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Response

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

from 1 to 14 December 2020

The Government of Germany has requested the publication of this response. The CPT's report on the periodic visit to Germany is set out in document CPT/Inf (2022) 18.

Strasbourg, 14 September 2022

Observations by the Federal Government on the recommendations, comments, and requests for information of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on the occasion of the Committee's visit from 1 to 14 December 2020 (CPT (2021) 31)

Berlin, 1 March 2022

Preliminary remarks

From 1 to 14 December 2020, a delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) paid its seventh periodic visit to the Federal Republic of Germany. The CPT delegation visited a total of 18 establishments, including police establishments, prisons and civil/forensic psychiatric facilities in Baden-Württemberg, Bavaria, Berlin, Brandenburg, Hamburg, Lower Saxony, North Rhine-Westphalia, Saxony-Anhalt and Schleswig-Holstein.
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.

By letter of 24 August 2021, the CPT forwarded a report drawn up following its visit (CPT (2021) 31) which contains a number of recommendations, comments and requests for information.

The CPT requested 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.

The Federal Government hereby submits its observations on this report. As responses can be provided to all the issues raised, the Federal Government's observations address in detail each of the CPT's remarks in the order in which they are addressed in the final report. In each case, the recommendations, comments, and requests for information precede the observations.

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

I. B Introduction

Paragraph 10 (p. 11, recommendation)

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.

In the opinion of Saxony-Anhalt, giving the CPT unrestricted access to patients' files would require a basis in *Land* law which has not yet been established. An amendment to the *Land* Act on Penal Measures of Correction and Prevention (*Maßregelvollzugsgesetz Sachsen-Anhalt,* MVollzG LSA) is planned in the current legislative period, which began in the summer of 2021. The CPT's recommendation on file access will be considered during the associated deliberations. The Federal Government has made reference to the international obligations in this context.

Paragraph 10 (p. 11, request for information)

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.

By contrast to the situation communicated in October 2020, the following new developments should be noted:

In **Berlin**, the new Act on the Protection of Personal Data in the Prison System and in the Social Services of the Justice System of the *Land* of Berlin and in the Authority Competent for Supervision of Conduct at Berlin Regional Court (*Gesetz zum Schutz personenbezogener Daten im Justizvollzug, bei den Sozialen Diensten der Justiz des Landes Berlin und der Führungsaufsichtsstelle beim Landgericht Berlin,* JVollzDSG Bln) entered into force on 6 October 2021. Section 51 of this Act contains a new legal basis enabling the CPT to comprehensively inspect files during visits to Berlin prisons. The new section 51 of the Act reads as follows:

Section 51 Inspection of files by national and international bodies for the prevention of torture

During their visits to an establishment, members of a delegation of the National Agency for the Prevention of Torture, the European Committee for the Prevention of Torture and

Inhuman or Degrading Treatment or Punishment and a body legitimised by the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment are to be given access to prisoners' personal files, health files and patient files in the prison hospital, insofar as this is strictly necessary to enable the respective body to perform its tasks.

In **North Rhine-Westphalia**, the planned revision of the Act on Measures of Aid and Protection with respect to Mental Disorders (*Gesetz über Hilfen und Schutzmaßnahmen bei psychischen Krankheiten*, PsychKG) will include a legal provision which relates to the CPT's access to psychiatric hospitals, an associated inspection of files and the accompanying processing of detainees' personal data. Meanwhile, the district governments – in their role as the hospitals' supervisory authorities – have already been instructed by decree to inform the psychiatric hospitals and to raise awareness of the fact that the CPT delegation is authorised to visit facilities where people are deprived of their liberty at any time and that the CPT delegation must therefore be granted access to the psychiatric hospitals.
The Act on the Implementation of Criminal Law Placement in a Psychiatric Hospital or an Institution for Withdrawal Treatment in North Rhine-Westphalia (*Gesetz zur Durchführung strafrechtsbezogener Unterbringungen in einem* psychiatrischen *Krankenhaus und einer Entziehungsanstalt in Nordrhein-Westfalen*, *StrUG NRW*) has been applicable since 31 December 2021. Pursuant to section 52 (2) *StrUG NRW*, the lower state authorities responsible for secure psychiatric detention and their respective institutions are to facilitate visits by the CPT in accordance with the legal provisions applicable to such visits. This also includes the right to inspect files.

The Act on Penal Measures of Correction and Prevention (*Maßregelvollzugsgesetz, MRVG*) in **Saarland** is currently being revised. In this connection, provisions are to be made to allow the CPT to access medical records.

In **Thuringia**, a Prison Data Protection Act (*Justizvollzugsdatenschutzgesetz*) is currently being prepared, which will give the members of the CPT the right to inspect personal, medical and therapy files. The current draft bill provides for the following:

"Section 23
File inspection
During their visits to an establishment, members of a delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment are to receive access to prisoners' personal files, health and therapy files and medical records in

the prison hospital to the extent that this is strictly necessary to enable the Committee to perform its tasks."

The CPT's fundamental right to inspect the files of forensic psychiatric patients is already provided for in law through the general provision of section 40 (2) of the Thuringian MRVG.

In addition, the Thuringian Act on Assistance and Placement of Mentally Ill Persons (*Gesetz zur Hilfe und Unterbringung psychisch kranker Menschen*, ThürPsychKG) is currently being revised. Within the scope of this amendment, a provision on the inspection of files by the CPT is also planned.

II. A. Police establishments

II. A. 1. Preliminary remarks

Paragraph 12 (p. 12/ 13, comment)

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.

The Federal Government shares the CPT's opinion that police premises which are not specifically designed for prolonged detention should only be used for short-term custody. In the *Länder*, this practice is ensured in various ways:
Where prolonged detention is anticipated, most *Länder* use custody cells in prisons or in centres for custody to secure departure (*Ausreisehaftanstalten*) which offer appropriate facilities (including the possibility of outdoor exercise, see below). This usually takes place by way of administrative assistance. Some *Länder* have specially designed rooms which provide suitable conditions (**Lower Saxony, Saxony**) or are planning to set up such rooms (**Saarland**). In the case of prolonged detention in **Bavaria**, transfer to a prison is usually sought in order to ensure that the necessary basic conditions are provided.

II. A. 2 Ill-treatment

Paragraph 14 (p. 13, comment)

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.

The Federal Government and the authorities of the *Länder* consider it an ongoing task to continually raise awareness among police officers of legal requirements and professional standards. This is already done comprehensively during initial training and is repeated and consolidated through in-service courses and further systematic training. In this context, it is particularly important to conduct deployment debriefings and to ensure that management recognises excessive workloads in good time and systematically intervenes in the event of potential misconduct.
The standards that are taught in basic and in-service training and regularly practised in operational training also include the correct and legal use of handcuffs.

Paragraph 15 (p. 14, request for information)

Statistics on the number of complaints about misconduct by police officers for the period 1 January 2016 to 31 December 2020

However, it remains unclear from the information provided to what extent the abovementioned 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*.

Responses: see annex to paragraph 15.

Paragraph 16 (p. 14, request for information)

Use of body-worn cameras

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*.

The Subcommittee for Command, Operations and Crime Prevention (Unterausschuss Führung, Einsatz und Kriminalitätsbekämpfung, UA FEK) of the Standing Conference of the Interior Ministers of the *Länder* has dealt with the pilot projects of the *Länder* on this topic on several occasions. In 2021, the subcommittee once again summarised the current situation in a report published at the end of April that year. The main content of the report may be summarised as follows:
Body-worn cameras are in use in all federal *Länder* except **Brandenburg, Saxony-Anhalt and Thuringia**. In some cases, the cameras are still in an introductory phase; in others, they are already being used across the board.
In **Brandenburg**, a pilot project is being prepared for practical use. **Thuringia** is continuing its pilot project and is preparing to introduce it in day-to-day operations. In **Saxony-Anhalt**, a legislative amendment is still required before the introduction of body-worn cameras, and this is planned for 2022.
As for the benefits of body-worn cameras, the data show that their use is mostly limited to public spaces in order to protect police officers from violent assaults in individual cases. This is because police legislation usually does not allow them to be used in homes.
The available research confirms that body-worn cameras have a positive effect as a means of prevention/de-escalation.

The **Federal Police** has been successively introducing body-worn cameras since February 2019. The Federal Police currently has over 2,420 devices. These are primarily deployed within the remit of the railway police as well as in the areas of border control, aviation security and the protection of federal bodies.

Paragraph 17 (p. 14/15, recommendation)

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).

The list sent in response to the CPT's enquiry following its visit provides an overview of the provisions applicable in the *Länder*. The CPT's recommendation has once again been brought to the attention of all competent authorities. **Baden-Württemberg** and **Saxony** are currently in the process of introducing individual identification for officers. In addition to the compulsory identification already in place in **Berlin** for police officers wearing a uniform (i.e. a badge featuring the name / officer number, tactical identification), there are also plans to introduce compulsory identification in the near future for officers in civilian clothing wearing a pull-over protective vest, a high-visibility vest or a distinguishing vest.

II. Safeguards against ill-treatment

Paragraph 18 (p. 15/16, recommendation)

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:

1. 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). 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;

2. 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).

Notification without delay of the legal remedies available against arrest or being taken into custody, information on the right to notify relatives and to contact defence counsel, and compliance with the agreements of the Vienna Convention on Consular Relations are all fundamental pillars of the rule of law.

According to police practice, the first instruction about these rights is given orally immediately after the arrest in accordance with the statutory requirements. In all *Länder*, persons taken into custody are given information sheets in various languages to instruct them of their rights. These are handed out as soon as possible following the arrest, generally upon arrival at the station.

