric in-patient care. According to staff, he had been in this condition already for months. In the Committee's view, his situation could easily amount to inhuman and degrading treatment. When the delegation raised this state of affairs with the management of the prison, the latter indicated that the prisoner's prison term would end in December 2020 and that he would then be transferred to a civil psychiatric hospital.⁵³ By letter of 6 January 2021, the German authorities confirmed that this transfer had taken place on 22 December 2020.

⁵³ After many unsuccessful attempts by the prison management to find a place for the inmate in a psychiatric prison ward or in a forensic facility, the hospitalisation was finally made possible through the prison's considerable efforts to appoint a guardian for the prisoner already while he was still being imprisoned. Hence, the guardian could consent (with approval of the guardianship court) to the placement in a civil hospital after the end of the prison term.

(ii) Another prisoner with a severe mental disorder at Lübeck Prison had been segregated from all other prisoners for about six weeks (and repeatedly before). Since April 2019, he had in addition been placed five times in a security cell, for periods of up to ten days. At the time of the visit, he was again being held in a security cell for already six days. Until the day before the visit, he had also been fixated for four days, as he had been in considerable danger of self-harm and suicide due to a state of psychosis. Whilst in the security cell, he had smeared the CCTV camera with his faeces, presumably in order to conceal his self-harming behaviour, had subsequently torn the paper trousers provided to him and had tried to tie off his genitals with a strip of cloth. When met by the delegation in the security cell, he was clearly in a poor mental condition and almost impossible to communicate with (despite the staff's assurances that he could speak German). On his back, he displayed a large lesion indicative of decubitus. Senior staff told the delegation that, despite the prisoner's urgent need for a sustainable transfer to a psychiatric hospital, it was very unlikely that such a transfer could be arranged soon, since, in contrast to the above-mentioned prisoner (case (i)), this prisoner was not close to the end of his prison term.

(iii) One prisoner at Celle Prison had at the time of the visit been held in segregation for 23 months. He had been diagnosed with a serious mental disorder, and, according to his medical file, suffered from severe symptoms. He had destroyed his cell furniture on several occasions. The prisoner had been prescribed neuroleptics and different tranquillisers but usually refused to take the medicines. A recent psychiatric assessment had recommended commuting his sentence into a placement in a forensic psychiatric facility (under Section 63 of the StGB). When met by the delegation, he was naked in his partly demolished cell which he had flooded and shouted out loudly. He later talked to the delegation, but was agitated, delusional and inconsistent, and apparently disoriented.

57. In the CPT's view, it is evident that the above-mentioned inmates could not be cared for and treated adequately in prison and that they were therefore in urgent need of a sustainable transfer to a suitable therapeutic environment. This assessment was fully shared by the managements of Celle and Lübeck Prisons. However, despite their considerable efforts, they usually encountered major difficulties in transferring prisoners suffering from severe mental disorders to an appropriate hospital environment, mainly due to the lack of capacity in suitable hospital facilities within or outside⁵⁴ the prison system.

There was an obvious need in Lower-Saxony and Schleswig-Holstein to expand the capacity of suitable facilities - or to create new such facilities - where prisoners with serious mental disorders could be provided with appropriate treatment and psycho-social care for as long as needed. A sustainable solution to this problem would clearly require close co-operation between the respective *Länder* Ministries responsible for prisons on the one hand and for health matters on the other.

At the end of the visit, the delegation requested, the authorities of Lower Saxony and Schleswig-Holstein (as well as North Rhine-Westphalia and Bavaria where similar problems had been found, see paragraphs 71 and 72) to review the situation of prisoners suffering from severe mental disorders and, where appropriate, make the necessary arrangements to ensure that the persons concerned are transferred to a suitable therapeutic environment in which they would be provided with adequate psychiatric care.

⁵⁴ Some of the inmates had been temporarily transferred to civil psychiatric hospitals (under the permanent supervision of prison staff) but had always been returned to prison after a short period.

In their response submitted after the visit, the authorities of both Schleswig-Holstein and Lower Saxony described their efforts, as well as the legal and practical difficulties in finding sustainable solutions for the prisoners concerned. In addition, the authorities of Schleswig-Holstein informed the Committee about existing plans to create an in-patient psychiatric unit at Lübeck Prison, to be opened at the latest by 2024, and the recent recruitment of a psychiatrist. These are clearly steps in the right direction.

The CPT recommends that the authorities of Lower Saxony, Schleswig-Holstein and, where appropriate, of other *Länder* take the necessary measures to ensure that the current arrangements for the hospitalisation of prisoners with serious mental disorders are reviewed, with a view to ensuring that they are treated in a suitable therapeutic environment.⁵⁵

58. Further, due to their severe mental disorders, some of the inmates concerned at Celle and Lübeck Prisons were at times very agitated or violent and were therefore attached to a restraint bed (*Fixierung*). While recourse to *Fixierung* was at both prisons relatively rare,⁵⁶ a few prisoners concerned had been fixated for more than a day (and in one case for four days, see paragraph 56).⁵⁷ The CPT considers that if a solution was found to the above-mentioned problem to transfer prisoners with severe mental disorders to an appropriate environment, resort to *Fixierung* could be avoided in prisons, as has been repeatedly advocated by the CPT in previous visit reports. **In this regard, reference is made to the remarks and recommendation made in paragraph 91.**

⁵⁵ As regards the situation of prisoners suffering from serious mental disorders at Bayreuth and Gelsenkirchen Prisons, and the relevant response of the authorities, reference is made to the remarks in paragraphs 71 and 72.

⁵⁶ At Celle, two prisoners had been fixated a total of three times in 2020 (not in 2019 and once in 2018). At Lübeck, inmates had been fixated four times in 2020.

⁵⁷ At Celle Prison, one prisoner had been fixated once for one day and 14 hours and a few months later for two days and 19 hours. The other prisoner had been fixated for 23 hours. At Lübeck, the instances of fixation lasted in three cases for up to six hours, but in one case for four days. In both establishments, prisoners were restrained in a security cell and the delegation was told that health-care staff were promptly informed of each resort to fixation and that a member of staff was constantly present and monitored the prisoner concerned (*Sitzwache*).

5. Health-care services

59. The general health-care staffing resources at Berlin Prison for Women were adequate.⁵⁸ The team comprised one general practitioner (GP) who worked for the prison for 0.8 full-time equivalent (FTE) and 11 FTE nurses (two additional nursing posts were vacant at the time of the visit). At Lichtenberg, at least one nurse was present at all times; however, at Pankow, a nurse was present between 6 a.m. and 2 p.m. on workdays only. **The CPT trusts that someone competent to provide first aid is always present at Pankow.**

60. Gelsenkirchen Prison had 1.8 FTE of a GP and 11 FTE nurses; however, no nurses were present in the establishment at night. Given the size of the establishment,⁵⁹ **the CPT recommends that the prison authorities of North Rhine-Westphalia take steps to ensure that a qualified nurse is present on a 24-hour basis at Gelsenkirchen Prison. This may require increasing the number of nurses.**

61. At Bayreuth Prison, the health-care staff made considerable efforts to provide adequate care to prisoners. However, the establishment only employed one full-time GP (another post of a GP was vacant), which is clearly insufficient for an establishment with a capacity of 890 places. As regards nursing staff, there were 21 FTE nurses who worked between 6 a.m. and 9 p.m. on workdays and between 6 a.m. and 8 p.m. on the weekend. The health-care unit also comprised a TB ward⁶⁰ which was visited twice a week for two hours by an external GP; a nurse was present in this ward at all times and, if needed, could provide first aid within the whole establishment.

The CPT recommends that the prison authorities of Bavaria take urgent steps to ensure that the vacant post of a general practitioner at Bayreuth Prison is filled. In the CPT's opinion, given the capacity of the establishment, it would be preferable to have three GPs working full-time in the establishment.

62. The delegation was informed that, at Gelsenkirchen Prison, nurses were obliged to work 42 days per year as prison officers and, during that time, wore the blue uniforms of the prison staff. In the other two establishments visited, although there appeared to be no such obligation, nurses with managerial functions regularly wore prison uniforms (at Bayreuth Prison) or parts thereof (nurses at Berlin Prison for Women).

In the CPT's view, such arrangements may easily compromise the perception of the professional independence of nurses and may be detrimental to the therapeutic relationship between nurses and prisoners – their patients. It is noteworthy in this context that several inmates interviewed during the visit stated that they could not clearly distinguish between staff with custodial duties and nurses.

⁵⁸ The health-care team provided services to all four separate locations of the prison, with an overall capacity of some 230 places at the time of the visit (for more details, see paragraph 33).

⁵⁹ It is recalled that the capacity of the establishment was 616 places (including an open unit for female prisoners).

⁶⁰ The ward had a capacity of 24 beds.

The CPT recommends that the prison authorities of North Rhine-Westphalia and, where relevant, of other *Länder*, put an end to the practice of nurses serving part-time as custodial staff.

Further, the Committee recommends that the prison authorities of Bavaria, Berlin and North Rhine-Westphalia, as well as, where relevant, of all other *Länder*, take steps to ensure that clothes worn by health-care staff are distinct from custodial staff uniforms, with a view to avoiding confusion about the respective roles of those two categories of staff and guaranteeing the perception of the professional independence of health-care staff.

63. More generally, it remains the case that prison health-care staff in the establishments visited were subordinated to the relevant Ministries of Justice, either directly or via the prison management, and that the provision of health care in prisons and the supervision of the quality thereof fell under the exclusive responsibility of the aforementioned ministries.

The CPT notes in this regard that the policy trend in Europe has favoured prison health-care services being placed, either to a great extent, or entirely, under the responsibility of the Ministry of Health.⁶¹ In principle, the CPT supports this trend. In particular, it is convinced that a greater participation of health ministries in this area (including as regards recruitment of health-care staff, their in-service training, evaluation of clinical practice, certification and inspection) will facilitate the provision of good quality health care for prisoners, as well as implementation of the general principle of the equivalence of health care in prison with that in the wider community.

64. The CPT notes positively that the health-care facilities in all three establishments visited were of a high standard in terms of infrastructure and equipment and the quantity and range of the medication available was generally adequate (see, however, paragraph 67 as regards the availability of treatment for hepatitis C).

Further, the findings of the visit indicate that access to specialist care, with the exception of psychiatric care (see paragraph 71), did not pose a major difficulty; prisoners were either treated by specialist doctors who regularly visited the establishments or inmates were taken to an external health-care facility (such as a civil or prison hospital).

65. As regards medical screening on admission, newly-arrived prisoners were examined shortly after their admission, first by a nurse and then by a medical doctor. At Berlin Prison for Women and at Gelsenkirchen Prison, inmates were offered voluntary testing for transmissible diseases. However, at Berlin, the screening did not systematically include testing for hepatitis C.

Moreover, at Bayreuth Prison, newly-admitted prisoners were *obliged* to undergo a blood test for HIV and hepatitis B and C.⁶²

The CPT recommends that the prison authorities of Bavaria and Berlin, as well as, where relevant, of other *Länder*, take steps to ensure that all newly-arrived prisoners are offered (rather than be obliged to undergo) a voluntary testing for HIV and hepatitis B and C.

⁶¹ See also Rules 40.1 and 40.2 of the European Prison Rules and the Commentary to the aforementioned rules.

⁶² Those inmates who refused the test were segregated from the rest of the prison population.

66. As regards medical confidentiality, at Bayreuth and Gelsenkirchen Prisons, health-care staff systematically informed custodial officers that inmates who tested positive for HIV and hepatitis B and C presented a risk in the case of a blood contact ("*Infektionsgefahr bei Blutkontakt*"); these inmates were subjected to certain restrictions, such as a ban on serving food to other inmates. Further, at Bayreuth Prison, health-care staff systematically informed the management of the establishment of serious health problems of prisoners, without the consent of the prisoners concerned, and custodial staff appeared to have virtually unrestricted access to medical files of inmates.

The CPT would like to stress that respect for confidentiality is essential to the atmosphere of trust which is a necessary part of the doctor/patient relationship and should be guaranteed and respected with the same rigour as in the population as a whole.⁶³

The CPT recommends that the prison authorities of Bavaria and North Rhine-Westphalia, as well as, where relevant, of other *Länder*, take steps to ensure that information concerning prisoners' health is kept in a manner which ensures respect for medical confidentiality. Health-care staff may inform prison officers on a need-to-know basis about the state of health of a prisoner; however, the information provided should be limited to that necessary to prevent a serious risk for the prisoner or other persons, unless the prisoner consents to additional information being given.

More particularly, the Committee considers that there is no reason to systematically inform staff with no health-care duties about the fact that a prisoner suffers from a transmissible disease. In fact, every blood contact should be regarded as potentially hazardous, whether or not the inmate concerned has previously tested positive for a transmissible disease. Further, it is not acceptable for staff with no health-care duties to have access to prisoners' individual medical files.

67. At Bayreuth Prison, although several prisoners suffered from hepatitis C, they did not systematically receive treatment for the infection. The CPT notes in this respect that treatment for hepatitis C is readily available and given the risks of the serious and irreversible long-term consequences of this disease, a prisoner with hepatitis C should be assessed with a view to receiving direct-acting antiviral (DAA) treatment. **The CPT recommends that the prison authorities of Bavaria and, where relevant, of other *Länder*, take steps to ensure that this precept is implemented in practice.**

68. As far as the recording of injuries is concerned, the delegation observed at Bayreuth and Gelsenkirchen Prisons⁶⁴ that the recording in individual medical files of injuries detected upon admission or following a violent episode in prison (even if all these cases were rather rare) lacked precision (e.g. the size of the injuries was not measured and the injuries were not exactly localised). Moreover, at Gelsenkirchen Prison, although a camera was available in the health-care unit, detected injuries were not systematically photographed. Further, in none of the establishments visited was there a dedicated register of injuries maintained by health-care staff. **The CPT recommends that these deficiencies be remedied.**

⁶³ See, in this context, paragraph 13 of the Appendix to the Recommendation R (98) 7 of the Council of Europe's Committee of Ministers to member States concerning the ethical and organisational aspects of health care in prison.

⁶⁴ As far as the delegation could ascertain, at Berlin Prison for Women, there were no recent cases of injuries.

69. Further, the findings of the visit once again indicate that in none of the establishments visited was there a clear reporting procedure in place in respect of detected injuries. **The CPT reiterates its recommendation that, in all *Länder*, the existing procedures be reviewed to ensure that whenever injuries are recorded which are consistent with allegations of ill-treatment made by the prisoner concerned (or which, even in the absence of an allegation, are clearly indicative of ill-treatment), the record is systematically brought to the attention of the competent prosecutor, regardless of the wishes of the person concerned. Health-care staff should advise the person concerned of the existence of the reporting obligation and also that the forwarding of the report to the prosecutorial authorities is not a substitute for the lodging of a formal complaint.**

70. At Berlin Prison for Women, the delegation gained a good impression of the psychiatric care provided to inmates. The establishment was visited by a psychiatrist once every two weeks and, if necessary, prisoners were promptly transferred for psychiatric evaluation and/or care to Plötzensee Prison Hospital in Berlin.

71. However, the situation as regards the provision of psychiatric care at Bayreuth and Gelsenkirchen Prisons is a matter of serious concern to the CPT. Although both establishments accommodated a number of inmates with mental health disorders,⁶⁵ Gelsenkirchen Prison was only visited by a psychiatrist once every two weeks for half a day and by another psychiatrist once every three to four weeks for another half day. The situation in this respect was even more problematic at Bayreuth Prison which was not regularly visited by a psychiatrist. Moreover, with the exception of the clinical psychologists attached to the socio-therapeutic units at Bayreuth Prison (see paragraph 47), there were no clinical psychologists in either of the two establishments who could provide regular therapeutic interventions.⁶⁶ These arrangements are clearly insufficient given the size of the prison population in the two establishments and the incidence of severe mental health disorders among prisoners.

Furthermore, the findings of the visit indicate that the managements of those two establishments encountered major difficulties in transferring prisoners with acute mental health disorders to a suitable therapeutic environment, either because of a lack of capacity in the respective wards of prison hospitals or due to the reluctance of civil health-care facilities to admit these patients.

It also became clear during the visit that, given their mental health disorders, the prisoners concerned had difficulties in coping with the prison environment and were perceived as disruptive; consequently, they were more likely to be placed in a security cell or be mechanically restrained (see paragraphs 87 and 91).

The CPT wishes to underline in this context that it is a well-established case-law of the European Court of Human Rights that the detention of a person who is ill may raise issues under Article 3 of the European Convention on Human Rights and that the lack of appropriate medical care may amount to treatment contrary to that provision.⁶⁷

⁶⁵ For example, according to the information provided to the delegation, at Gelsenkirchen Prison, some 20 inmates were suffering from a psychosis and at Bayreuth Prison, approximately 100 prisoners had a mental disorder (including a number of them a psychosis).

⁶⁶ The psychologists working in the establishments (see paragraph 75) were affiliated to the management and did not carry out clinical work.

⁶⁷ See, for example, *Slawomir Musiał v. Poland*, no. 28300/06, 20 January 2009, paragraph 87.

72. At the end of the visit, the CPT's delegation raised these concerns with the prison authorities Bavaria and North Rhine-Westphalia and requested them to review the situation of prisoners suffering from severe mental disorders and, where appropriate, make the necessary arrangements so that the persons concerned are transferred to a suitable therapeutic environment in which they will be provided with adequate psychiatric care. The delegation wished to be informed, within three months, of the steps taken by the relevant authorities.⁶⁸

In their response submitted after the visit, the prison authorities of Bavaria and North Rhine-Westphalia acknowledged that the situation of prisoners with mental disorders (and their increasing number in some establishments) posed a particular challenge. However, they were making efforts to tackle the issue, including by striving to attract suitably qualified health-care professionals.

For example, already in 2017, the Ministry of Justice of Bavaria and the authority responsible for the execution of penal measures (*Amt für Maßregelvollzug*) agreed on recommendations in order to facilitate the co-operation between prisons and establishments for the execution of penal measures in respect of prisoners with mental disorders. Moreover, so as to create additional capacities for the treatment of this category of prisoner, it was planned to set up a new psychiatric ward at Munich Prison, the third ward of its kind in Bavaria.

In North Rhine-Westphalia, the Minister of Justice had appointed an expert commission which dealt with the situation of inmates with mental disorders and their treatment and it was already planned to increase the number of beds for the treatment of prisoners with acute mental disorders. For example, the reconstruction of the prison hospital for North Rhine-Westphalia, which had already started, would increase the capacity for this treatment from 16 to 53 beds. Further, the prison authorities had developed a concept for Intensive Psychiatric Treatment of Inmates in Prison which contains the offer of out-patient treatment to prisoners in need of post-inpatient care. It is also aimed at prisoners with serious chronic mental health disorders whose state of health does not require hospitalisation.

The CPT notes positively the attention paid by the prison authorities of Bavaria and North Rhine-Westphalia to the situation of prisoners with mental disorders and would like to receive more detailed and up-to-date information on the concrete measures taken in this respect, including those which are outlined above.

Further, in the light of the findings of the visit and the information subsequently received, **the Committee encourages the prison authorities of Bavaria and North Rhine-Westphalia to continue their efforts to ensure adequate treatment of prisoners with mental disorders in a suitable environment. In particular, the Committee recommends that:**

- **the psychiatric input at Gelsenkirchen and Bayreuth Prisons be significantly increased;**
- **clinical psychologists are recruited at Gelsenkirchen and Bayreuth Prisons and integrated into multi-disciplinary health-care teams providing care to prisoners with mental disorders;**

⁶⁸ As regards the findings of the visit concerning the situation of inmates subjected to the special security measure of segregation from all other inmates (*Einzelhaft*) who were suffering from mental disorders and the relevant response of the authorities, reference is made to paragraphs 56 and 57.

- **the current arrangements for the hospitalisation of prisoners with acute mental disorders be reviewed, with a view to ensuring that they are treated in a suitable therapeutic environment.**

73. It is a positive development that opioid agonist treatment was now offered to prisoners with drug misuse problem in all three establishments visited (albeit at Bayreuth Prison, the criteria appeared very restrictive and only 13 prisoners received this treatment).⁶⁹ **The CPT encourages the prison authorities of Bavaria to take steps to ensure that the criteria for the provision of opioid agonist treatment are reviewed at Bayreuth Prison.**

74. Moreover, it is praiseworthy that a needle and syringe exchange programme was in place at Berlin Prison for Women. **The CPT encourages the prison authorities of all other Länder to introduce a needle and syringe exchange programme in prisons.**

6. Other issues

a. prison staff

75. The staff complement appeared to be on the whole adequate in all three establishments visited.⁷⁰ There were 145 custodial officers,⁷¹ six social workers and two psychologists at Berlin Prison for Women, 220 custodial officers, 14 social workers and eight psychologists at Bayreuth Prison and 199 custodial officers, ten social workers and five psychologists at Gelsenkirchen Prison.

76. In the course of the visit, the CPT's delegation interviewed several transgender prisoners. Although they generally spoke positively of staff and their attitude towards them, several complaints were heard that certain members of staff refused to address them with the name and pronouns they chose or referred to them as "it", which was perceived by the inmates concerned as demeaning. **The CPT recommends that the practice of addressing transgender prisoners as "it" be stopped. More generally, the CPT considers that transgender prisoners who wish to change their name and form of address/pronouns should be provided with support to do so in accordance with the law and then they should henceforth be addressed in that manner.**

⁶⁹ During the previous periodic visit carried out in 2015, the CPT was informed that, as a matter of policy, opioid agonist treatment was not offered in prisons in Bavaria.

⁷⁰ It should be recalled that the establishments had the following capacities: Bayreuth Prison – 890 places, Berlin Prison for Women (locations Lichtenberg and Pankow) – 122 places and Gelsenkirchen Prison – 555 places.

⁷¹ 92 officers were women and 53 were men.

b. contact with the outside world

77. Once again, the delegation observed striking differences between the prisons visited regarding the arrangements for allowing prisoners to maintain contact with the outside world.⁷²

It is praiseworthy that at Berlin Prison for Women, both remand⁷³ and sentenced prisoners had virtually unrestricted access to the telephone installed in their cells.

That said, at Gelsenkirchen Prison, prisoners were as a general rule allowed to make only two phone calls a month, each lasting ten to 15 minutes. It is a matter of particular concern that, despite the specific recommendation made after the previous periodic visit, at Bayreuth Prison, in accordance with the relevant legislation of Bavaria,⁷⁴ both remand and sentenced prisoners were only allowed to make phone calls in urgent cases. As already noted in the report on the 2015 visit, in the CPT's view, such a state of affairs is not acceptable and is incompatible with the European Prison Rules.⁷⁵

The CPT once again calls upon the prison authorities of Bavaria to review their policy regarding prisoners' access to the telephone in the light of the preceding remarks and to amend the relevant legislation, in order to ensure that all prisoners (including those on remand) have regular and frequent access to the telephone.

Further, **the Committee encourages the prison authorities of North Rhine-Westphalia to take steps to ensure that the current entitlement for prisoners at Gelsenkirchen Prison to make phone calls is increased.**

78. It is noteworthy that, at Berlin Prison for Women, prisoners were allowed to receive four hours of visits per month.

Prisoners held at Gelsenkirchen Prison could receive two 70-minute visits per month and those at Bayreuth Prison three visits per month, each lasting 45 minutes. Further, in both establishments, additional visits were granted to prisoners with children (two hours per month at Gelsenkirchen) or married prisoners (45 minutes per month at Bayreuth).