As regards the statutory foundations, the following can be noted:
The German Code of Criminal Procedure (*Strafprozessordnung* – StPO) contains sufficiently concrete obligations – in particular in section 114b StPO – which also apply to provisional arrest pursuant to section 127 (4) StPO.
Under section 114b (1) StPO, accused persons are to be instructed following their arrest of their rights as listed in section 114b (2) StPO without delay and in writing in a language they understand. In such cases, without delay ("unverzüglich") is to be read as meaning without any *culpable* delay. Prior to this, the police may only arrange for measures that cannot be delayed, in particular the involvement of an interpreter, if this is necessary for a mandatory oral instruction.

The primary obligation to provide written instructions does justice to the special situation facing the arrested person, who may be in an extreme mental state as a result of the arrest and may therefore be limited in their ability to absorb information. By handing out a written instruction sheet, the arrested person is to be put in a position where they can actually take note of their rights by reading them during a relatively calm period and comprehending the content. As the CPT has noted, law enforcement bodies generally use such instruction sheets in practice. However, if written instruction is clearly insufficient, oral instruction must also be given (section 114b (1) sentence 1 StPO).
The accused person must confirm in writing that he or she has been given instruction. If he or she refuses to sign, this must be documented (section 114b (1) sentence 4 StPO).

The aforementioned general provisions also apply in juvenile criminal proceedings pursuant to section 2 (2) and section 70a (7) of the Youth Courts Act (*Jugendgerichtsgesetz*, JGG). In addition, sections 70a and 109 (1) JGG prescribe additional instructions for accused juveniles (14-17 years old) and young adults (18-20 years old). In addition to the instructions to be provided in all juvenile criminal proceedings pursuant to 70a (1) JGG, special instructions pursuant to section 70a (2) nos. 2-5 and (3), (4) and (6) JGG must also be provided in cases involving deprivation

of liberty. Furthermore, section 70b (1) sentence 1 JGG expressly prescribes a manner of instruction that takes age and stage of development into account.

Instruction sheets – including their translations into numerous languages – are publicly available on website of the Federal Ministry of Justice:

https://www.bmj.de/SiteGlobals/Forms/Suche/Belehrungsformularesuche_Formular.html

https://www.bmj.de/SiteGlobals/Forms/Suche/Belehrungsformularesuche_Jugendliche_Formular.html

Paragraph 19 (p. 16/17, recommendation)

Allegations:
- no feedback given to detained persons as to whether a third person could be reached
- detained persons were not allowed to inform their family about the detention if the latter lived abroad

Reminder: Exceptions to the right of notification for the purpose of protecting the legitimate interests of the police investigation must be clearly defined and made subject to appropriate safeguards (...).

1. 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.

2. 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.

3. 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.

The applicable statutory provisions ensure that a person of trust or relative of the arrested person is notified immediately.

According to section 114b (2) sentence 1 no. 6 StPO, arrested individuals are to be advised that they may notify a relative or a person trusted by them, provided the purpose of the investigation is not significantly endangered thereby. The right to notification itself is governed by section 114c (1) StPO and, pursuant to section 127 (4) StPO, must also be observed during provisional arrest. The wording of this provision clearly expresses that the right of a person who has been arrested to notify a close relative or trusted person is the rule, and that it may

be refused or delayed only in exceptional cases where there is cause for concern that it would considerably jeopardise the investigations. The Federal Government believes that this standard is sufficiently specific, both in terms of the protections it affords to the person taken into custody and in terms of ensuring that the police can properly perform their duties. The only conceivable alternative would be to introduce individual provisions governing specific case constellations, which, in light of the variety of situations that can arise in practice, would be at risk of being incomplete.

Where applied, the exception permitted under section 114b (2) no. 6 and section 114c (1) StPO must be as brief and limited as possible. This is the consequence of the provision made in section 114c (1) StPO, according to which the accused party is to be given the opportunity to notify a close relative or trusted person of his/her arrest *without delay* ("unverzüglich"). According to the universally valid definition given to this phrase in section 121 (1) of the Civil Code (*Bürgerliches Gesetzbuch*, BGB), *without delay* ("unverzüglich") is to be read as meaning without *culpable* delay. This corresponds to the standard applied by the European Court of Human Rights, which derives, from the right to respect for private and family life, an obligation for governments to ensure that the family members of an arrested person are notified "promptly" ("rapidement").

It bears noting in this context that section 114c (2) StPO creates a further temporal limitation: According to this provision, a court that has ordered the execution of remand detention must also make an order for one of the arrested person's relatives, or a person trusted by him/her, to be notified of the detention without delay (without *culpable* delay). This obligation is not subject to any exceptions or limitations, even if the purpose of the investigation were to be jeopardised, thus distinguishing it from the right of accused parties to notify others of their arrest pursuant to section 114c (1) StPO. The decision on the execution of remand detention is taken when the arrested person is brought before the competent court. This is done following the person's arrest, and not later than on the following day (section 115 (1), (2), section 128 (1) StPO). If detention is enforced, the court orders that one of the arrested person's relatives or a person trusted by him/her be notified without delay (section 114c (2) StPO). This serves to ensure the protection afforded under Article 104 para. 4 of the Basic Law, according to which a relative or a person enjoying the trust of the person in custody must be notified without delay of any judicial decision imposing or continuing deprivation of liberty. The law does not provide for any exceptions from this judicial duty of notification. This duty exists irrespective of the arrested person's own right to notify a close relative or trusted person under sections 114c (1) and 114b (2) no. 6 StPO. As a consequence, the very latest point in time at which a relative or

a person trusted by the arrested person is notified *ex officio* that the arrested person is being held in custody is the day following the arrest.

Paragraph 20 (p. 18, comment)

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.

Pursuant to section 137 (1) StPO, an accused person may avail himself or herself of the assistance of defence counsel at any stage of the proceedings. He or she may consult defence counsel and obtain advice even before being examined. The accused person must be notified of this right before the examination, at the same time as the instruction on the freedom to make statements (section 136 (1) sentence 2 StPO and, in the case of arrest, section 114b (2) no. 4 StPO). The right to have defence counsel present, which previously applied only to examinations by the public prosecution office and the court, has been extended to cover police examinations by the Second Act to Strengthen the Procedural Rights of Accused Persons in Criminal Proceedings and to Amend the Law on Courts with Lay Judges of 27 August 2017 (Zweites *Gesetz zur Stärkung der Verfahrensrechte von Beschuldigten im Strafverfahren und zur Änderung des Schöffenrecht*s), and now arises expressly from section 163a (4) sentence 3 in conjunction with section 168c (1) StPO.

Practical difficulties in contacting defence counsel in individual cases can never be completely avoided. The legal situation in such cases is as follows:

On the one hand, it is true that a mobile phone can be seized as evidence under sections 94 (2), 98 (1) and (2) StPO subject to a judicial order or, in exigent circumstances, judicial confirmation. On the other hand, section 136 (1) sentence 3 StPO makes it clear that accused persons who wish to consult defence counsel prior to their examination must be given information that facilitates their ability to contact such defence counsel. State bodies are also obliged to actively assist the accused person in this regard. Reference should be made to any emergency legal services that are available. If an accused person declares that he or she wishes to speak to defence counsel prior to the examination, the planned examination must also be delayed. It is only permissible to continue the examination without defence counsel if the accused person expressly agrees to this and if serious efforts have already been made to help him or her contact defence counsel. If contact attempts are unsuccessful, the accused person must not be pressured into providing further information.

With regard to the case described, in which a detainee was not given access to his seized mobile phone so that he could (allegedly) find his lawyer's telephone number, it should be noted that this is the correct procedure. If the mobile phone has been seized as evidence, it cannot be returned to the accused person, as he or she could easily delete data or lock the phone while claiming to be looking for a telephone number. This does not mean that the accused person's access to a lawyer is cut off, as he or she can also contact the lawyer by other means. Even if the lawyer's number is stored on the mobile device, there is still the option for police officers to retrieve the phone number in the presence of the person concerned or to make it known by other means (Internet).

Paragraph 21 (p. 19, recommendation)

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.

In the first instance, under German law an accused person receives assistance from a lawyer who is paid for by the State by means of the assignment of court-appointed counsel (*Pflichtverteidiger*). The relevant criteria for this are listed in section 140 StPO, which was revised by the Act to Reform the Law governing Mandatory Legal Representation (*Gesetz zur Neuregelung des Rechts der notwendigen Verteidigung*), entering into force on 13 December 2019. As the CPT has noted, the level of protection provided by the guarantee of legal assistance in criminal proceedings has once again been significantly increased.

The act served 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*. It was possible to implement this Directive while essentially maintaining the previous German system of mandatory legal representation. This system serves to protect accused persons and to improve the functionality of the administration of justice. Where necessary in the interests of the proper administration of justice, every accused person who does not have defence counsel is assigned mandatory court-appointed defence counsel funded (initially) by the state, irrespective of the accused person's financial capacity and, potentially, irrespective of their will. Under the Directive, Member States are free to make the granting of legal aid conditional solely on an examination of the interests of justice, referred to in the Directive as the "merits test". However, a Member State's national law must satisfy the requirements of Article 4 para. 4 of the Directive, according to which the seriousness of the criminal offence,

the complexity of the case and the severity of the sanction at stake must be taken into account when examining the interests of justice. In this respect, the Directive explicitly refers to the criteria developed by the European Court of Human Rights for the interpretation of the term “the interests of justice” in Article 6(3)(c) of the European Convention on Human Rights (ECHR).

The individual criteria for the appointment of mandatory defence counsel are listed in section 140 StPO. In particular, these include the severity of the offence at issue (section 140 (1) nos. 1 and 2 StPO), the expected legal consequence (section 140 (1) nos. 1, 2, 3 and 7 and (2) StPO), the complexity of the case (section 140 (2) StPO) and the personal circumstances of the accused, especially their ability to defend themselves (section 140 (1) nos. 4, 5 and 9 and (2) StPO). These criteria are thus in line with the requirements of the Directive, as well as the case law of the European Court of Human Rights pertaining to Article 6 para. 3 (c) ECHR. The assistance of court-appointed defence counsel is provided, subject to the prerequisites set out in section 140 StPO, independently of whether or not the accused person is in economic need. German law thus goes beyond the requirements of Article 6(3)(c) ECHR.