The Committee stresses once again that all prisoners, whatever their legal or marital status or family situation, should be entitled to receive a visit of at least one hour every week. **The Committee once again recommends that the prison authorities of Bavaria and North Rhine-Westphalia as well as of all other *Länder* take resolute steps to ensure that this precept is effectively implemented in all prisons.**

79. At Gelsenkirchen Prison, prisoners were allowed, under certain conditions, to receive a three-hour unsupervised family visit once a month, and at Berlin Prison for Women, there were plans to introduce this kind of visit. As far as the delegation was informed, no such possibility existed at Bayreuth Prison. **The CPT encourages the prison authorities of Bavaria as well as of all other *Länder* to introduce unsupervised (family) visits for prisoners.**

⁷² The arrangements described in the following paragraphs do not reflect the restrictions imposed in the context of the Covid-19 pandemic (in this respect, see paragraphs 98 to 103).

⁷³ Unless their possibilities for having contact with the outside world have been restricted by the court.

⁷⁴ See Section 35 (1) of the BayStVollzG and Section 21 (1) of the BayUVollzG.

⁷⁵ See Rules 24.1 and 99 and the Commentary on these Rules.

80. At Bayreuth and Gelsenkirchen Prisons, the delegation was informed that remand prisoners were allowed to receive visits and make phone calls only if authorised by the court.

As underlined in the report on the 2015 visit, the CPT considers that remand prisoners should be entitled to receive visits and make telephone calls as a matter of principle, rather than these being subject to authorisation by a judge. This precept is also set out in the European Prison Rules.⁷⁶ Any refusal in a given case to permit such contacts should be specifically substantiated by the needs of the investigation and be applied for a specific period of time. If it is considered that there is an ongoing risk of collusion, particular visits or telephone calls can always be monitored.

The CPT reiterates its recommendation that the prison authorities of Bavaria and North Rhine-Westphalia, as well as, where relevant, of other *Länder*, take steps to ensure that the rules governing remand prisoners' contacts with the outside world are revised, in the light of the preceding remarks.

81. Further, at Bayreuth Prison, remand prisoners were only allowed to receive visits under "closed" conditions (i.e. with physical separation from visitors). The CPT considers that "open" visiting arrangements should be the rule and "closed" ones the exception, for all legal categories of prisoner. Any decision to impose closed visits must always be well-founded and reasoned and based on an individual assessment of the potential risk posed by the prisoner.

The CPT recommends that the prison authorities of Bavaria as well as of all other *Länder* take steps to ensure that this precept is effectively implemented in all prisons.

c. discipline

82. It remains the case that, according to the relevant *Länder* legislation, the most severe disciplinary sanction that may be imposed on adult prisoners is solitary confinement (*Arrest*) for a period of up to four weeks. In the case of juveniles and young adults, solitary confinement may be imposed for up to two weeks.

At Berlin Prison for Women, disciplinary sanctions were imposed on prisoners only very rarely.⁷⁷ At Bayreuth and Gelsenkirchen Prisons, resort to disciplinary sanctions was more frequent⁷⁸ and, more importantly, at Bayreuth, solitary confinement as a disciplinary measure was in several cases imposed for periods of 14 to 24 days.

As noted in the report on the 2015 visit, the CPT considers that, given the potentially very damaging effects of solitary confinement on the mental and/or physical well-being of the prisoners concerned, the maximum period for solitary confinement as a punishment for adult prisoners should be no more than 14 days for a given offence, and preferably less.⁷⁹ Further, there should be a prohibition of sequential disciplinary sanctions resulting in an uninterrupted period of solitary confinement in excess of the maximum period.

⁷⁶ See Rules 24.1 and 99 and the Commentary to these Rules.

⁷⁷ For example, in 2020, disciplinary sanctions were imposed in 29 cases, none of which concerned solitary confinement.

⁷⁸ At Gelsenkirchen Prison, in 2020, solitary confinement was imposed in twelve out of 151 cases. At Bayreuth Prison, solitary confinement was imposed in some 150 cases in 2020 (out of a total of some 300 cases in which disciplinary sanctions were imposed).

⁷⁹ See paragraph 56(b) of the 21st General Report on the CPT's activities.

Further, the CPT wishes to stress once again that given the potentially detrimental effect on the physical and/or mental well-being of juveniles, solitary confinement should never be imposed on juveniles as a disciplinary punishment. Reference is also made to Rule 60.6.a of the European Prison Rules (as revised in 2020).⁸⁰

The CPT reiterates its recommendation that the authorities of Berlin, Bavaria and North Rhine-Westphalia as well as of all other *Länder* take steps to ensure that the above-mentioned precepts are effectively implemented in practice and that the relevant *Länder* laws are amended accordingly.

83. Despite the recommendation made in the report on the 2015 visit, the relevant legislation of Bavaria continues to contain provisions according to which contacts with the outside world (other than with lawyers and judicial authorities) may be limited to “urgent matters” for a period of up to three months (either as a separate sanction or in conjunction with other sanctions such as solitary confinement).⁸¹

At Bayreuth Prison, although this type of disciplinary punishment was as a rule only used together with and for the duration of solitary confinement, the imposition of those two disciplinary sanctions concurrently was systematic.

The Committee must reiterate that disciplinary punishment of prisoners should never involve a total prohibition of family contact and that any restrictions on family contact as a punishment should be imposed only when the offence relates to such contact.⁸²

The Committee reiterates its recommendation that the prison authorities of Bavaria and all other *Länder* take steps to ensure that the above-mentioned precepts are effectively implemented in practice and that the relevant *Länder* laws are amended accordingly.

84. At Bayreuth Prison, the information gathered through interviews with prisoners indicates that during the first seven days of placement in disciplinary solitary confinement, prisoners were still not allowed any other reading material than religious works.⁸³ Indeed, despite the specific recommendations repeatedly made by the Committee in the past, the relevant legislation continues to provide that access to reading material may be prohibited during disciplinary solitary confinement.⁸⁴

The CPT once again calls upon the prison authorities of Bavaria and, where relevant, of other *Länder*, to formally abolish the aforementioned restriction without any further delay.

⁸⁰ Rule 60.6.a of the recently revised European Prison Rules reads as follows: “Solitary confinement, that is the confinement of a prisoner for more than 22 hours a day without meaningful human contact, shall never be imposed on children, pregnant women, breastfeeding mothers or parents with infants in prison.”

⁸¹ See Sections 110 (1)(7) and 156 (3)(6) of the BayStVollzG and Sections 28 (1) and 35 (3)(4) of the BayUVollzG.

⁸² See Rule 60.4 of the European Prison Rules and the Commentary to these Rules; see also Rule 43 (3) of the *Nelson Mandela Rules*.

⁸³ Following this period, the prisoners concerned were allowed access to books.

⁸⁴ See Sections 111 (5) of the BayStVollzG and Section 28 (1) of the BayUVollzG.

85. As regards disciplinary procedures, it regrettably remained the case that prisoners subjected to a disciplinary sanction were neither provided with a copy of the disciplinary decision, nor (with the exception of Berlin Prison for Women) informed in writing of the possibilities of lodging an appeal.⁸⁵ Following the visit, the authorities informed the CPT that in the context of disciplinary proceedings, the prisoners concerned were orally informed of the possibility to lodge an appeal. However, a number of prisoners interviewed by the CPT's delegation during the visit who had recently been subjected to disciplinary sanctions stated that they were not aware whether there was a possibility to lodge an appeal against the disciplinary decision.

The CPT reiterates its recommendation that the prison authorities of Berlin, Bavaria and North Rhine-Westphalia, as well as, where relevant, of other *Länder*, take steps to ensure that prisoners subjected to a disciplinary sanction receive a copy of the disciplinary decision, informing them about the reasons for the decision and the avenues for lodging an appeal.

86. At Bayreuth and Gelsenkirchen Prisons, in line with the relevant legislation,⁸⁶ prison doctors were still required to certify, prior to the implementation of the disciplinary sanction of solitary confinement, whether a prisoner was fit to undergo this measure.⁸⁷ In practice, in both establishments, prisoners were seen by a medical doctor and then directly taken to a solitary confinement cell.

Further, prisoners subjected to solitary confinement were not systematically visited by a member of health-care staff on a daily basis.

The Committee must stress once again that medical practitioners in prisons act as the personal doctors of prisoners and ensuring that there is a positive doctor-patient relationship between them is a major factor in safeguarding the health and well-being of prisoners. Against this background, the practice of prison doctors certifying that a prisoner is fit to undergo punishment is scarcely likely to promote that relationship.⁸⁸ As a matter of principle, medical personnel should never participate (or be perceived as participating) in any part of the decision-making process resulting in any type of solitary confinement, except where the measure is applied for medical reasons.

On the other hand, health-care staff should be very attentive to the situation of prisoners placed in disciplinary cells. The health-care staff should immediately be informed of every such placement and should visit the prisoner without delay after placement and thereafter on a regular basis, at least once per day, and provide him/her with prompt medical assistance and treatment as required. They should report to the prison director whenever a prisoner's health is being put seriously at risk by being held in disciplinary confinement.

⁸⁵ The CPT must point out in this respect that summary information on general legal remedies contained in the house rules cannot be regarded as a substitute for the provision of specific information in the context of a particular disciplinary procedure.

⁸⁶ See Section 114 of the BayStVollzG and Section 82 of the StVollzG NRW.

⁸⁷ The same requirement is laid down by the relevant legislation in Berlin (see Section 97 of the StVollzG Bln which, however, had not been applied in practice at Berlin Prison for Women for several years preceding the visit (see paragraph 82)).

⁸⁸ This point was recognised in the European Prison Rules; indeed, the rule in the initial version of the Rules, stipulating that prison doctors must certify that a prisoner is fit to sustain the punishment of disciplinary confinement, had been removed a long time ago.

Consequently, **the CPT once again recommends that the prison authorities of Berlin, Bavaria and North Rhine-Westphalia as well as of all other *Länder* review the role of health-care staff in relation to disciplinary matters in the light of the above remarks and amend the relevant legal provisions accordingly. In so doing, regard should be had to the European Prison Rules (in particular, Rule 43.2) and the comments made by the Committee in its 21st General Report (see paragraphs 62 and 63 of CPT/Inf (2011) 28).**

d. security-related issues

87. All three prisons visited had at least one security cell (*besonders gesicherter Haftraum – BGH*) for segregation of prisoners for security reasons (in particular, risk of self-harm or harm to others). According to the relevant registers, the usual length of placement in these cells ranged from a few hours to three days; at Bayreuth and Gelsenkirchen Prisons, the placement exceptionally lasted up to some ten days.⁸⁹ As observed by the CPT during previous visits, material conditions in these cells were adequate in terms of size, state of repair, ventilation, access to natural light and equipment (including a mattress, a call bell and a toilet).

However, at Bayreuth and Gelsenkirchen Prisons, the in-cell toilet area was not pixelated on the CCTV monitor screen. At Bayreuth Prison, the delegation was informed that pixelation had been abolished following a security incident during which a prisoner placed in the security cell had peeled a tile off the wall and attempted to self-harm.

The CPT considers that when it is deemed necessary to place a prisoner under video-surveillance, his/her privacy should be preserved when he/she is using a toilet, for example by pixelating the image of the toilet area. Moreover, in the Committee's view, video-surveillance cannot replace frequent personal supervision by staff in the case of agitated prisoners or those prone to self-harm. **The CPT recommends that these precepts be effectively implemented at Bayreuth and Gelsenkirchen Prisons.**

88. At Berlin Prison for Women, prisoners placed in the BGH were provided with cotton tracksuit bottoms, a T-shirt and a blanket. However, in the other two establishments, prisoners placed in these cells were systematically obliged to wear semi-transparent paper underwear and a gown made of the same material.

In the CPT's view, only when there is an evident suicide risk or case of self-harm should an inmate be obliged to remove his or her clothes and, in such cases, the inmate should be provided with rip-proof clothing and footwear. The removal of clothes should follow an individual risk assessment. **The CPT recommends that these precepts be effectively implemented at Bayreuth and Gelsenkirchen Prisons.**

⁸⁹ Overall, in 2020, BGH cells were used in ten cases at Berlin Prison for Women, in 45 cases at Bayreuth and in 15 cases at Gelsenkirchen.

89. In all three establishments visited, prisoners placed in security cells were systematically denied access to outdoor exercise, often for several days (see paragraph 87 regarding the length of placement). This is not acceptable and the CPT cannot see any justification for such systematic denial. Once again, the Committee notes with concern that the relevant *Länder* laws of Bavaria, Berlin and North Rhine-Westphalia contain provisions which allow the imposition of a prohibition on outdoor exercise for prisoners held in security cells (as an additional security measure).

The CPT is obliged to call upon the authorities of all *Länder* concerned once again to take the necessary steps to ensure that prisoners subjected to segregation are offered at least one hour of outdoor exercise per day. Further, prohibition on outdoor exercise should be abolished from the relevant legislation as a special security measure.

90. At Gelsenkirchen Prison, on the wall of the anteroom of the security cell, next to the fixation bed, there were two cabinets with glass front sides in which several pairs of metal handcuffs and ankle-cuffs were kept in a visible manner.⁹⁰

In the CPT's view, such an arrangement is wholly inappropriate and may easily be perceived by the prisoners who are being brought to the security cell as a threat. The CPT cannot agree with the argument put forward by the prison authorities after the visit that placing the restraint devices in a visible manner ensures that they can be promptly accessed and used.

The CPT recommends that the necessary steps be taken at Gelsenkirchen Prison to ensure that restraint devices in the anteroom of the security cell are hidden from view.

91. The CPT welcomes the fact that, at Berlin Prison for Women, mechanical restraint (*Fixierung*) has not been used at all for several years; instead, if, very rarely, inmates became agitated, they were promptly transferred to the prison hospital.

In the other two establishments visited, the use of mechanical restraint was relatively rare;⁹¹ at Bayreuth Prison, the last case dated back to 2018 and at Gelsenkirchen, there were five cases in 2020, two cases in 2019 and no cases in 2018.⁹²

That said, at Gelsenkirchen Prison, according to the relevant records examined by the delegation and as confirmed by staff, prisoners were in some cases continuously mechanically restrained for several days.

⁹⁰ According to the information provided by staff, these instruments were used exclusively for the transport of prisoners, not to fixate prisoners in the security cell.

⁹¹ In both establishments, prisoners were restrained in the high security cells and the delegation was told that health-care staff were promptly informed of each resort to fixation and that a member of staff was constantly present and monitored the prisoner concerned (*Sitzwache*).

⁹² The CPT takes note of the information provided by the authorities of North Rhine-Westphalia that with the entry into force in 2019 of Law on the improvement of legal protection in the event of *Fixierung* (*Gesetz zur Verbesserung des Rechtsschutzes bei Fixierungen im Justiz- und Maßregelvollzug und bei öffentlich-rechtlichen Unterbringungen in psychiatrischen Einrichtungen des Landes Nordrhein-Westfalen*) which introduced amendments to the StVollzG NRW and the UVollzG NRW, safeguards accompanying the use of mechanical restraint had been strengthened. In particular, *Fixierung* may only be used as a measure of last resort and, unless only applied for a short period of time, must be reported to a judge with a view to obtaining his/her approval.

The CPT recommends that the relevant authorities of all *Länder* abandon the resort to *Fixierung* in prisons. Pending the full implementation of this recommendation, steps should be taken to ensure that the duration of *Fixierung* is for the shortest possible time (usually minutes rather than hours).

92. As regards more generally resort to security measures described in the preceding paragraphs, the CPT considers that the implementation of the recommendation concerning the provision of psychiatric care set out in paragraph 72 will facilitate efforts to decrease the use of security cells and to abandon resort to *Fixierung* in prison.

93. In the three establishments visited, prisoners were on various occasions subjected to strip-searches (in particular, upon admission and before placement in a security cell). The CPT acknowledges that resort to this measure did not appear to be excessive and was based on an individual risk assessment.

However, the information gathered during the visit indicates that prisoners were often asked to undress fully. In this respect, the CPT must point out that every strip-search is a very invasive and potentially degrading measure. To minimise embarrassment, prisoners who are searched should not normally be required to remove all their clothes at the same time, e.g. a person should be allowed to remove clothing above the waist and put it back on before removing further clothing.

The CPT recommends that the prison authorities of all *Länder* take steps to ensure that these precepts are effectively implemented in practice in all prisons.

e. admission procedures

94. In all three establishments visited, house rules existed in a range of languages and were systematically provided to newly-admitted prisoners. However, a few prisoners complained that they were not given a copy of the house rules in a language that they understood. **The CPT recommends that all newly-arrived prisoners at Bayreuth Prison, Berlin Prison for Women and Gelsenkirchen Prison be provided with information on the regime in force in the establishment and on their rights and duties, in a language which they understand.**

95. As regards the specific situation of female prisoners, the CPT notes positively that, at Berlin Prison for Women, a gender-specific admission procedure was in place for newly-admitted prisoners. In particular, the initial interview carried out upon admission systematically included screening for the detection of vulnerabilities, such as a history of any sexual abuse and other gender-based violence, drug and/or alcohol misuse and mental health-care needs, as well as the identification of the responsibilities of newly-admitted women towards their families/children. The information was then utilised in the drawing-up of detailed individual sentence plans (*Vollzugs- und Eingliederungsplan*).

96. Further, the delegation was informed that a working group on women in prison had been established in North Rhine-Westphalia, which would focus on the specific situation of women who had been victims of gender-based violence prior to their imprisonment. It was expected that a new unit would be opened as a pilot project at Bielefeld Prison, which would cater for the specific needs of these women, in particular by providing trauma therapy. **The CPT notes with interest these plans and would like to receive more detailed and up-to-date information on this project.**

f. complaints procedures

97. In all three prisons visited, internal house rules contained information for prisoners on avenues of complaint open to them, both outside and inside the establishment, including to the heads of accommodation units and the governor.

However, at Bayreuth and Gelsenkirchen Prisons, no register of internal complaints was maintained. The CPT considers that all written complaints should be registered and statistics on the types of complaints made should be kept as an indicator to management of areas of discontent within the prison.

The CPT recommends that these principles be effectively implemented in practice at Bayreuth and Gelsenkirchen Prisons.

g. Covid-19 pandemic and the measures taken

98. Overall, the CPT gained a positive impression of the steps taken in the establishments visited in the context of the Covid-19 pandemic. Further, the Committee notes positively that in Bavaria and North Rhine-Westphalia, in order to decrease the number of inmates entering the prison system and to control the occupancy levels, the admission of persons sentenced to imprisonment for their failure to pay a fine was temporarily suspended.

99. In the three establishments visited, the incidence of Covid-positive cases among inmates was very low (there were no cases at Gelsenkirchen, one case at Bayreuth and two cases at Berlin Prison for Women).

At Berlin Prison for Women, newly-admitted prisoners were offered voluntary PCR testing on the first and sixth day after their arrival and stayed in quarantine until the negative outcome of the second test (i.e. usually for one week after their arrival).

100. At Gelsenkirchen and Bayreuth Prisons, newly-admitted prisoners were placed in a 14-day quarantine and, in the latter establishment, the prisoners concerned were twice given PCR tests.

That said, in both establishments, these inmates had virtually no human contact during the two-week quarantine and were locked up in their cells for 23 hours a day, with only one hour of outdoor exercise which they took alone.

The CPT encourages the prison authorities of Bavaria and North Rhine-Westphalia to explore ways in which newly-admitted prisoners placed in quarantine could be provided with meaningful human contact every day. For example, prisoners admitted on the same day could be allowed to associate together in a sufficiently ventilated indoor or outdoor area, while strictly observing the necessary preventive measures (physical distancing, wearing of masks).

101. With the exception of the beginning of the pandemic in spring 2020 when the prisons visited reportedly experienced an occasional shortage of personal protective equipment (PPE), PPE was available in the establishments visited for staff and prisoners alike (in particular face masks and disinfectant gel).

102. The provision of leisure activities was limited to a certain degree in all three establishments in the context of the pandemic and, at Gelsenkirchen Prison, prisoners' workshops were closed. However, the inmates affected by this latter restriction received 50 % of their average salary as compensation for the loss of income.

103. As regards the impact of the measures on the possibilities for prisoners to maintain contact with the outside world,⁹³ in all three establishments, visits were initially suspended for several weeks in spring 2020. Once reintroduced, tables in the visiting facilities were fitted with partitioning for all categories of inmate, the number of visitors was regulated and, at Bayreuth and Gelsenkirchen, the visiting entitlement was decreased in comparison with the usual arrangements.

To compensate for these restrictions, at Gelsenkirchen Prison, the limit on making phone calls had been abolished, the costs of prisoners' phone conversations were borne by the establishment during the time when visits were not allowed and prisoners were offered the possibility to use calls via Internet (VoIP). At Bayreuth Prison, prisoners were granted three 15-minute free-of-charge phone calls a month.⁹⁴

At Berlin Prison for Women, the possibility to use VoIP calls had been introduced for inmates⁹⁵ and it was planned to maintain this possibility beyond the pandemic. **The CPT welcomes these plans which will further help prisoners to maintain contacts with the outside world.**

⁹³ As regards the usual arrangements for maintaining contact with the outside world, reference is made to paragraphs 77 to 81.

⁹⁴ According to the management, it was impossible to introduce VoIP calls for technical reasons.

⁹⁵ At the time of the visit, in addition to the virtually unlimited possibility to make phone calls, prisoners benefited from four hours of either VoIP conversations or visits a month.

C. Psychiatric establishments

1. Preliminary remarks

104. The delegation visited two clinics for forensic psychiatry, namely Asklepios Clinic North – Ochsenzoll (Hamburg) and Uchtspringe Forensic Psychiatric Clinic (Saxony-Anhalt).

105. It is recalled that the legal grounds for involuntary placement in a forensic psychiatric hospital (*Maßregelvollzug*) are set out in Section 63 (for persons who are declared not to be criminally responsible or who have diminished responsibility for the criminal offence they have committed) and Section 64 (compulsory alcohol or drug addiction treatment of persons who have committed a criminal offence linked to their tendency to excessively consume alcohol or narcotics) of the Criminal Code (StGB).⁹⁶ Placements under Section 63 may be indefinite, while those under Section 64 may be only ordered for a maximum of two years.⁹⁷ Further, according to Section 126a of the Code of Criminal Procedure (StPO), persons who are suspected of having committed a criminal offence may under certain conditions be admitted to a psychiatric establishment for public security reasons.⁹⁸

In 2016, the legal requirements for placements of a patient in a forensic psychiatric hospital have been tightened. Placement orders under Section 63 of the StGB are now limited to specific, particularly serious crimes and additional preconditions for placements beyond six and ten years respectively have been introduced, with the aim of avoiding disproportionate placements and excessively long durations of stay. The new provisions further require an increased involvement of independent psychiatric expertise in the review of forensic placement decisions.⁹⁹

106. The execution of penal measures of correction and prevention (*Maßregeln der Besserung und Sicherung*) falls within the legislative and administrative competence of the *Länder* and is regulated either by the relevant general mental health law or a separate law on penal measures of correction and prevention (*Maßregelvollzugsgesetz* – MRVG). Both Hamburg and Saxony-Anhalt have a separate MRVG (*Hamburgisches Maßregelvollzugsgesetz* – *HmbMVollzG* and *Maßregelvollzugsgesetz Sachsen-Anhalt* – *MVollzG LSA*).

107. *Asklepios Clinic North – Ochsenzoll in Hamburg* (hereinafter “Hamburg Ochsenzoll”) was visited by the CPT for the first time. It is part of a larger hospital compound and located in a vast forest park area in the outskirts of Hamburg. It comprises several functional buildings of different security levels with 19 male, female and mixed-sex wards (each accommodating 15 to 20 patients). For an official capacity of 309 places, the forensic clinic was at the time of the visit slightly overcrowded with 322 patients with mental disorder mainly held under Section 63 and 64 of the StGB as well as under 126a of the StPO.

⁹⁶ Placements under Sections 63 and 64 of the StGB can be combined with a prison sentence, when the persons concerned have diminished responsibility for the criminal offence they have committed (Section 21 of the StGB).

⁹⁷ See Section 67d of the StGB.