In addition to being entitled to court-appointed counsel, accused parties in Germany who are unable to pay for a lawyer themselves can also benefit from free legal advice. Under the Act on Legal Advice and Representation of Citizens on a Low Income (*Gesetz über Rechtsberatung und Vertretung für Bürger mit geringem Einkommen*, BerHG), accused persons who are not entitled to court-appointed counsel under section 140 StPO but who have no financial means of paying for counsel themselves are entitled to free legal advice from a lawyer.

Furthermore, *Länder* regulations on police custody for the purpose of preventing threats contain the obligation to give the detained person the opportunity, without delay, to notify a person of their choosing and to consult with that person, at least as far as the purpose or execution of the measures is not thereby endangered, cf. for example section 20 (2) of the Lower Saxony Police and Public Order Authorities Act (*Niedersächsisches Polizei- und Ordnungsbehördengesetz*, NPOG).

On the basis of the coalition agreement of the new Federal Government, various areas of German criminal law and criminal procedure law will be subject to review during the current legislative period. This will also include an examination of whether further amendments to the system of mandatory defence are necessary and appear worthwhile.

Paragraph 22 (p. 19, recommendation)

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.

With the legislation to implement Directives (EU) 2016/1919 and 2016/800 in the form of the Act to Reform the Law governing Mandatory Representation (*Gesetz zur Neuregelung des Rechts der notwendigen Verteidigung*) and the Act to Strengthen the Procedural Rights of Accused Persons in Juvenile Criminal Proceedings (G*esetz zur Stärkung der Verfahrensrechte von Beschuldigten im Jugendstrafverfahren*), both of which entered into force in December 2019 (with regard to the implementation of Directive (EU) 2016/1919, see the comment on paragraph 21 above), the assistance provided to accused persons by defence counsel at an early stage has been expanded considerably, both in general criminal proceedings and, further still, in juvenile criminal proceedings. The right to be present during investigative measures, in particular during examinations of accused juveniles, was also expressly clarified in law for parents and additionally established in law – for the first time – for other adults capable of protecting the interests of the juveniles concerned. Nevertheless, it appears as though the Committee does not consider the current law to be sufficient.

The Committee considers the presence of defence counsel to be necessary whenever a detained juvenile is examined (and also when a statement is signed in connection with the criminal offence – a process which, under German law, can hardly be separated from the examination).

Under German law, accused persons may avail themselves of the assistance of defence counsel at any stage of the proceedings, even before their examination; they must be instructed of this right at the beginning of their examination (section 136 (1) sentence 2, section 137 (1) sentence 1, section 163a (3) sentence 2 and (4) sentence 2 StPO and – in the case of an arrest – section 114b (2) no. 4 StPO; see also the comment on paragraph 20). The relevant general provisions of the Code of Criminal Procedure also apply in juvenile criminal proceedings pursuant to section 2 (2) of the Youth Courts Act (*Jugendgerichts-gesetz*, JGG). This means that, as a matter of principle, the right for defence counsel to be present also applies to the examination of juveniles. If defence counsel is not present in cases where the participation of defence counsel is considered mandatory, the examination of juveniles (and young adults; cf. section 109 (1) sentence 1 JGG) is to be delayed or interrupted for a reasonable time according to section 70c (4) sentence 1 JGG, a provision which has been in force since the end of 2019. If the accused young person does not yet

have defence counsel of their own choosing, defence counsel must be appointed for them – at the latest before they are examined – in those cases where participation of defence counsel is considered mandatory (section 68a (1) sentence 1 JGG; with the exception of special cases involving petty offences pursuant to sentence 2).

Thus, the presence of defence counsel is adequately ensured – whether in cases where defence counsel of the accused person's choosing is present or has been appointed prior to the examination, or in cases where the participation of defence counsel is considered mandatory. However, the law does not oblige defence counsel to be present during the examination if the defence counsel him/herself – i.e. not just the juvenile – expressly waives his/her right to be present (section 70c (4) sentence 2 JGG). The defence counsel must personally examine, within the scope of his/her legal duties, whether his/her presence is required for the protection of the juvenile's interests or for reasons pertaining to an effective defence.
In addition to cases in which a defence counsel chosen by the accused person is already present or has been appointed prior to the examination, these statements apply only to cases where participation of defence counsel is considered mandatory (set out in section 140 StPO and, for juveniles, in section 68 JGG). However, the aforementioned legislation from 2019 also significantly expanded the range of situations in which the participation of defence counsel is mandatory and provided that defence counsel should be appointed earlier than was the case under the old law (section 141 StPO, section 68a JGG). With regard to the issue of detained juveniles addressed by the Committee, particular reference should be made here to section 140 (1) nos. 4 and 5 StPO (in the case of accused persons who have already been deprived of their liberty following a judicial decision and accused persons who are to be brought before a court for a decision on detention or provisional placement). In addition to the other cases where participation of defence counsel is mandatory, section 140 (2) StPO is also of particular importance for juveniles (applicable if "the assistance of defence counsel appears necessary due to the severity of the offence, due to the difficult factual or legal situation, or" – particularly in the case of juveniles – "if it is evident that the accused cannot defend himself"). For juveniles, the new section 68 no. 5 JGG also stipulates that defence counsel must always be appointed whenever a juvenile sentence (with or without suspension of penalty on probation) is to be expected. If the expectation of such an outcome already exists prior to the examination, the defence counsel must also be appointed in juvenile cases before the examination takes place – as in other situations where the participation of defence counsel is mandatory.

The German legislator has adjudged these complex rules on mandatory defence counsel to be appropriate, particularly in light of the special need for protection of young accused persons. Likewise, the above-mentioned laws from 2019 were not primarily guided by fiscal considerations or the facilitation of criminal prosecution, but rather by thorough deliberations regarding proportionality. Particularly in the case of juvenile criminal proceedings, findings and considerations relating to juvenile criminology were also important. These factors are also relevant in ensuring that the criminal prosecution authorities and the criminal justice system treat criminal or accused young people in an age-appropriate way. Wherever possible and not otherwise required, it is necessary to avoid formal criminal proceedings leading to a main court hearing and to avoid lengthy proceedings in general. This is to avoid unnecessary burdens and harmful side effects for the further development of the juveniles concerned. Thus, for quite some time now, 60 to 70% of criminal proceedings against juveniles in Germany have been settled by way of “Diversion” (i.e. the prioritisation of informal measures over formal criminal proceedings) pursuant to section 45, 47 JGG, predominantly by way of discontinuation during the investigation proceedings without criminal court sanctions. It cannot be ruled out that requiring the participation of defence counsel at an early stage whenever the applicable law does not provide for mandatory defence (including, for example, cases involving a first-time shoplifter) would unnecessarily expand and prolong the criminal proceedings and potentially make simple resolutions by “Diversion” more difficult to achieve. Another issue would be the availability of defence counsel with appropriate qualifications for dealing with juvenile defendants.

On the basis of the coalition agreement of the new Federal Government, various areas of German criminal law and criminal procedure law will be subject to review during the current legislative period. This will also include an examination of whether improvements are still possible or advisable with regard to defence counsel in juvenile criminal proceedings.

In respect of the Committee’s view that a trusted adult must always be present during the examination of detained juveniles, the following should be noted:

In principle, parents (or other legal guardians/legal representatives) have a right to be present whenever their child is examined as an accused party (section 67 (3) sentences 1 and 2 JGG). If their presence is refused or it was not possible to contact them in time before the examination, another suitable adult must be allowed to be present (section 67 (3) sentence 3 JGG). Thus, if the juvenile brings or has such a trusted person with them in such cases, the trusted person must be allowed to be present during the examination. If the juveniles names a trusted person who is not present but is likely to appear, it will generally be

necessary to wait for a reasonable period of time in accordance with the spirit and purpose of the provision, unless an immediate examination is necessary without delay. The accused person is to be informed, in a manner which is understandable to them, about the rights to be present prior to their being examined (section 70a (1) sentence 3 no. 5, section 70b (1) sentence 1 JGG), as well as of their right to refuse to make a statement (section 136 (1) sentence 2, section 163a (3) sentence 2 StPO). If necessary, the accused person may therefore also make their testimony conditional on the presence of a trusted person.

The law refrains from imposing on the juvenile the presence of another adult who may not even enjoy his or her trust. In more serious cases, participation of defence counsel will usually be mandatory anyway, which means that, during the examination, a defence lawyer will be present who can adequately protect the interests of and provide advice to the juvenile. Furthermore, in any juvenile criminal proceedings, it is the responsibility of the youth courts assistance service (a social service of the child and youth welfare system) to look after the juveniles concerned (section 52 (3) of the Eighth Book of the Social Code, *Sozialgesetzbuch* VIII). In proceedings against juveniles, the youth courts assistance service must be informed at the earliest possible stage (section 38 (6) sentence 1 and 2, section 70 (2) JGG). If the youth courts assistance service is informed prior to the examination (which must always be the case for examinations after a juvenile has been summoned) and if it deems its presence during the examination to be necessary in order to adequately care for the juvenile, a representative of the youth courts assistance service must be allowed to be present.

Overall, the Federal Government takes the view that these provisions ensure adequate and sufficient protection of the juvenile's interests through the presence of trusted adults.

II. A. 4 Conditions of detention

Paragraph 24 (p. 20, recommendation)

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.

This CPT recommendation has once again been brought to the attention of all competent authorities. According to information provided by the *Länder*, mattresses are available in all stations equipped with custody rooms, in accordance with the regulations. Blankets are also given out where necessary. However, this does not rule out the possibility that in individual cases – for example, where individuals are in an extreme mental state – these items may not be made available temporarily, insofar as this is necessary to protect the individuals concerned.