⁹⁸ According to Section 81 of the StPO, criminal suspects may also be admitted to a psychiatric establishment for the purpose of conducting a psychiatric assessment.

⁹⁹ For further details, see paragraph 132.

Amongst the patients were 39 women and one 16-year-old juvenile. In the last five years, an average of 83 patients per year had been admitted to the clinic, with a clear upward trend. Upon release, patients held under Section 63 of the StGB had reportedly spent six years at the clinic on average, but a number of patients had stayed much longer. One patient had been held at the hospital for 35 years.

108. The CPT carried out a follow-up visit to *Uchtspringe Forensic Psychiatric Clinic (Maßregelvollzug Uchtspringe; hereinafter “Uchtspringe”)*,¹⁰⁰ which is located near the town of Stendal in Saxony-Anhalt. It comprises a large modern three-storey building complex with several inner yards which had opened in 1996 and was further enlarged in 2002, and three older accommodation buildings. The patients are accommodated in ten closed wards (nine for men and one for women) as well as one open mixed-gender ward. There is also an outpost in Lochow with four closed wards.¹⁰¹ In total, the hospital accommodated at the time of the visit 286 adult patients – mainly held under Sections 63 and 64 of the StGB and 126a of the StPO – for an official maximum capacity of 264 (including 57 places at Lochow). Fifteen of the patients were women. According to the information received, patients held at the clinic under Section 63 of the StGB stayed on average 7.6 years and patients held under Section 64 of the StGB 1.2 years.

109. As was the case in many other *Länder*, both clinics were facing an increase in the number of patients, in particular those admitted under Section 126a of the StPO. Therefore, at the time of the visit, they were operating above their official capacities and at Uchtspringe this had already been the case for the last two years.

The managements of both clinics were well aware of this problem and perceived it as one of their main challenges. Hamburg Ochsenzoll therefore had concrete plans to build space for some 40 to 60 beds in the near future¹⁰² and Uchtspringe was planning to build two new wards with about 30 beds each, by 2024. **The CPT would like to receive updated information on this matter.**

2. Ill-treatment

110. The delegation received no allegations of deliberate physical ill-treatment of patients by staff in either of the psychiatric hospitals visited.

Further, inter-patient violence did not appear to be a major problem at either of the clinics. Whenever such incidents occurred, staff appeared to intervene promptly and react adequately.

¹⁰⁰ In 2015, the visit had to be interrupted due to the clinic’s refusal to provide the delegation with access to patients’ individual administrative and medical files (see also paragraph 7).

¹⁰¹ Lochow is located some 60 km south of Uchtspringe. It was not visited by the delegation.

¹⁰² A new ward with 16 beds was planned to open in 2021 and another ward in 2022.

3. Living conditions

111. Material conditions at Hamburg Ochsenzoll and Uchtspringe Forensic Psychiatric Clinics were generally of a high standard, contributing to a positive therapeutic environment. Patients were usually accommodated in spacious single or double rooms. However, most women at Uchtspringe stayed in triple rooms. The majority of the rooms also comprised a sanitary annex. All rooms had good access to natural and artificial light, were well ventilated, clean and in a good state of repair and most rooms were also adequately furnished (with a bed, table, chair, wardrobe/shelving). Further, it is commendable that patients were allowed to personalise their rooms to a large degree.

That said, a number of accommodation rooms at the acute/admission ward (18-1) at Hamburg Ochsenzoll where patients could stay between some days and several years were rather bleak. Mainly due to security considerations, several patients on this ward were sleeping directly on a mattress on the floor, in some cases without bed linen. A number of rooms also had no additional equipment such as a table, chair or cupboard/shelving and the patients thus kept their clothes and other belongings in black rubbish bags. Some patients were locked in such rooms for prolonged periods and also during meals and thus had to eat on their mattresses or on the floor.

The CPT acknowledges that, due to security considerations, some potentially agitated patients can at times not be placed in rooms equipped with regular furniture. However, for such situations, suitable furniture should be provided which would allow patients to take meals in a dignified manner.

The Committee recommends that the authorities of Hamburg take the necessary steps at Asklepios Clinic North – Ochsenzoll to ensure that when, for security reasons, patients must exceptionally be accommodated in rooms without regular furniture, they are provided with adequate safe furniture. Further, all patients should be provided with bed linen (if necessary suicide-proof).

112. At both clinics, patients generally had daily access to pleasant green outdoor areas, and a number of patients could go outdoors at any time during the day. This is commendable. However, many other patients could go outside into the open air only for about one hour per day, which is the minimum entitlement set out in the respective laws.

The CPT considers that the aim should be that patients in psychiatric establishments should generally, health permitting, benefit from unrestricted access to outdoor areas during the day, unless treatment activities require them to be present on the ward.¹⁰³ **The Committee encourages the authorities of Hamburg and Saxony-Anhalt, as well of all other *Länder*, to review the existing arrangements for outdoor exercise in psychiatric establishments accordingly.**

¹⁰³ As regards the security measure of prohibiting or restricting outdoor exercise for patients, reference is made to paragraph 127.

4. Staff and treatment

113. Health-care staffing levels were adequate in both clinics. The health-care team at Hamburg-Ochsenzoll (capacity: 309 beds) comprised doctors who occupied 29.6 full-time posts (including 13 specialised in forensic psychiatry) and 326 full-time equivalents (FTE) of nursing staff. There were a further 16.8 FTE of psychologists, 26.1 FTE of educators and therapists and 12.8 FTE of social workers. At Uchtspringe (capacity: 264 beds), doctors occupied 15 full-time posts (including seven specialised in psychiatry and psychotherapy and four of them further in forensic psychiatry) and nursing staff 259. In addition, the clinic employed pedagogues, therapists and social workers covering an equivalent of 40.4 full-time posts, and 23.6 FTE of psychologists.

114. The CPT would like to emphasise at the outset that its delegation gained a generally positive impression of the treatment provided to patients at Hamburg Ochsenzoll and Uchtspringe Forensic Psychiatric Clinics.

115. In particular, *individual treatment plans* were drawn up for all patients upon their admission and were reviewed every six months as legally required. At Uchtspringe, many patients further told the delegation that they had been involved in the drafting process. It is also positive that the plans at Uchtspringe defined concrete treatment goals, specified the corresponding therapeutic means and indicated the staff member responsible.

Regrettably, this was not the case with the treatment plans examined by the delegation at Hamburg Ochsenzoll, which appeared largely descriptive and retrospective and much less future-oriented. Further, at Hamburg Ochsenzoll, many patients and even a number of the health-care staff on the wards seemed to be unaware of the treatment plans' contents.

The CPT recommends that the authorities of Hamburg and, where appropriate, of other *Länder*, take steps to ensure that, in all psychiatric establishments, the patients' individual treatment plans indicate the goals of treatment, the therapeutic means to be used and the staff member responsible. Further, patients should be involved in the drafting of the individual treatment plans and their subsequent modifications and be informed of their therapeutic progress.

116. The CPT welcomes the fact that both clinics offered a wide and appropriate range of therapeutic, rehabilitative and recreational *activities* for patients. These included, amongst other things, individual and group therapy sessions with a psychologist, substance abuse groups, occupational and music therapy sessions, different types of work therapy (e.g. woodwork, gardening at Uchtspringe and sewing room, print office at Hamburg Ochsenzoll) and various sports activities. Patients at both clinics had further access to a library and at Uchtspringe also to an indoor swimming pool.

117. At both clinics, several patients who had been hospitalised in relation to sex offences were receiving at the time of the visit *anti-androgen treatment* (so-called “chemical castration”) to which they had consented.¹⁰⁴ The CPT welcomes the fact that, in each case, the treatment had been preceded by comprehensive health checks including laboratory tests and bone density measuring and was accompanied by regular checks such as blood tests, checks of vital signs and repeated bone density measuring. Further, at Uchtspringe, the patients receiving anti-androgen treatment seemed to be well informed about the possible effects of the treatment, including side-effects, and their consent had been documented by their signature on a consent sheet.

That said, at Hamburg Ochsenzoll, some of the patients concerned appeared to know very little about the medication’s possible effects and/or side-effects. Reportedly, before starting the treatment, discussions with medical staff had mainly focussed on the necessity for the treatment. In this connection, the clinic provided the delegation after the visit with the information sheets given to patients concerning the treatment with anti-androgens. Rather surprisingly, these information sheets concerned the use of gonadotropin-releasing hormone analogs (anti-androgens) for treating prostate cancer (with most parts concerning cancer crossed out) and contained no specific information on the use of the drug for the treatment purpose relevant to the patients concerned (reducing the sex drive). In addition, it contained no information on the (possible) length of the treatment and was not written in easily comprehensible language. Further, it appeared that, in several cases, the patients’ written consent to the ongoing anti-androgen treatment was only sought after the CPT had asked for its documentation.¹⁰⁵ In addition, patients seemed to be unaware of the possibility to withdraw their previous consent to the treatment.

The Committee wishes to reiterate that the informed free written consent of the patient concerned should be obtained prior to the commencement of anti-androgen treatment, it being understood that consent can be withdrawn at any time. This includes that the patient is fully informed of all the potential effects and side-effects of the treatment, as well as the possibility for withdrawal of his/her consent and possible consequences of refusal to undergo such treatment.

The CPT recommends that the authorities of Hamburg, and, where appropriate, of other *Länder*, take steps to ensure that these precepts are being fully implemented in practice in forensic psychiatric establishments.

118. At both clinics, patients were frequently brought to the hospitals by the police (i.e. those admitted under Section 126a of the StPO). In this regard, it is positive that, upon arrival, an appropriate *physical admission examination* of the patient was usually carried out and recorded in the patient’s medical file.

That said, it transpired from consultations with health-care staff at both clinics that there were no clear procedures in place in respect of the recording and reporting of injuries.

¹⁰⁴ Five patients at Hamburg Ochsenzoll and six at Uchtspringe.

¹⁰⁵ The delegation had asked the Clinic to submit the relevant patient file entries concerning the start of the treatments. It subsequently received, on 5 February 2021, five consent sheets signed by the respective patients which were dated in September 2017 in one case, but in four cases only in January 2021.

In this context, the CPT wishes to recall the well-known fact that involuntary admission to a hospital of a patient with acute mental disorder may be a high-risk undertaking in which coercive measures frequently have to be used. Therefore, the accurate and timely recording and reporting of any injuries which the patient may display upon admission is an important safeguard against possible ill-treatment and should always be carried out promptly by a doctor. Whenever injuries are recorded which are consistent with allegations of ill-treatment made by a patient (or which, even in the absence of an allegation, are clearly indicative of ill-treatment), the record should also be systematically brought to the attention of the competent prosecutor, regardless of the wishes of the patient concerned. Health-care staff should further advise the patient concerned of the existence of the reporting obligation, and also that the forwarding of the report to the prosecutorial authorities is not a substitute for the lodging of a formal complaint.

The CPT recommends that the relevant authorities of Hamburg and Saxony-Anhalt as well as of all other *Länder* take the necessary steps to ensure that the above-mentioned precepts are effectively implemented in all psychiatric hospitals in Germany.

5. Means of restraint

119. In both clinics, agitated and/or violent patients were on occasion subjected to seclusion in a so-called crisis intervention room or in their own room, mechanical restraint on a restraint bed (*Fixierung*) and/or the forcible administration of rapid tranquillisers (chemical restraint), in order to prevent an imminent risk of escape, self-harm or harm to others.

120. The relevant MRVGs of Hamburg and Saxony-Anhalt provide for a number of safeguards concerning the use of means of restraint. In particular, means of restraint may only be applied as a measure of last resort, must always be ordered by a doctor in advance (or, in the case of an emergency, be approved by a doctor without delay) and be supervised by a doctor.¹⁰⁶

In Hamburg, the MRVG further requires that *Fixierung* applied for longer than twelve hours and any restraint measure applied for longer than 24 hours must be approved¹⁰⁷ by the director of the clinic and that, in the case of *Fixierung*, a debriefing be carried out with the patient concerned after the end of the measure.¹⁰⁸ In Saxony-Anhalt, the clinic is under a legal obligation to report all instances of the use of restraint measures on a weekly basis to the supervisory authority, and every instance lasting more than one week must be approved by that authority.¹⁰⁹ A debriefing must be carried out by the doctor in charge after the end of any *Fixierung*.¹¹⁰

It is particularly noteworthy that, in 2018, the Federal Constitutional Court had delivered a judgment¹¹¹ in which it ruled that resort to *Fixierung* which was not only a short-term measure (i.e. expected to last more than half an hour) must be validated by a judge and the Court also set out a number of basic requirements which must be met whenever a patient was subjected to *Fixierung* (including the existence of a specific legal basis, every use to be decided and supervised by a doctor, in principle one-to-one supervision by health-care staff, diligent documentation, patient to be informed of legal remedies).

¹⁰⁶ Sections 32 and 33 of the HmbMVollzG as well as Section 20 of the MVollzG LSA.

¹⁰⁷ Sections 33 (2), 32 (3) and Section 5 (2) 5. of the HmbMVollzG.

¹⁰⁸ Section 33 (3) of the HmbMVollzG.

¹⁰⁹ Section 20 of the MVollzG LSA.

¹¹⁰ Section 20a (5) of the MVollzG LSA.

¹¹¹ Judgement of 24 July 2018 (2 BvR 309/15, 2 BvR 502/16).

In Hamburg, the above-mentioned directives of the Federal Constitutional Court had been incorporated in the MRVG in 2018, while legislative procedures were still pending in Saxony-Anhalt at the time of the visit.¹¹²

121. From the examinations of relevant records and interviews with patients, it transpired that, in both clinics, the above-mentioned safeguards regarding the use of means of restraint were generally implemented in practice. In particular, a request for a judicial decision was always submitted in time for any instance of *Fixierung* which lasted longer than 30 minutes. It is commendable that, at Uchtspringe, this requirement was already being meticulously adhered to at the time of the visit (before having been stipulated by law). According to the information received, judges usually visited the hospitals without undue delay to see the patient concerned and to decide as to the lawfulness of the measure.

122. That said, a number of shortcomings were observed by the delegation at Hamburg Ochsenzoll and Uchtspringe.

Firstly, neither of the two clinics visited had an internal written policy in place on the use of means of restraint.

In the CPT's view, every psychiatric establishment should have a comprehensive, carefully developed policy on restraint. The involvement and support of both staff and management in elaborating the policy is essential. Such a policy should be aimed at preventing as far as possible the resort to means of restraint and should make clear which means of restraint may be used, under what circumstances they may be applied, the practical means of their application, the supervision required and the action to be taken once the measure is terminated. The policy should also contain sections on other important issues such as: staff training; recording; internal and external reporting mechanisms; debriefing; and complaints procedures. Further, patients should be provided with relevant information on the establishment's restraint policy.

123. Secondly, in both clinics, patients subject to *Fixierung* were not always under continuous, direct and personal supervision by a qualified member of staff.

Although the MRVG of Hamburg requires that a patient under *Fixierung* must be cared for "on the spot" (*an Ort und Stelle*), "permanently" and "personally" with an emphasis on the necessity for permanent visual and hearing/earshot contact,¹¹³ this appeared to be rarely the case in practice. Instead, according to the files examined, the patients concerned were frequently supervised from the ward staff office via a CCTV camera with additional regular personal checks either in the room where the patient was fixated or through a window in the door. In between the checks, patients reportedly had to shout for staff if they needed assistance. At Uchtspringe, patients under *Fixierung* were frequently subject to continuous, direct and personal supervision. However, some of the individual fixation orders examined by the delegation also indicated that the patient was to be supervised via CCTV rather than directly by a continuously present staff member (*Sitzwache*). In the light of these findings, the CPT must once again emphasise that personal staff presence is crucial in order to maintain the therapeutic alliance with fixated patients and to provide them with the assistance they may need.

¹¹² The amendments to the relevant provisions of the MVollzG LSA were enacted in March 2021.

¹¹³ Section 33 of the HmbMVollzG.

Patients held in *seclusion* at both clinics were in some cases under continuous direct personal supervision and otherwise supervised by CCTV and at regular intervals through a door hatch. In the latter case, staff only occasionally entered the room where the patient was secluded, for instance, to deliver meals (and in some cases reading material). Regrettably, the patients concerned usually received barely any meaningful human contact except from the daily doctor's visit which often also took place through the door hatch. This was also the case for some of the patients who were secluded in their own room, including, at Hamburg Ochsenzoll, on the admission ward. Some patients had been held under such conditions for weeks or months on end (see paragraph 129).

The CPT acknowledges that some patients held in seclusion appeared to be barely responsive and did not (always) react when approached. However, efforts should be made by staff on a daily basis to make contact with every secluded patient. In this connection, the CPT very much welcomes that, by letter of 10 May 2021, the authorities of Saxony-Anhalt committed themselves to fostering increased interaction and communication with the secluded patients and they have informed the CPT that specific staff training to this effect is in preparation.

124. Thirdly, while secluded patients could in both clinics usually wear their personal clothes, at Uchtspringe, patients were on (rare) occasions held in a seclusion room whilst naked, as was also the case during the delegation's visit. It is particularly worrying that the patient concerned was not even provided with a blanket to cover himself nor with a pillow. In the CPT's view, such a practice could easily be considered to be degrading for the patients concerned. The patients should be provided with special garments which permit the patient to wear a minimum amount of clothing while taking into account any risk of suicide (or soiling¹¹⁴).

125. Fourthly, at both clinics, the delegation gained the impression that patients often did not benefit from a comprehensive debriefing with a member of the health-care staff after having been subjected to *Fixierung*, seclusion or chemical restraint.

126. Fifthly, while at Uchtspringe, seclusion and *Fixierung* appeared to be duly registered in a restraint register and the delegation had difficulty at Hamburg Ochsenzoll in obtaining a clear picture of the frequency and duration of the different restraint measures, as a comprehensive central restraint register did not exist at the clinic. Although various electronic and paper records were kept regarding incidents involving resort to means of restraint and statistical data were compiled on the number of instances of *Fixierung*, the delegation – as well as the hospital's management and any other monitoring body or inspection – could not obtain a general overview of how often and for how long individual patients were subjected to the different types of means of restraint.

Further, at both clinics, the forcible administration of rapid-acting tranquillisers (chemical restraint) was only recorded as "emergency medication" in the patients' medical files.¹¹⁵ The CPT does not share the argument put forward by doctors at Hamburg Ochsenzoll that rapid chemical tranquillisation always constituted a therapeutic intervention as part of psychiatric treatment and thus could not be considered to be a restraint measure as such. The Committee wishes to stress that, as a matter of principle, agitated/violent patients subjected to chemical restraint should benefit from the same safeguards as patients who are subjected to other types of restraint.

¹¹⁴ Reportedly, at least one patient concerned had frequently smeared himself with his faeces.

¹¹⁵ The medicine doses administered were noted in the patient's medical file, but not as a restraint measure.

As already emphasised by the Committee in its previous report, a specific register on the use of means of restraint (including chemical restraint) is an indispensable tool for effective management and staff monitoring of these measures and will greatly facilitate the oversight into the extent of their occurrence with a view to possibly reducing the resort to such measures in the future. The entries in the register should – in addition to the records contained in the patient’s personal file – include the time at which the measure began and ended; the circumstances of the case; the reasons for resorting to the measure; the name of the doctor who ordered or approved it; staff who participated in the application and supervision of the measure; and an account of any injuries sustained by patients or staff.

127. Sixthly, despite the specific recommendation made by the CPT in previous visit reports, it remained the case that patients held in seclusion were sometimes prohibited from having any access to outdoor areas due to security reasons, in accordance with the respective MRVGs.¹¹⁶

The CPT wishes to recall that, as a matter of principle, all patients with mental disorder should be offered daily access to the open air unless there are clear medical contraindications. If patients display particularly violent behaviour, appropriate arrangements can and should be found to ensure the safety of the patient concerned and others, as well as the establishment’s internal order, while still guaranteeing the patient’s right to daily access to an outdoor area (e.g. by additional staff surveillance).

128. As regards the frequency and duration of the resort to restraint measures, the CPT welcomes the fact that, in both clinics, *Fixierung* appeared to be used only rarely and usually for periods of short duration. At Hamburg Ochsenzoll, during the first eleven months of 2020, there had been nine instances of *Fixierung* (out of which five concerned the same patient with particularly challenging behaviour) and at Uchtsprunge, 23 instances (out of which eleven concerned the same patient with particularly challenging behaviour), usually lasting up to 30 minutes and, in one exceptional case, 23 hours.

At Hamburg Ochsenzoll, the two longest instances of *Fixierung*, which concerned the mentioned challenging patient with very exceptional aggressive and self-harming behaviour, lasted six days and 17 hours and five days and 22 hours. The delegation discussed the situation of this patient in depth with the management of the clinic, interviewed him and examined his files. Based on this, it gained the impression that the clinic had paid particular attention to the treatment of this patient and had reacted professionally/adequately to his exceptionally challenging condition (which had considerably improved subsequently).

129. That said, the Committee notes with concern that, at both clinics, *seclusion* was used rather frequently and sometimes for very long periods. For instance, at Uchtsprunge, patients had been secluded in 182 cases in the first eleven months of 2020 (and in 184 cases in 2019). Further, at Hamburg Ochsenzoll, several patients had been held in a seclusion room in 2019 and 2020 for two or more months, sometimes followed by prolonged seclusion in their own rooms. Moreover, at Uchtsprunge, the duration of stay in a seclusion room was for several patients in the same period eight and a half months, four and a half months, in two cases almost eleven months and in one extreme case 19 months.

¹¹⁶ Section 32 (2) 3. of the HmbMVollzG and Section 20 (1) 2. of the MVollzG LSA.

From discussions with medical staff at both clinics it became apparent that the reason why a number of patients were being held in seclusion for prolonged periods was because they were considered to present a serious danger to themselves or others in their vicinity, usually due to their symptoms being treatment-resistant or because of their refusal to take the prescribed medication and the difficulties in medicating patients exceptionally against their will (see also paragraph 137). In addition, the delegation was told by staff at Uchtspringe that patients who normally stayed in multiple-occupancy rooms were sometimes held in seclusion rooms for longer than necessary, due to the lack of single or phasing-out rooms (see paragraph 131). This concerned in particular women at Uchtspringe, as almost all of them were accommodated in triple rooms.

Given the potentially detrimental effects of seclusion to a patient's mental health, the CPT must stress again that seclusion, as any other type of restraint, should always be a measure of last resort and should be terminated as soon as the patient has calmed down. A patient's stay in a seclusion room should never be prolonged due to a lack of accommodation rooms.

130. The CPT recommends that the authorities of Hamburg and Saxony-Anhalt redouble their efforts to reduce the frequency and duration of seclusion of patients at Asklepios Clinic North – Ochsenzoll and Uchtspringe Forensic Psychiatric Clinic, in the light of the remarks made in the preceding paragraph.

Further, the Committee recommends that the authorities of Hamburg and Saxony-Anhalt as well as of all other *Länder* take the necessary steps to ensure that:

- all patients subject to *Fixierung* benefit from continuous direct personal supervision (Sitzwache) by a qualified member of staff. The staff member should maintain a therapeutic alliance with the patient and provide him/her with the assistance needed.
- all patients subject to seclusion are provided with regular, meaningful, daily, face-to-face human contact and offered daily access to an outdoor area unless there are clear medical contraindications;
- all patients subject to seclusion are provided with adequate clothing (if necessary rip-proof/suicide-proof), a blanket and a pillow;
- if a patient, very exceptionally, has still not sufficiently improved after a period of some days in seclusion, he/she has also opportunities to participate in meaningful activities (including recreational, with access to reading material and radio or TV) and possibilities to maintain contact with the outside world via visits or telephone. Further, there should be a clearly described planned pathway, formulated as far as possible in consultation with the patient, which defines how attempts will be rigorously made to re-integrate the patient back into full association with others in a less restrictive environment, as soon as possible;
- once the use of means of restraint has been terminated, a debriefing of the patient takes place;
- every application of restraint, including chemical restraint, is recorded in a dedicated register on the use of means of restraint (in addition to the patient's medical file);
- a comprehensive written policy on restraint is put in place in every psychiatric hospital, in the light of the remarks made in paragraph 122.