Paragraph 25 (p. 21, recommendation)

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.

Relevant provisions are in place in the custody legislation of a number of *Länder* (e.g. in **Berlin, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate, Thuringia** and **Saarland**). The recommendation is also followed in the other *Länder*, insofar as it is compatible with safety requirements. In this connection, reference is made to the response to paragraph 12 of the recommendations.

II. A. 5 Other issues

Paragraph 27 (p. 22, recommendation)

1. 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.

In accordance with the judgment of the Federal Constitutional Court of 24 July 2018 (file no. 2 BvR 309/15, 2 BvR 502/16) *Fixierung* is to be understood under German law as a restraint that fully deprives an individual of their freedom of movement in all limbs. According to the judgment, *Fixierung* exists in cases where five-point and seven point restraints are used and all limbs of the person concerned are strapped to a bed. It is therefore a form of shackling that almost completely deprives the individual of their ability to move. The Federal Constitutional Court requires a judicial order for the use of such restraints, unless it is foreseeable that the measure will last for less than half an hour.
From a police perspective, however, the use of temporary *Fixierung* can be a useful means of preventing threats, depending on the circumstances of the individual case. In any event, *Fixierung* is only permissible where its application is absolutely necessary. A strict proportionality test must also be carried out, which must also be reviewed continuously during the application of *Fixierung*. *Fixierung* is thus to be used as a last resort when less intrusive measures are no longer sufficient to prevent threats. Each application of *Fixierung* must be documented.

2. 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.

With regard to the mentioned facility in **Potsdam**, it can be reported that the possibility of replacing the shackles currently in use is being examined following the Committee's comments. This will ensure that any risk of injury which may have existed until now due to the use of metal fixtures can be ruled out in future when short-term shackling is used.
With regard to the central detention unit of **Munich** Police Headquarters, it should be noted that there is only one special cell (security cell) in which a metal ring is anchored to the wall. Individuals can be shackled to this metal ring if required. The walls are lined with a shock-absorbing material. A prisoner transport belt is fitted to the person concerned and their hands are tied in front of their body using handcuffs. The reverse side of the prisoner transport belt

is then attached to the metal ring with a flexible connector (another metal handcuff or plastic cable ties). The metal ring is fitted above the cell's laying area so that the person concerned can sit down while being shackled in the manner described. This means that the freedom to move is not completely eliminated.

Shackling an individual in the manner described above is a last resort in order to minimise the risk of injury for the deployed police officers or to minimise the risk of self-harm for the person affected by the measure. Shackling serves primarily to bridge the gap until the person concerned is placed in a psychiatric hospital. Before the metal ring is used, less intensive methods of restraint are carried out and/or considered in stages in the interests of proportionality. Individuals who are shackled to the metal ring are subject to continuous, direct and personal supervision (*Sitzwache*) so that the measure can be adjusted or terminated if the person concerned calms down. All uses of the “shackling ring” are documented and reviewed by the head of unit as part of their supervisory duties.

Paragraph 28 (p. 22, recommendation)

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.

This recommendation has been brought to the attention of all competent authorities. Insofar as head protection is used in some *Länder*, this must be documented in accordance with the relevant provisions (**Bavaria, Lower Saxony, Saxony**). In **Berlin**, instructions are currently being drawn up for the use of head protection on persons in police custody.

The recommendation for persons at risk of self-harm is consistent with police practices in Germany. As a rule, a doctor should be consulted in cases where an individual’s fitness for custody or detention is in doubt, so that it can be determined whether they are in fact fit for such custody or detention and whether further steps (admission as an in-patient) can be initiated as appropriate. Individuals in custody who have consciousness-related disorders or exhibit signs of mental illness require greater levels of care. Depending on the circumstances of the individual case, supervision is to be increased by carrying out checks at shorter intervals or implementing permanent supervision.

Paragraph 29 (p. 22, recommendation)

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*.

Since other methods of handcuffing (in front of the body) carry the risk of the driver being attacked, as examples from the past have shown, cuffing the hands behind the back during transport in police vehicles is considered necessary from a safety perspective, unless there are equipment or facilities available which can prevent this (such as protective partitions or separate seating groups in minibuses).
Police officers are trained to give high priority towards protecting the physical integrity of everyone involved in a particular procedure, and this also applies to the transport of persons. In all cases, handcuffing must be preceded by a proportionality test.

Paragraph 30 (p. 23, recommendation)

Strip-searches are a very invasive and potentially degrading measure, and detained persons who are being searched should not normally be required to remove all their clothes at the same time

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.

The police authorities are aware of the special importance of respecting human dignity when searching persons. **Baden-Württemberg**, for instance, has included these principles in the draft of its new custody regulations. Another example can be found in section 17 (2) sentence 2 of the **Bremen** Police Act, which governs the search of persons. If the search requires the person concerned to undress, they should be allowed to undress the upper and lower part of their body consecutively, putting on the clothing from the first part of their body before undressing the second part. If the search would violate the individual’s sense of modesty, it should be carried out by a person of the same sex or by a doctor. If there is a legitimate interest, any wish to be searched by a person or a doctor of a certain sex is to be granted. At the request of the person concerned, a person of trust is to be allowed to be present.
Saarland also intends to take the Committee's recommendations into account when updating its own custody regulations.

Paragraph 31 (p. 23, recommendation)

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.

As a general rule, items of clothing are only confiscated if they pose a safety risk or if they can be used in an abusive manner (for example, to render sanitary facilities inoperable, to strangle oneself or feign strangulation, to inflict other injuries upon oneself or to carry out violent attacks on officers). Such measures must always be preceded by a risk assessment. The Committee's recommendation will be taken as an opportunity to once again raise awareness of this issue in police stations.

B Prison establishments

B.2. Ill-treatment

Paragraph 38 (p. 26, recommendation)

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.

It should first of all be noted that prisons are required to immediately report all incidents concerning possible criminal acts to the competent public prosecution office for an examination under criminal law.

Independent of the initiation of investigation proceedings by the public prosecution office, all prisons keep nationwide statistics on disciplinary sanctions (“StV 10”), in which all assaults by prisoners against staff and against other prisoners are recorded. According to the statistics, an assault (“Tätlichkeit”) is defined as intentional, successful bodily harm within the meaning of sections 223 et seqq. of the Criminal Code (*Strafgesetzbuc*h, StGB). Successful hostage-taking and successful deprivation of liberty are also counted as *Tätlichkeiten*.

Violent incidents among prisoners and incidents by prisoners against staff are also regularly reported to the competent supervisory authority, where a central record of violent incidents is kept in some cases. Against this background, **Bavaria** does not see any need to introduce a

formalised register in the individual prisons. The staff who care for and supervise the prisoners are aware of any violent incidents previously committed by or involving those prisoners. This is partly due to the security notes in the electronic prison database, which is accessible to all staff. Prisoners who have been identified as perpetrators or victims of a violent incident in custody are assigned security notes, which are also retained when a prisoner is transferred to another Bavarian prison. This means that staff members who are dealing with a prisoner for the first time can also obtain a quick overview of the situation and pay special attention to violence prevention when implementing correctional measures.

A register for violent incidents is already kept in **Hamburg** prisons. The register is displayed via the ANNA elBe programme. In **North Rhine-Westphalia**, violent confrontations involving prisoners are already recorded within the prison system, but not in a single "register" because of the different types of circumstances involved. A distinction is made between low-intensity violence among prisoners, violent assaults by prisoners on each other resulting in significant injuries, and violent assaults by prisoners on staff resulting in significant injuries. As well as recording the incidents in the files, documentation is also carried out in the BASIS-Web accounting software. This procedure has proven effective both from an informational and administrative point of view. The recording of data in a single file is associated with certain data protection concerns. This is because personal data – and in particular health data, which requires special protection – would have to be combined into one file which could then be viewed by all staff members.

In **Berlin**, assaults by prisoners on each other or by prisoners on prison staff are recorded and reported to the supervisory authority. Any criminal complaints filed in this context are also recorded. In the **Baden-Württemberg** prison system, intentional ill-treatment is recorded electronically if the consequences are significant. In particular, injuries that render someone unable to work or unfit for service are considered to be significant. In addition, incidents where the public prosecution office or the police have been notified of a suspected criminal offence are recorded in electronic form. In such cases, the reporting obligation is waived only if it can be assumed on the basis of prior experience that criminal proceedings would not be pursued due to the petty nature of the offence. In **Rhineland-Palatinate**, the actual acts of violence reported by the prisons are recorded by the supervisory authority in a SharePoint table. The case numbers are broken down in the table by year, by violence against staff and by violence among prisoners. This list is very easy to evaluate and guarantees that the data are recorded in a uniform manner. The possibility of additionally recording data within a register maintained in the prisons is to be examined. It may be

conceivable to evaluate the data using markers in the BASIS-Web accounting software. **Brandenburg** also intends to examine the possibility of establishing a register in prisons.

B.3. Conditions of detention

a. Material conditions

Paragraph 41 (p. 27, request for information)

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

In **North Rhine-Westphalia**, new mattresses are being fitted according to plan and delivery targets have so far been met without delay. Of the 36 prisons, 17 were fully equipped with the new mattress model this year, and another prison was partially equipped. The remaining mattresses are expected to be fitted in the course of 2022, with Gelsenkirchen prison being scheduled to receive its supply in the first quarter.

Paragraph 42 (p. 27, recommendation)

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.
The CPT recommends that these deficiencies be remedied.

In Berlin, a shelter has been erected in the yard of the **Pankow** facility.

At St. Georgen-**Bayreuth** Prison, all outdoor exercise areas have seating. However, during the winter months, the wooden benches in the outdoor exercise areas of buildings A and B are kept in storage in order to protect them from weather damage. Switching to weather-resistant metal benches, as used in the other outdoor exercise areas, is not considered necessary. Detainees should move around as much as possible during their time outdoors and should not sit in the cold – particularly in winter. Should the benches need to be replaced, however, metal benches will be purchased instead.

It is not currently considered necessary to equip all outdoor exercise areas at St. Georgen-Bayreuth prison with shelters against inclement weather. The prisoners have sufficiently weatherproof clothing to be able to spend one hour a day outdoors. A shelter would only

appear important for the prisoners in the infirmary and the TB hospital, where such a shelter is already available in the outdoor exercise area.

With regard to the specific situation at **Gelsenkirchen** prison, there are currently significant security concerns that speak against the construction of rain shelters. The daily outdoor period guaranteed by law (section 43 (2) of the Prison Act of North Rhine-Westphalia, *Strafvollzugsgesetz NRW*) is not affected by this. While outdoor activities may be restricted due to adverse weather conditions, such conditions are to be interpreted narrowly and must be limited to extreme weather. In any event, the typical weather conditions during outdoor activities do not result in the cancellation of the daily outdoor period.

B.3. b. Regime

Paragraph 44 (p. 28, recommendation)

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.

The **Pankow** facility has a small mother-and-child area to accommodate a maximum of two women and their children until they turn one year old. This joint accommodation therefore lasts for a maximum of one year. For this reason, the initial planning for this area of the facility specifies that the prison is responsible for providing the spatial and material requirements to enable the joint accommodation of mothers and their child/children. The Youth Welfare Office, meanwhile, is responsible for the welfare of the child. Child-rearing assistance (*Hilfe zur Erziehung*) is provided when deemed necessary by the Youth Welfare Office. This includes taking care of the children in the mother's (compulsory) absence, for example while she is attending court appointments or doctor's appointments outside of the Pankow facility. In these situations, the children are cared for by employees of an independent organisation commissioned by the competent Youth Welfare Office. The extent of the assistance is determined in advance for each individual case in an assistance planning conference led by the Youth Welfare Office.

Due to these structures – in particular the fact that the prison does not have its own educational staff to look after the children – it is neither possible nor planned for the children to be cared for in the prison in order to allow their mothers to participate in work, language courses or leisure courses. Mothers can take their children with them to individual leisure activities, provided that the nature of the leisure course and the behaviour of the child in such

a group situation allow this (e.g. for the project "Playing and making toys"). As a rule, mothers who are accommodated in the mother-and-child area with their children have the option of moving to another residential group area every day during prisoner leisure time from 3:15 p.m. onwards. The mothers also participate in the communal outdoor periods. Upon request, mothers can always be visited by other prisoners in the mother-and-child area. This means that the mothers can not only withdraw to their area, but can also seek the company of other prisoners.

Paragraph 45 (p.28, comment)

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).

Prisoners on remand at St. Georgen-**Bayreuth** Prison are given the opportunity to take part in sports (weight training, table tennis, outdoor sports) and joint leisure activities for at least three hours a day during out-of-cell time. Work, on the other hand, is primarily assigned to convicts, as they are obliged to work (unlike prisoners on remand, for whom the presumption of innocence applies) and work is an important element of the social rehabilitation concept. When it comes to vocational training and educational measures, convicts must also be given primary consideration due to the mandate of social rehabilitation. Furthermore, it is not feasible to offer vocational training during the execution of remand detention due to the unpredictable duration of the detention.

Prisons in **North Rhine-Westphalia** offer a wide range of vocational education and activities. Prisoners have the possibility of working during their imprisonment in a vocation in which they were trained, or to be trained in a recognised vocation. The prisons have well-equipped operations that meet the standards of modern training facilities and in which prisoners are supervised and taught by members of the skilled trades in accordance with the relevant training programmes.

At **Gelsenkirchen** Prison, efforts are made to put all prisoners to work in accordance with their existing skills and abilities. For example, it has been possible to expand the offer of school education by hiring new educators. However, the proportion of prisoners not working due to illness or an unwillingness to work, or because they are transit prisoners, is around 20 percent. The prison director is constantly striving to offer additional employment

opportunities, particularly in cooperation with local businesses. However, this often proves difficult due to the volatile economic climate.

Paragraph 46 (p. 29, request for information)

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.

The CPT would like to receive the comments of the Bavarian prison authorities on this issue.

In order to participate in sports activities at St. Georgen-**Bayreuth** prison, prisoners must have sports shoes and clothing for hygiene reasons and in order to prevent injuries. They can use the shoes and clothing they have previously purchased either in another prison or via the sports shop at St. Georgen-Bayreuth prison. Sports clothing cannot usually be mailed to prisoners for security reasons. However, all prisoners can have their own money transferred by third parties for the specific purpose of purchasing sportswear.

Prisoners can choose from an extensive range of sports equipment from the company Massak, the prices of which are by no means significantly higher than the usual retail prices.

For example, 18 different types of sports shoes are available, which cost between 50 euros (9 styles) and 100 euros (3 styles). T-shirts are available at prices ranging from 8 euros to 27.50 euros and tracksuits are available at prices from 60 to 85 euros. Moreover, the prisoner council has an influence on the product range.

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

Paragraph 53 (p. 32/33, recommendation)

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. 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.

The segregation of prisoners for security reasons is only ever ordered if it appears absolutely necessary due to the behaviour exhibited by the prisoner. Moreover, the order is continuously reviewed and is only ever carried out for a short a period as necessary. During the period of segregation, the prisoners concerned are subject to particularly close supervision.

Measures have been implemented in the security unit of Lübeck Prison in **Schleswig-Holstein** to ensure that a programme of meaningful activities is available to prisoners and detainees in order to combat the harmful effects of being alone. In order to mitigate the onerous situation and to ensure that daily human communication is possible, the staff of the security unit have been asked to increase the number of conversations they have with the prisoners about everyday events or current affairs. Conversations aimed at promoting empathic communication through additional direct interpersonal contact are offered by an external member of staff from an independent organisation. The relevant budget item was expressly increased for such expenses ("expenses for therapy measures and external specialists"). In the security unit, every prisoner and detainee is offered individual counselling and is permanently assigned an employee of the psychological service, who also regularly offers and holds discussions.

The contact person for individuals in preventive detention puts forward an offer to establish contact with detainees in the security unit.

A visitation room (with a partition) is set up in the security unit for visits by relatives and friends. In 2022, a freely accessible telephone will also be installed in the corridor of the security unit so that telephone calls no longer have to be transferred by the unit staff.

Alongside these measures aimed at establishing contact in order to prevent loneliness, there is also the possibility of using the fitness room in the security unit several times a week. The room features a treadmill, rowing machine, gymnastics mat and wall bars. The unit’s kitchen may be used at weekends so that the prisoners can maintain their ability to cope with life outside prison. On weekdays, books and magazines can be borrowed from the security unit's own library or from the prison library.

Work is not offered in the security unit, because if a prisoner is sufficiently able to reach agreements that they can be given materials and fulfil their work obligations, it is usually disproportionate for them to remain in segregation and they should therefore rejoin the main prison population.

It is possible for two prisoners in the security unit to spend their leisure time together outside of their detention room, if the security evaluation so permits.

The implementation of measures is dependent upon the specific danger posed by the prisoners and detainees and their willingness to cooperate.

Kiel Prison tries to counteract the negative effects of segregation by offering various initiatives to the prisoners concerned in order to gradually reintegrate them into the wider prison community. This can include offering an additional outdoor period within a prisoner group that is not considered problematic for the prisoner. In addition, discussions with the psychological service and the spiritual adviser are offered on a regular basis. In Kiel Prison, segregated prisoners are allowed to make telephone calls from their cells in order to maintain and intensify their contact with relatives and friends. A separate sports programme is currently being developed.

In **Lower Saxony**, prisoners are to be offered the opportunity to engage in human contact for at least two hours per day during segregation. In addition to the supervisory staff working in the unit, the members of the specialist services (psychologists, social education workers), the spiritual advisers and the heads of unit are also expected to offer conversations on a regular basis. Furthermore, contact with persons outside of prison and with other prisoners is to be encouraged, insofar as this appears reasonable from a security perspective. Activities in

small groups are to be offered to prisoners for whom it is considered appropriate. These include communal work, cooking in groups and participating in sports and leisure activities.

In the prisons of the other *Länder*, prisoners also generally have the opportunity to engage in purposeful activities during the period of segregation and are given the opportunity to have human contact (in particular with supervisory staff, care and support staff, and spiritual advisers). These measure are always dependent on the circumstances of the specific case. First and foremost, this means taking into account the specific risk situation, although staffing considerations can also play a role. In **Hesse**, for example, there are several opportunities to contact staff of the general prison service every day, including during the one-hour individual free period. In addition, the specialist services (psychological service and social service) and the medical service offer unburdening talks at least once a week. Prisoners can also avail themselves of spiritual care at all times. Furthermore, regular reviews are carried out to determine whether the prisoner can be offered activities inside or outside the cell. This is dependent upon the specific risk situation and the interest and skills of the prisoner.

The stated goal in **Bavarian** prisons is to achieve compliance among prisoners in order to keep the period of continuous segregation as short as possible. As soon as the behaviour of the segregated prisoners permits, the segregation restrictions are gradually relaxed and the prisoners are gradually reintegrated into the main prison population following an individual trial phase. A particular priority in this respect is enabling the segregated prisoners to maintain human contact and providing them with a structured daily routine, including activities where appropriate. However, the extent to which continuous segregation can be relaxed is dependent on the prisoners' behaviour. If their behaviour does not allow for the gradual relaxation of the measure, a programme of purposeful activities during segregation – especially outside the detention room – and the facilitation of genuine human contact are not likely to be justifiable for security reasons. The safety of staff and fellow prisoners – and ultimately of the segregated prisoner themselves – is the priority in such cases.