131. Material conditions in the seclusion rooms at both clinics were generally adequate.

That said, at Uchtspringe, the management concurred with the delegation's view that the high concrete platforms (of approximately 80 cm height) in most of the seclusion rooms were not safe, as patients could harm themselves by falling or throwing themselves onto the stone floor (which had already happened). The delegation was told that the seclusion rooms on the new wards to be built in the coming years would be of a different design without concrete platforms. In the above-mentioned letter of 10 May 2021,¹¹⁷ the authorities of Saxony-Anhalt further informed the Committee about plans to renovate and modernise at least one seclusion room in 2021 and to equip it with "vandalism-proof" furniture which can be individually placed and removed as needed.

In this connection, senior management staff at Uchtspringe had further mentioned during the visit plans to create, at least on the new wards, "phasing out rooms" for patients whose condition allowed their release from the seclusion room but who were not yet ready to return immediately to a multiple-occupancy room. The rooms should also be equipped with safe furniture¹¹⁸ (including table and stool) and allow patients to eat in dignity rather than on their mattresses or on the floor.

The CPT welcomes these developments and it trusts that the management of Uchtspringe Forensic Psychiatric Clinic will remove the concrete platforms in seclusion rooms without delay.

6. Safeguards

- a. review of forensic placement decisions

132. The necessity of continued hospitalisation of patients in a forensic institution must be subject to a review by the competent criminal court *ex officio* once a year in respect of placements under Section 63 of the StGB and every six months in respect of placements under Section 64 of the StGB.¹¹⁹ In addition, patients are entitled to request a judicial review of their placement (provided that this right is not used in an abusive manner).

Since the 2015 visit, the relevant federal legislation has been amended in order to enhance the mandatory involvement of an independent psychiatric expert in the context of these reviews.¹²⁰ An independent expert opinion is now required at least every three years (and, after six years, every two years), the experts concerned must have experience in forensic psychiatry and must not have previously established an opinion on the patient concerned.

133. The CPT welcomes the fact that, according to the files examined by the delegation at both clinics, the regular reviews were carried out within the legal deadlines. During court proceedings, patients were usually heard in person by a judge and were represented by a lawyer. Independent psychiatric experts were involved as frequently as required under the new legal provisions.

¹¹⁷ See paragraph 123.

¹¹⁸ Regarding safe furniture, reference is also made to paragraph 111.

¹¹⁹ See Section 67e of the StGB.

¹²⁰ See Section 463 (4) of the StPO.

b. involuntary treatment

134. As regards the involuntary treatment of forensic patients with a mental disorder, it is recalled that, since 2011, the Federal Constitutional Court has issued several judgements in which it declared the relevant legal provisions of several *Länder* as not being sufficiently specific and therefore null and void.¹²¹ The Court has developed precise criteria for legal provisions governing involuntary treatment of forensic patients with a mental disorder which should exist in all *Länder*. These include the requirements that the patient is, due to his/her illness, not capable of discernment (or not capable of acting accordingly), that no less intrusive means are available and that the measure is proportionate to the treatment goal. The measure must further be ordered and supervised by a doctor and can only be authorised if an independent external expert has been involved. It is further required that serious efforts have been made, with the necessary expenditure of time and without exerting undue pressure, to obtain the patient's trusted consent. The CPT welcomes these developments.

135. In Hamburg, the relevant legal provisions have been amended and brought in line with the above-mentioned requirements set out by the Federal Constitutional Court.

Section 10 of the HmbMVollzG provides in particular that treatment of the disorder which led to the patient's forensic placement may only take place against his/her natural will¹²² (*ärztliche Zwangsbehandlung*) if, due to an illness, the patient concerned is not able to recognise the necessity for the treatment or to act according to such recognition. Other medical measures related to the disorder which led to the patient's forensic placement can be implemented against the patient's will (*ärztliche Zwangsmaßnahmen*), if due to an illness he/she is not able to recognise the necessity for the treatment or to act according to such recognition *and* the measure serves to avert a danger for the life or imminent severe danger to the patient's health. Such measures are further permitted if they serve to avert a danger to life or an imminent severe danger to the health of *other persons* (without the requirement of the patient's lack of capacity of discernment).¹²³ In both cases, an independent forensic psychiatrist – commissioned by the clinic in agreement with the responsible health authority – must approve the involuntary treatment in advance, and the involuntary treatment order must be reasoned and communicated in writing to the patient two weeks prior to its implementation, in order to enable the patient to challenge the measure before a court in advance.¹²⁴

All other medical interventions (measures not related to the disorder which led to the patient's forensic placement) may only be carried out without the patient's (or their legal representatives') consent in order to avert a danger to the patient's life or severe danger to the health of other persons.¹²⁵

¹²¹ In particular judgement of 23 March 2011 (2BvR 882/09) and judgement of 20 February 2013 (2BvR 228/12).
¹²² "Natural will" (*natürlicher Wille*) is a German legal term which comprises a person's currently existing intentions and desires, e.g. expressed through his/her behaviour, even if the person is in a state of pathological disruption of mental activity that excludes the determination of free will.
¹²³ Section 10 (4) of the HmbMVollzG.
¹²⁴ In emergency cases, prior approval by an independent psychiatrist and prior notice to the patient are not required if they would cause considerable harm to the life or health of the patient.
¹²⁵ Section 11 (2) and (3) of the HmbMVollzG.

136. In Saxony-Anhalt, the MVollzG LSA did not – at the time of the visit – contain a valid legal basis for resort to involuntary treatment (as the relevant provision was not in conformity with the German Constitution (Basic Law). Patients in forensic institutions could therefore only be treated against their will through a lengthy procedure to (partially) deprive the patient concerned of his/her legal capacity and obtain the guardian's consent for involuntary treatment which additionally had to be approved by the Guardianship Court.¹²⁶

The CPT welcomes the fact that the amendments made in March 2021 to the MVollzG LSA also introduced fundamental safeguards concerning the involuntary treatment of forensic patients. According to the new Section 9a, involuntary treatment may only take place if the patient concerned is, due to his/her illness, not able to recognise the severity of his/her disease or the necessity for the treatment (or to act according to such recognition) and if the measure is aimed at averting a risk to the life or an imminent risk of severe bodily harm to the patient or others. The measure must further be ordered and implemented by a doctor and, in addition, be approved by a court. The law also provides for giving comprehensive information to the patient about the intended treatment and appeal possibilities and requires detailed recording of the reasons for the measure as well as of relevant statements made by the patient.

The CPT notes that the involvement of an independent outside psychiatrist is not provided by law. **It would like to be informed by the authorities of Saxony-Anhalt to what extent external experts are involved in the involuntary treatment procedures.**

137. In practice, involuntary treatment was resorted to very rarely at both clinics; there were about one to three cases per year.¹²⁷

At Hamburg Ochsenzoll, the above-described legal safeguards were duly implemented in practice. However, the delegation was told by senior staff that the authorisation procedure for involuntary treatment was very cumbersome and time-consuming. This obviously presented a considerable obstacle to the application of the measure. If initiated, the procedures for authorisation of involuntary treatment measures usually took several months until the patients could be treated (the two cases authorised in 2020 took at least three, and four and a half months respectively¹²⁸). This prolonged some patients' suffering from severe symptoms such as hallucinations and delusions. According to the files examined, the patients concerned were seriously unwell¹²⁹ while the procedure was pending, and some had therefore been placed in seclusion. In all case files examined by the delegation, the subsequent medication led to an improvement in the patient's state.

¹²⁶ According to the files examined, the procedures usually lasted several months.

¹²⁷ In 2020, one patient at Uchtsprunge (based on his guardian's consent), and two patients at Hamburg Ochsenzoll.

¹²⁸ The given periods concern the time between the agreements of the clinic and the health authority about the choice of the independent expert until the administration of the medicine to the patient. The patients had clearly been in need of treatment already earlier, when the procedure was initiated.

¹²⁹ At least two of the patients were obviously possessed by their hallucinations (and delusions) to a degree that prevented them from having any meaningful verbal communication. Due to their mental state they were neither able to benefit from therapeutic offers such as sports therapy or occupational therapy nor to have even a short talk with staff.

At Uchtsprunge, patients had apparently on occasion been in a similar state due to the (previous) lack of an adequate legal basis for involuntary treatment. Some of the patients concerned had obviously not been capable of discernment. Some of them were described in the files as “completely confused” and “not able to make contact”. The delegation was told by the management that the lack of an adequate legal provision regulating involuntary treatment clearly led to increased recourse to means of restraint, in particular seclusion of the patients concerned, sometimes for prolonged periods. In the above-mentioned letter of 10 May 2021,¹³⁰ the authorities of Saxony-Anhalt informed the CPT of the newly-introduced provisions concerning involuntary treatment and also expressed their hope that involuntary treatment would in a number of cases prevent seclusion from the outset and also lead to a significant reduction in the duration of seclusion.

In sum, at both clinics, it appeared that patients who were not capable of discernment sometimes did not receive the treatment they needed (or received it only after a delay of several weeks or months) due to the considerable legal and/or practical obstacles to exceptionally treat a patient without his/her consent. At least in some cases, this state of affairs extended the patients’ suffering from severe symptoms and led to increased restraint of the patients concerned.

The CPT therefore recommends that the authorities of Hamburg and, where appropriate, of other *Länder*, take the necessary steps to ensure that - while adhering to the above-mentioned fundamental safeguards surrounding involuntary treatment measures - the procedures for exceptional involuntary treatment of patients with mental disorder be carried out in a timely manner in order to avoid unnecessary prolongation of the patients’ suffering.

138. At Hamburg Ochsenzoll, it remained unclear whether the patients concerned were always informed about the existing legal remedies against an involuntary treatment measure.

The CPT would like to receive confirmation from the authorities of Hamburg that all forensic patients who are subject to involuntary treatment (and, where applicable, their legal representative) are informed in advance, both verbally and in writing, about their right to challenge the involuntary treatment measure before the court.

¹³⁰ See paragraphs 123 and 131.

c. inspection and complaints procedures

139. In Hamburg, a supervisory commission (*Aufsichtskommission*), comprising seven members (including at least one psychiatrist and one judge), carries out unannounced inspections to the clinic at least twice a year in order to verify, amongst other things, if the rights of the forensic patients are being respected.¹³¹

In Saxony-Anhalt, the law provided that a mental health care board (*Ausschuss für Angelegenheiten der psychiatrischen Krankenversorgung*) sends independent external visiting commissions (*Besuchskommissionen*) at least once per year to each psychiatric establishment in order to monitor the treatment and care of psychiatric patients.¹³²

140. In both clinics, patients could address complaints to the management and they were entitled to challenge administrative decisions against them before the competent court.¹³³ In addition, they could send confidential complaints to the supervisory commission (in Hamburg) and the mental health care board or visiting commission (in Uchtspringe).

141. In practice, most patients at Hamburg, had received information on their rights, including the existing complaint avenues, upon their admission (house rules and information brochure). In addition, the address and phone number of the supervisory authority (*Aufsichtskommission*) were visibly displayed on the wards. However, the delegation was told that written information on rights was generally not distributed upon admission to the ward for women.

At Uchtspringe, patients generally received the clinic's house rules upon admission, but they did not contain information on complaint avenues. Several patients interviewed by the delegation appeared to be unaware of any avenue of complaint.

The CPT trusts that the authorities of Hamburg and Saxony-Anhalt will take the necessary steps to ensure that all patients in psychiatric establishments are systematically informed of their rights, including the existing avenues to lodge complaints.

¹³¹ Section 48 of the HmbMVollzG.

¹³² Section 42 of the MVollzG LSA and Section 37 of the PsychKG LSA.