The care measures in the prisons of **Saxony-Anhalt** pursue a similar goal: The prisoners' resources are to be mobilised in order to motivate them and to try to (re)integrate them into the general prison population to the greatest possible extent. This is generally achieved by individually tailoring the prison regime to the needs of the respective prisoner by way of a progression-based system. Even during segregation, suitable measures are taken with the primary aim of restoring the prisoner's ability to function as part of a group. In most cases, this is achieved by engaging in daily outdoor activities with (one or more) suitable fellow prisoners. If the prisoner shows a positive development during these activities, attempts will

be made to consolidate this contact with other prisoners through regular joint leisure activities in the prison unit. Independent of these progression-based processes within a prison unit, prisoners subject to segregation are granted visits with eligible contacts.

Prisons in **Saxony** were also sent guidelines to be followed in the case of segregation. These stated, for example, that special care should generally be provided according to the 2-2-1 system, whereby the responsibility for offering talks with the prisoners lies with the psychological service and the social service for 2 days a week respectively, and with the prison unit's management for 1 day a week. In addition, unit staff are available to be contacted several times a day.

Paragraph 55 (p. 33, recommendation)

Obligation of all prisoners in the high-security unit to change all their clothes, including underwear, before and after every stay in the unit's outdoor yard in the presence of two prison officers.
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).

Pursuant to section 77 (2) sentence 1 of the **Lower Saxony** Prison Act (*Niedersächsisches Justizvollzugsgesetz*, NJVollzG), a physical search in which the prisoner removes their clothes is only permissible in individual cases of imminent danger or when ordered by the prison director. In derogation therefrom, section 77 (3) NJVollzG stipulates that the prison authority may issue a general order to the effect that prisoners must be searched in accordance with subsection (2) upon admission to the prison, subsequent to contact with visitors, and following any period of absence from the prison.

The list of case categories in the Act for which a general strip-search order is permissible is exhaustive; it does not include outdoor exercise within the prison. A strip-search before and/or after outdoor exercise may therefore only be carried out in individual cases of imminent danger or when ordered by the prison director. Given the particular intensity of the intervention involved in such a search, strict requirements are to be imposed when determining its necessity and, furthermore, the possibility of deviating from the order is to remain in cases where the risk of abuse is remote or where such a risk can be averted using equally suitable, less intrusive means[1].

[1] Cf. Federal Constitutional Court, order of 23 September 2020 - 2 BvR 1810/19 -, margin no. 26.

Paragraph 57 (p. 35/ 36, recommendation)

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.

According to the law of **Lower Saxony**, it is already possible to take prisoners to a hospital outside of the prison if their illness cannot be diagnosed or treated in a prison or in a prison hospital, or if it is not possible to take or transfer the prisoner to a prison hospital in a timely manner (section 63 (2) of the Lower Saxony Prison Act, *Niedersächsisches Justizvollzugsgesetz*, NJVollzG). If efforts to transfer prisoners with mental disorders to a hospital outside of the prison system for treatment are not successful, this is generally not due to the legal situation, but is rather the result of factual circumstances such as the lack of capacity in psychiatric hospitals.

The problem of insufficient capacity in psychiatric hospitals has prompted the Lower Saxony *Land* government to set up an interministerial working group with the aim of developing models for creating additional accommodation and therapy places for mentally ill offenders.

As regards the case described in paragraph 56 (iii), it is stated for the sake of completeness that the retrospective "commutation" of a sentence that has become final and binding into a measure of reform and prevention under section 63 of the Criminal Code (*Strafgesetzbuch*, StGB) is not possible. The case differs insofar as the prisoner committed further offences during the execution of the sentence while he clearly had a considerably reduced – and possibly even non-existent – capacity to control his actions, for which his placement in a psychiatric hospital was ordered as part of preventive detention proceedings pursuant to section 63 StGB. The execution of the prison sentence is to be interrupted if the prisoner is admitted to a forensic psychiatric facility. This is likely to be the case in the foreseeable future.

To ensure adequate psychiatric care in **Schleswig-Holstein**, consultant psychiatrists are regularly present in all prisons in order to support the prison doctors in the medical treatment of mentally ill prisoners. In addition, a full-time psychiatrist is employed at Kiel Prison and Lübeck Prison. In Lübeck Prison, the psychiatrist is supported by two psychiatric nurses (external nursing staff).

A partially in-patient psychiatric unit is in operation at Neumünster Prison. In terms of organisation, the unit is comparable to an outpatient psychiatric day clinic and offers a total of

20 places for the treatment of psychiatric disorders. The treatment provided at the unit aims to stabilise the health of the mentally ill prisoners by initiating psychiatric diagnostics and providing therapy so that the prisoners concerned can be reintegrated into regular prison life.

The prison system in Schleswig-Holstein currently does not have its own treatment programme for seriously mentally ill prisoners who require constant care by medical staff. At the beginning of 2026, a fully in-patient psychiatric ward with 25 places and a permanent medical presence will be put into operation at Lübeck Prison for prisoners from all over Schleswig-Holstein. The necessary funds are available. An interdisciplinary working group has been set up to work on the conceptual design.

In the first quarter of 2022, negotiations will be held with Kiel University regarding the possibility of including in-patient beds in its construction plans – independently of the plans for a fully in-patient psychiatric unit in Lübeck Prison. Discussions will also be held on the possibility of using in-patient beds in exceptional cases even before any such renovations take place.

In other *Länder*, the situation is as follows:

Mentally ill prisoners in the **Baden-Württemberg** prison system can be transferred in particular to the Hohenasperg prison hospital. If necessary, prisoners may also be transferred to a hospital outside the prison for the required duration of treatment or care (see, for example, section 34 (2) sentence 1 of the Baden-Württemberg Prison Code, Book 3 (*Gesetzbuch über den Justizvollzug in Baden-Württemberg Buch 3,* JVollzGB III)).

In **Brandenburg**, Brandenburg an der Havel Prison has a psychiatric ward in which specialist psychiatric care is ensured by way of a cooperation agreement with a neighbouring non-governmental specialist clinic. The average occupancy rate of the psychiatric ward was just under 93% in 2019 and 73% in 2020 (due to the pandemic). Prisoners with mental disorders in the *Land* of Brandenburg are admitted to the psychiatric ward on a case-by-case basis following a medical diagnosis by a psychiatrist. Prisoners who cannot receive out-patient or in-patient psychiatric treatment in the psychiatric ward or who require an emergency psychiatric evaluation are placed in a hospital with a psychiatric ward outside of the prison. This ensures that, in the *Land* of Brandenburg, psychiatric care is provided to prisoners with severe mental disorders in a hospital or on the psychiatric ward at Brandenburg an der Havel Prison.

The *Land* of **Bremen** ensures that out-patient psychiatric care is provided in the prison system by means of a weekly specialist consultation. The prison system of the *Land* of Bremen does not have an in-patient psychiatric unit. In order to ensure that in-patient psychiatric care is provided, integrated treatment is required. This is ensured by transferring prisoners to the psychiatric wards of prison hospitals in other *Länder* or by transferring them to a forensic psychiatric ward or general psychiatric ward of the local hospital. Thus, both out-patient and in-patient care for prisoners with severe mental disorders is, in principle, guaranteed in the prison system of the *Land* of Bremen. In practice, however, there are difficulties in transferring prisoners to the forensic psychiatric facility of the *Land* of Bremen in cases of mental illness. Possibilities for improving integrated care are currently being examined in cooperation with the department of health.

In all prisons in **Hesse**, out-patient psychiatric care is ensured by psychiatrists who work in the prisons on a consultancy basis. Further examinations and the administration of medication are carried out in two wards for prisoners with psychological issues in the central hospital of Kassel I prison and in Weiterstadt prison. As far as possible, acute psychiatric treatment is provided in external facilities. Since problems have arisen in the past due to the unwillingness of external facilities to accept mentally ill prisoners, the prison administrations were asked, following the involvement of the Hessian Ministry of Social Affairs, to speak to the heads of their nearest general psychiatric clinics about the general possibilities for treating mentally ill prisoners.

In **Mecklenburg-Western Pomerania**, there are also difficulties in providing suitable therapeutic treatment to prisoners with severe mental disorders. There are no prison hospitals. In principle, prisoners with a mental illness can be transferred to a forensic psychiatric facility in Mecklenburg-Western Pomerania. However, the treatment capacities there are insufficient, which is why further talks are currently being sought with the Ministry for Social Affairs, Health and Sport, which is responsible for forensic psychiatric detention. In addition, further possibilities for improving psychiatric care in the prisons are being examined.

The problem of providing suitable therapeutic treatment to prisoners with serious mental illnesses also exists in **Rhineland-Palatinate**. When it comes to providing treatment, the general healthcare system usually operates at full capacity. In addition, there are legal hurdles involved in transferring a prisoner to forensic psychiatric clinics. The treatment capacities of the prison hospital are also limited. The care provided to prisoners with serious psychiatric illnesses in Rhineland-Palatinate is currently being fundamentally reconsidered. Various options for improving psychiatric care are being examined.

In **Saarland**, it is ensured that prisoners with severe mental disorders can be referred to a suitable therapeutic facility for treatment. Places are reserved for prisoners in the secure area of forensic psychiatric facilities. In addition, there is a close cooperation with municipal facilities, some of which even have specially secured patient rooms for use by the prison system.

In **Saxony**, prisoners with severe mental disorders are generally treated in the prison hospital of Leipzig Prison. The new prison hospital, which is expected to open in spring 2022, will have 50 places available in the psychiatric-psychotherapeutic unit. If admission to Leipzig Prison is not possible due to insufficient capacity, the prison must seek to arrange in-patient psychiatric treatment in an external psychiatric hospital.

In **Saxony-Anhalt**, too, the possibility of transferring the person concerned to Leipzig prison hospital is initially considered. Admitting seriously mentally ill prisoners to an external hospital generally proves to be difficult. Against this background, it is possible in cases of mental illness to transfer the prisoner to a forensic psychiatric facility in Saxony-Anhalt, if this facility proves to be more suitable for the requisite medical treatment and accommodation (section 74 (1 a) of Book I of the Prison Code of Saxony-Anhalt, *Justizvollzugsgesetzbuch des Landes Sachsen-Anhalt*, JVollzGB I LSA).

Paragraph 58 (p. 36, recommendation)

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, a few prisoners concerned had been fixated for more than a day (and in one case for four days, see paragraph 56). 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.

Paragraph 91 (p. 50, recommendation)

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).

The recommendations made in paragraphs 58 and 91 will be responded to together because these issues are related.

There is consensus that mechanical restraints (*Fixierung*) are particularly intrusive measures which represent an extreme burden for all those involved – the prisoners affected as well as the prison staff. Against this background, mechanically restraining prisoners should be avoided to the extent possible. However, not all *Länder* share the presumption that transferring prisoners suffering from (severe) mental disorders to external therapeutic institutions renders the use of mechanical restraints in prisons completely unnecessary. The predominant view is that ordering the use of mechanical restraints in prisons – as a last resort and for the shortest possible time – continues to be necessary. Some *Länder* pointed out that a prisoner who is in such a condition as to make *Fixierung* inevitable as a last resort is hardly fit for transport, for example to be transferred to a psychiatric hospital. They went on to state that psychiatric hospitals or wards, which generally could be considered more "suitable" environments, could not dispense with using *Fixierung* as a last resort any more than prisons.

In the **Lower Saxony** prison system, the use of *Fixierung* is a total exception. At the same time, arrangements must be in place to ensure that staff can act with legal certainty and confidence if there is cause to use *Fixierung*. Transferring the person concerned to a therapeutic facility does not always remedy the situation: Imminent risks to the life and bodily integrity of individuals that cannot be averted by any measures less intrusive than *Fixierung* are not necessarily related to the diagnosis of an illness that would justify transferring the person concerned to a hospital outside the prison system. Even if it is possible to start external treatment of the person concerned very promptly following diagnosis of a relevant illness, it cannot be ruled out that a situation may arise, even during the – brief – interim period, where there is no alternative to *Fixierung* being used.

Such a profound interference with basic rights may only be ordered as a last resort and may not, under any circumstances, last longer than absolutely necessary to avert the danger at hand. Since, as a rule, it cannot be predicted how things will progress in a given case, any mandatory requirement to terminate the use of mechanical restraints after a specific period of time is difficult to implement in practice. Nevertheless, the Federal Constitutional Court ruled[2] that, where the use of *Fixierung* is not merely a short-term measure – that is, if it is foreseeable that it will last longer than approximately half an hour – this constitutes a deprivation of liberty within the meaning of Article 104 (2) of the Basic Law which is not covered by a judicial order for placement and once again requires judicial authorisation. Such use of mechanical restraints may only be ordered by a court.

[2] Federal Constitutional Court, judgment of 24 July 2018 – file no.: 2 BvR 309/15, 2 BvR 502/16.

Schleswig-Holstein also continues to consider it necessary to allow using *Fixierung* as a security measure of last resort if any other, less severe measures are not sufficient to avert an acute danger of self-harm or harm to others.

In **Baden-Württemberg**, too, *Fixierungen* are used in prisons only in rare isolated cases. This happens predominantly in the medical rather than in the prison context. In general, the prison system attempts to prevent at an early stage the emergence of dangerous situations in which *Fixierung* might become necessary. As such, situations in which prisoners must exceptionally be subject to *Fixierung* happen only very rarely or no longer happen at all **in any of the *Länder***. At **Saarbrücken Prison**, for example, a so called time-out room is currently being built with a view to avoiding the use of *Fixierung*. This room will be lined with heavy padding which will even allow prisoners who are at an acute risk of self-harm to be placed there temporarily.

Prisons in **Saxony** no longer use *Fixierung* at all. Only at the prison hospital of Leipzig Prison may there be instances where *Fixierung* is used, where necessary, once all other less severe measures have been tried. Here, too, where *Fixierung* is to be used for more than 30 minutes, the measure is subject to judicial authorisation.

B.5. Health-care services

Paragraph 59 (p. 37, comment)

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.

With regard to the Berlin Prison for Women (Pankow location), it can be reported that all prison officers completed first aid training as part of their basic training for the general prison service. The required refresher courses are planned to take the form of periodic training courses. All first responders appointed by the prison have up-to-date first aid training anyway.

Paragraph 60 (p. 37, recommendation)

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, **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.**

In order to ensure medical care, prisons in **North Rhine-Westphalia** are provided with the necessary (established) nursing care posts. In 2020, for instance, closed prisons in particular were each provided with one additional (established) post (staff employed under a collective agreement, equivalent to service grade 1.2) by an order dated 9 April 2020 – 5122 E - IV. 1/20.

Paragraph 61 (p. 37, recommendation)

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 fulltime in the establishment.

Pleasingly, after years of effort, the vacant post of a general practitioner at St. Georgen-**Bayreuth** Prison was filled on 1 October 2021. Two medical practitioners can now manage the workload fairly well.

Paragraph 62 (p. 38, recommendation)

1. 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.
2. 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.

In several *Länder*, nurses do not serve as prison staff as a matter of principle (e.g. in **Bavaria, Brandenburg, Hesse, Saxony** and **Saxony- Anhalt**).
The majority of nursing staff at prisons in **North Rhine-Westphalia**, in addition to their nursing training, have also completed training as general prison service staff members. This dual training leads to a considerable improvement in medical care and thereby to a qualitative enhancement of the overall care situation. If the nursing staff did not have the

competence necessary for adequate security, for security reasons additional “pure” general prison staff would have to be employed in the nursing area more frequently. Given the current personnel situation, the prison cannot completely refrain from at times having the nursing staff also perform activities of general prison staff. But such use of staff can also strengthen inmates’ general trust in the staff, for example when staff can use their special medical skills to deal expertly with a sudden emergency situation in the prison area.

Similar reports were submitted by other *Länder* where nurses likewise also serve as prison staff. Professional independence is not as risk. Doctor-patient privilege is maintained because the confidentiality obligations to which staff members are subject with regard to the medical aspects of their work are not undermined by the fact that they carry out additional tasks. It is clear from their functional clothing (either nursing staff or prison staff clothing) which kind of activity they carry out. The service clothing worn by medical service staff is white and can thus be clearly distinguished visually from the service clothing worn by prison officers.

However, an exception from wearing the respective functional clothing should apply to situations where nursing staff are involved in guarding prisoners at hospitals or in prisoner transport. In such situations, it may be necessary – for security reasons in particular – for them to wear general service clothing. Even for staff members carrying out executive functions and not getting into direct contact with prisoners, it is not deemed necessary to deviate from the principle of wearing general service clothing. To the extent that nursing staff at St. Georgen-**Bayreuth** Prison deviated from these principles by wearing general service clothing in the past, this practice has since been terminated.

Paragraph 63 (p. 38, comment)

The CPT notes in this regard that the policy trend in Europe has favoured prison healthcare services being placed, either to a great extent, or entirely, under the responsibility of the Ministry of Health. 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.

The *Länder* are opposed to transferring responsibility for prisoner health care to the health ministries. They do not see any need to do so. Prisoners have a statutory right to necessary, sufficient and appropriate health care, although this is subject to compliance with the

principle of economic efficiency. For prisoners, health care is one of the key aspects of the prison system that cannot be removed and transferred to a different remit. Particularly with a view to the required technical supervision, responsibilities must lie within one ministry and cannot be divided up. In addition, there are concerns that such a transfer of responsibilities would result in the quality of health care being diminished since it would lead to considerable information deficits and, as a result, to massive organisational problems. There is no actual need for this either, since the relevant medical expertise exists in the prison system. Some *Länder* reported that health-care services in prison were already equivalent to those offered in the wider community, and that in some cases, certain medical examinations and treatments were even carried out more quickly inside than outside the prison system. In addition, there are independent complaints bodies which prisoners can also turn to with regard to medical issues, e.g. petitions committees, execution of sentence divisions or medical associations. Prisoners are sufficiently familiar with these options.

Nevertheless, there is some exchange between the justice ministries and health ministries of the *Länder* which could be further intensified in the future, where appropriate.

Paragraph 65 (p. 39, recommendation)

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.

In **Bavaria**, the routine medical examination of prisoners on admission includes screening for indications of dangerous transmissible diseases, in particular blood testing for HIV, hepatitis B and C (Administrative Provision no. 3 (2) on Article 7 of the Bavarian Prison Act (*Bayerisches Strafvollzugsgesetz*, BayStVollzG)). This practice serves to protect all prisoners and staff members from potential infections and is thus very much in the prisoners' own interest. Merely offering such tests on a voluntary basis would result in an unacceptable reduction of this level of protection. Where prisoners refuse to have their blood tested, testing is not carried out forcibly and they do not face any disciplinary consequences. Instead, the (few) prisoners concerned are, as a general rule, accommodated in single-occupancy cells for the purpose of health protection.

In **Berlin**, there is no mandatory testing for HIV and hepatitis B and C. In the course of the examination on admission, such testing can therefore only be carried out as a voluntary measure for diagnosing blood-transmitted diseases. Generally, the principle of equivalence

applies here, which means that testing is carried out in those cases where this would also be indicated outside of prison. It is currently being assessed whether supervised HIV self-tests could be offered to inmates in addition to voluntary blood tests. Such tests could be carried out both as part of the examination on admission and throughout the entire period of imprisonment.

In the remaining *Länder*, testing for HIV and hepatitis B and C is not mandatory either; however, voluntary testing is offered.

Paragraph 66 (p. 39, recommendation)

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.