¹³³ See Section 130 of the StVollzG of Hamburg and Section 41 of the MVollzG LSA.

7. Other issues

a. contact with persons outside the hospital

142. As regards contacts with persons outside the hospital, patients at both hospitals could receive phone calls without restriction and make calls from the ward phones as long as they had credit on their own pre-paid phone cards.

In addition, they could normally receive visits for one hour per week or more. That said, at the time of the CPT's visit, the visiting possibilities had been restricted due to the Covid-19 pandemic at both hospitals. This meant that at Uchtspringe, all visits would take place with a plexiglas partition and were limited to one hour per week (and four visitors at a time). This appeared to be a reasonable temporary solution. Moreover, the possibility to make video calls had been introduced at Uchtspringe. This is commendable, in particular as, according to the management, the possibility for video calls was planned to be maintained after the end of the pandemic.

In contrast, at Hamburg Ochsenzoll, visits had been fully suspended during the month preceding the CPT's visit and the measure was still in force when the delegation left the clinic. This was deplored by many patients. While video calls were occasionally used at the hospital for court hearings, they were regrettably not offered for patients' private contacts.

The CPT trusts that the authorities of Hamburg will take the necessary steps to ensure that patients held in psychiatric hospitals will henceforth be able to receive visits, whilst respecting Covid-19-related safety measures.

Further, the Committee encourages the authorities of Hamburg as well as of all other *Länder* to consider introducing the possibility of video calls for patients' contacts with their next-of-kin.

b. disciplinary measures

143. 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 patients in forensic hospitals, a possibility which, in the CPT's experience, exists in almost no other Council of Europe member state.

According to Section 21 of the MVollzG LSA, a patient who has culpably violated an obligation under the MVollzG LSA (or who has repeatedly violated the house rules) may be subjected for a specified period of time to one of the measures set out in an exhaustive list. The measures include *inter alia* withdrawal of access to radio and television, restriction of participation in group activities, prohibition of work or occupational activities and separate accommodation during their spare time. The most severe sanction is "separate accommodation in a patient's room for the whole day" (solitary confinement) - whilst guaranteeing the minimum entitlement of outdoor access", i.e. one hour per day - which can be imposed for up to four weeks in the case of severe or repeated violations.

In practice, the measure was occasionally applied as a disciplinary sanction at Uchtspringe, in cases where a doctor considered that the patient had been in a position to understand the implications of his/her acts. In 2019, there had been three punishments implemented, and in 2020 (until the time of the visit), six. The most frequently applied disciplinary sanction was “separate accommodation during free time”, usually for five to six days, but once for the maximum period of four weeks.

As mentioned already in its report on the 2015 visit, the CPT has general reservations about the use of disciplinary measures vis-à-vis patients with a mental disorder. Such measures aim at sanctioning patients’ behaviour, which is often likely to be related to a psychiatric disorder and should be approached from a therapeutic rather than a punitive standpoint. They may also considerably disturb a trusting doctor-patient relationship. Moreover, given the potentially very damaging effects of solitary confinement to a person’s mental health, the CPT considers that patients with mental disorder should never be subject to such a disciplinary measure.

The CPT recommends that the authorities of Saxony-Anhalt abolish the disciplinary sanction of solitary confinement vis-à-vis patients with a mental disorder.

Further, it encourages the authorities of Saxony-Anhalt and, where appropriate, of other *Länder*, to fully abolish any disciplinary sanctions vis-à-vis patients with a mental disorder.

c. security-related issues

144. As regards the admission procedure, it is positive that, at Uchtspringe, newly arrived patients were only exceptionally admitted to a seclusion room, based on an initial individual risk assessment. However, at Hamburg Ochsenzoll, it appeared that patients were, upon admission, frequently secluded in a bare admission room¹³⁴ - equipped only with a mattress on the floor, blanket, pillow, a urine bottle, a camera and an alarm button - for 24 hours¹³⁵ or even longer before being placed in a normal patient’s room. In the CPT’s view, newly admitted patients should only be secluded in such a room upon individual risk assessment if this is required by their mental state.

The CPT would like to receive confirmation from the authorities of Hamburg that seclusion of newly-arrived patients is not a routine practice, but only applied when required by the patient’s mental state, based on an individual risk assessment and for as short a time as necessary.

As regards the provision of safe furniture, reference is made to the recommendation in paragraph 111.

¹³⁴ Or in a regular seclusion room.

¹³⁵ With one hour of outdoor access per day.

145. Patients at both clinics could further be subjected to a strip-search when arriving at the hospitals. While at Uchtspringe these strip-searches were reportedly only carried out upon a concrete suspicion (that the patient would hide a prohibited item or substance), the delegation gained the impression that, at Hamburg Ochsenzoll, strip-searches - with patients having to squat and hold their buttocks apart - belonged to the standard admission procedure. Moreover, patients at Hamburg Ochsenzoll were at least occasionally obliged to remove all their clothes at the same time during such searches.

The CPT considers that a strip-search is a very intrusive and potentially degrading measure; resort to this measure should be based on an individual risk assessment and subject to rigorous criteria and supervision and be carried out in a manner respectful of human dignity. A strip-search should be carried out only when there are reasonable grounds to suspect that a patient may have hidden on him/her items that may be used to harm him-/herself or others and when such a search is necessary in order to detect these (an ordinary search being unlikely to result in their discovery). Every reasonable effort should be made to minimise embarrassment; patients who are searched should therefore normally not be required to remove all their clothes at the same time, e.g. the patient should be allowed to remove clothing above the waist and put the clothing back on before removing further clothing.

The CPT recommends that the authorities of Hamburg and, where appropriate, of other *Länder*, take the necessary measures to ensure that where resort is made to strip-searches in psychiatric establishments, the measure is always based on an individual risk assessment and carried out in a manner respectful of human dignity.

146. Further, at both clinics, the delegation heard complaints that patients held in seclusion were sometimes handcuffed and on rare occasions also ankle-cuffed with a body-belt in a secure outdoor yard. In the CPT's view there is no justification for such a practice.

The Committee recommends that the authorities of Hamburg, Saxony-Anhalt, and, where appropriate, of other *Länder*, abolish the practice of hand- and/or ankle-cuffing patients with mental disorder while they are in a secure outdoor yard.

d. the use of surgical castration in the context of treatment of sex offenders

147. In previous visit reports,¹³⁶ the CPT expressed its fundamental objections to the use of surgical castration as a means of treatment of sex offenders, since it is a mutilating, irreversible intervention which could not be considered as a medical necessity in this context. Therefore, the Committee recommended that steps be taken by all relevant federal and *Länder* authorities to put a definitive end to its use.

In this connection, the CPT welcomes the fact that, according to the information received from the German authorities,¹³⁷ not one single surgical castration had been carried out in the context of treatment of sex offenders since 2013. **The Committee trusts that all relevant federal and *Länder* authorities will put a definitive end to the use of surgical castration as a means of treatment of sex offenders.**

¹³⁶ For further details, see CPT/Inf (2012) 6, paragraphs 140 to 145, and CPT/Inf (2014) 23, paragraphs 49 to 51 and CPT/Inf (2016) 32, paragraphs 131 and 132.

¹³⁷ In their response to the CPT's 2015 report (CPT/Inf (2017)14) and by letter of 21 April 2021.

APPENDIX I

List of the establishments visited by the CPT's delegation

Baden-Württemberg

- Freiburg Prison (targeted visit to interview remand prisoners)

Bavaria

- St. Georgen-Bayreuth Prison
- Bayreuth-City Police Station
- Munich Police Headquarters (*Polizeipräsidium, Polizeiinspektion ED 6*)

Berlin

- Prison for Women (locations Lichtenberg and Pankow)
- Police Detention Centre, Tempelhofer Damm 12
- Federal Police Station, Central Railway Station

Brandenburg

- Potsdam-West Police Station

Lower Saxony

- Celle Prison (targeted visit to interview inmates held in prolonged segregation)
- Rosdorf Prison (targeted visit to interview remand prisoners and inmates held in prolonged segregation)

Hamburg

- Asklepios Forensic Psychiatric Clinic
- Hamburg Police Station 11
- Federal Police Station, Central Railway Station

North Rhine-Westphalia

- Gelsenkirchen Prison
- Düsseldorf Police Headquarters (*Präsidium*)
- Gelsenkirchen Police Headquarters (*Präsidium*)

Saxony-Anhalt

- Uchtspringe Forensic Psychiatric Clinic

Schleswig-Holstein

- Lübeck Prison (targeted visit to interview remand prisoners and inmates held in prolonged segregation)

APPENDIX II

List of the federal and *Länder* authorities and other bodies met by the CPT's delegation

A. Federal authorities

Federal Ministry of Justice and Consumer Protection

Ms Margaretha Sudhof	State Secretary
Mr Alfred Bindels	<i>Ministerialdirektor</i> , Head of the Directorate General IV, Constitutional Law, Administrative Law, International and European Law
Ms Eva-Lotta Gutjahr	<i>Ministerialdirigentin</i> , Head of the Directorate IV A
Mr Hans-Jörg Behrens	<i>Ministerialrat</i> , Head of the Unit of Human Rights, Acting Liaison Officer of the CPT
Ms Claudia Radziwill	Administrator, Unit of Human Rights

Federal Ministry of the Interior, Building and Community

Ms Dagmar Busch	<i>Ministerialdirigentin</i> , Head of the Directorate General B, Federal Police Affairs
-----------------	--

B. *Länder* authorities

Bavaria

Mr Georg Eisenreich	Minister of Justice
Mr Frank Arloth	Head of Office (<i>Amtschef</i>) of the Ministry of Justice
Mr Peter Holzner	<i>Ministerialdirigent</i> , Head of the Prison Administration, Ministry of Justice

Hamburg

Ms Melanie Schlotzhauer	State Councillor of the Office of Labour, Health, Social Affairs, Family and Integration
Mr Stefan Lengefeldt	Head of the Unit of Planning of Civil Psychiatry and Forensic Psychiatry (<i>Maßregelvollzug</i>), Department of Planning of Health Care, Office of Labour, Health, Social Affairs, Family and Integration

Ms Amina Sökeland Advisor for Forensic Psychiatry, Unit of Planning of Civil Psychiatry and Forensic Psychiatry, Office of Labour, Health, Social Affairs, Family and Integration

North Rhine-Westphalia

Mr Dirk Wedel State Secretary of the Ministry of Justice

Ms Katharina Wagner Head of Office of the State Secretary

Mr Jakob Klaas *Ministerialdirigent*, Head of the Prison Administration, Ministry of Justice

Ms Anne Zaum Judge, Unit of Law and Legislation related to Prison Matters, Ministry of Justice

Saxony-Anhalt

Ms Beate Bröcker State Secretary of the Ministry of Labour, Social Affairs and Integration

Ms Gabriele Theren *Ministerialdirigentin*, Head of the Department of Social Affairs and Occupational Safety, Ministry of Labour, Social Affairs and Integration

Ms Claudia Reich-Becker Head of the Unit of Civil Psychiatry, Forensic Psychiatry (*Maßregelvollzug*) and Addiction, Department of Social Affairs, Ministry of Labour, Social Affairs and Integration

Ms Sabine Zumpf Advisor, Unit of Civil Psychiatry, Forensic Psychiatry and Addiction, Ministry of Labour, Social Affairs and Integration

* * *

In addition, the delegation held a videoconference with representatives of the Federal Ministry of the Interior, Building and Community and the Federal Ministry of Justice and Consumer Protection as well as with senior officials from the Ministries of the Interior, Justice and Social Affairs of various *Länder*.

C. Other bodies

National Agency for the Prevention of Torture (National Preventive Mechanism)

Mr Ralph-Günther Adam *Leitender Sozialdirektor a.D.*, Head of the Federal Agency for the Prevention of Torture

Mr Rainer Dopp Former State Secretary, Head of the Joint Commission of the Länder

Mr Christian Illgner Head of Office (*Leiter der Geschäftsstelle*)

Ms Sarah Teweleit Scientific Associate, Office of the National Agency for the Prevention of Torture