In **Bavaria**, prisoners' medical files are kept separately from their personal files and in secure locations so that only authorised staff have access to them.
Including a file note stating "avoid blood contact" is permissible in individual cases, but only subject to the condition that this is necessary to avert a considerable danger to the life and limb of prisoners and other persons (e.g. staff members).
In specific constellations, attaching such a warning notice is necessary to protect the life and limb of fellow inmates, staff members and other persons. Owing to the special features inherent to the prison system, infections of prisoners with various, potentially deadly, transmissible diseases poses a considerable danger to the health or life of fellow prisoners, staff members and other persons. It is not unusual for prison staff to get into close physical contact with prisoners. As prisoners often have problematic histories characterised by drug abuse, they, as well as the staff members dealing with them, are at a considerable risk of infection. Averting the considerable danger to the health or life of prisoners and staff members which results from dangerous infectious diseases is a key task of the prison system and at the same time part of the duty of care which an employer has towards its staff

members. The necessary additional awareness among staff members will likely not be achieved if all prisoners are treated as if they were infected.

In **North Rhine-Westphalia**, staff members of the prison medical services are regularly made aware of the need to comply with medical confidentiality. Medical data (health data) are filed separately in order to comply with the stipulations of the North Rhine-Westphalia Act on the Protection of Personal Data in the Prison System (*Justizvollzugsdatenschutzgesetz Nordrhein-Westfalen*). Section 33 (2), first sentence, of that Act provides that any personal data which were confided to the persons referred to in section 203 (1), first sentence, nos. 1, 2 and 5 of the Criminal Code (*Strafgesetzbuch*) by prisoners, or which were otherwise made known to them about prisoners, are subject to confidentiality also vis-à-vis prison authorities. There are only narrow exceptions to this rule: The persons referred to in section 203 (1), first sentence, nos. 1, 2 and 5 of the Criminal Code have to disclose such data to the prison management to the extent that, with due consideration of the prisoners' interest in the confidentiality of their personal data, this is necessary in individual cases in order to prevent self-harm, to avert considerable danger to the life and limb of fellow prisoners or other persons or to avert the danger of considerable criminal offences being committed. In addition, the doctor is authorised to disclose secrets which were made known to him or her in the context of general health-care services to the extent that this is necessary in order for the prison authorities to fulfil their duties or in order to avert considerable danger to the life and limb of prisoners or other persons.

In the other *Länder*, prisoners' health data are also kept separate from their personal files and are not generally accessible. Medical confidentiality is respected and maintained. Staff members are not systematically informed about prisoners suffering from infectious diseases. As a rule, staff members outside the medical service are notified of infectious diseases only where necessary in specific cases.

Some of the *Länder* (e.g. Hesse) agree with the view that every blood contact should be regarded as potentially hazardous irrespective of whether or not there is evidence of a transmissible disease. In **Lower Saxony**, this has resulted in potential hazards due to blood contacts or contacts with secretions no longer being noted on the transport certificate. In **Saxony-Anhalt**, this issue is regularly taken up in training courses for prison staff. As a result, staff members are aware of the need to classify every blood contact as potentially hazardous and to act accordingly. At the prisons of the *Land* of **Schleswig-Holstein**, staff members not working in the health-care unit are not informed of HIV and hepatitis C infections of prisoners, since existing infectious diseases are not recorded in prisoners' personal files. During their training, prison staff are already made aware of how to approach

responsible infection protection by way of an HIV and hepatitis prevention event, and are thus well prepared for infections occurring within the prison system.

Paragraph 67 (p. 40, recommendation)

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.

At **Bavarian** prisons, prisoners infected with hepatitis C receive comprehensive therapy tailored to their specific condition. This includes the necessary medication. Generally, as regards the current state of affairs regarding the treatment of hepatitis C, the development of direct-acting antiviral (DAA) medication has been a major medical advancement in recent years. Although treatment with this new medication is extremely costly, it is now the standard therapy in the Bavarian prison system. This topic has already been the subject of several prison doctors' conferences. In particular, these conferences focused on the need for various criteria to be considered when deciding on whether this therapy is indicated in a particular case. The criteria discussed included the status of the disease and the genotype of the virus, as well as the likelihood of reinfection, the time to be served in prison and the patient's compliance. The prison doctor in charge decides, on his or her own responsibility, which specific treatment measures are to be taken regarding a particular prisoner and what medication is to be used. In doing so, he or she has to take into account the existing medical guidelines which are based on the assumption that chronic hepatitis C generally requires treatment.

At St. Georgen-Bayreuth Prison, the viral load and liver function of all prisoners suffering from hepatitis C are checked regularly at intervals of six months. In addition, medication is prescribed to lower their viral load. The decision on when and according to which criteria treatment with direct-acting antiviral medication is indicated falls within the prison doctor's sole responsibility. Currently (as of 15 December 2021), one prisoner at St. Georgen-Bayreuth is being treated for hepatitis C with direct-acting antiviral medication during his time in prison.

In the other *Länder*, prisoners diagnosed with hepatitis C are also, as a rule, treated in line with existing guidelines and in accordance with current recommendations. The precondition for this is that the time to be served is long enough so that the necessary therapy does not

need to be terminated or interrupted. Whether there is a medical indication for such treatment is determined by specialist doctors, while the actual treatment is then coordinated by the prison doctors.
In **Hesse**, a decision about whether such treatment is indicated can now also be made by prison doctors.

Paragraph 68 (p. 40, recommendation)

As far as the recording of injuries is concerned, the delegation observed at Bayreuth and Gelsenkirchen Prisons 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.

Paragraph 69 (p. 40, recommendation)

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.

The recommendations made in paragraphs 68 and 69 will be responded to together because these issues are related.
At St. Georgen-**Bayreuth** Prison, prisoners involved in physical altercations are, as a rule, taken to the medical service immediately after staff become aware of the incident. Any injuries are localised, recorded and visually documented there. Photographic documentation is prepared and stored in the prison's IT system. It therefore appears unnecessary to measure the size of the injuries.

In **North Rhine-Westphalia**, after the CPT's visit in 2015, all prisons were instructed to proceed with particular care in preparing written documentation of alleged injuries to prisoners, including photo documentation (several representative photos from various perspectives including an overall view) so that the photos can allow conclusions as to the scope and severity of an injury. In addition, the prisons were encouraged to assure adequate picture quality (complete image, light and focus) and to make sure that all injuries in which

others were involved (fights, accidents, work or sports accidents, etc.) which might involve claims against third parties (prison, fellow inmates or others) are photographed. The prisons also have to prepare sufficiently detailed documentation of the course of the incident.

In the other *Länder*, injuries detected and treated during the examination on admission or following violent incidents are also recorded in the medical files of the prisoners concerned. As a rule, photographic documentation is prepared with the prisoner's consent in cases involving serious injuries. If a criminal offence is suspected, such documentation is made available to the investigating authorities. The prevailing view is that it is not necessary to maintain a register of injuries, among other reasons because such incidents are, as a rule, included in the nationwide statistics "StV 10", which list disciplinary proceedings.

1.) Paragraph 72 (p. 42, request for information)

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.

2.) Paragraph 72 (p. 42, comment)

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.**

3.) Paragraph 72 (p. 42, recommendation)

In particular, the Committee recommends that: 1. the psychiatric input at Gelsenkirchen and Bayreuth Prisons be significantly increased; 2. clinical psychologists are recruited at Gelsenkirchen and Bayreuth Prisons and integrated into multi-disciplinary health-care teams providing care to prisoners with mental disorders; 3. 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.

An important goal of the **Bavarian** prison system is to ensure that prisoners with mental illnesses are cared for in the most optimal way possible. The increasing number of prisoners with psychological issues and the increasing severity of the detected illnesses and/or disorders present a major challenge. One reason for this is that both inside and outside the prison system, it has been difficult for the past several years to find sufficient trained personnel (especially psychiatrists) for vacant positions.

In 2017, in an effort to improve the situation, the Bavarian State Ministry of Justice and the Bavarian Centre for Family and Social Affairs – Office for Forensic Psychiatric Detention

cooperated in developing recommendations for action in order to facilitate cooperation between the prisons and the forensic psychiatric detention facilities in treating mentally ill prisoners.

In order to create additional treatment capacity for mentally ill prisoners in the Bavarian prison system, the new establishment of an additional (the third in Bavaria) psychiatric unit is planned at Munich Prison.

In addition, since 2021, there has been the possibility at all Bavarian prisons to take advantage of telemedicine services of an external medical service provider to provide health care (including psychiatry) to the prisoners. The initial experiences with using telemedicine services have been extremely positive, and lead to the conclusion that telemedicine represents a meaningful addition to the medical consultations and treatment that is provided to prisoners by full- and part-time doctors who are present in person, and that this can further improve the quality of overall health care.

Currently, the Bavarian prison system does not have any established posts for the proposed use of clinical psychologists. While the number of established posts for psychologists was considerably increased from 29 in 1988 to 124 in 2021, the psychologists assigned to these posts are working at full capacity providing regular psychological care to the persons in Bavarian prisons and carrying out therapeutic work in socio-therapeutic facilities. There are plans to take up the CPT's proposal to apply for additional posts in future budget negotiations. Whether such established posts will be created depends on the legislature deciding on budgetary matters.

The prison system of the *Land* of **North Rhine-Westphalia** is already working intensively on improving the care of mentally ill prisoners as soon as possible. An important basis for this is the result reached by a commission of experts hired by the Justice Minister of the *Land* of North Rhine-Westphalia, which focused particularly on measures to recognise and deal with mental illnesses on the part of prisoners.

The number of treatment spots for acute psychiatric cases is to be increased greatly; in this way, cases of longer-term solitary confinement are to be avoided in the future. The already-begun renovations of the North-Rhine Westphalia prison hospital are a first step which will increase capacity from currently 16 to 53 treatment spots. Efforts are also underway to further increase the number of acute psychiatric treatment spots over the long term by acquiring and modifying a suitable property. The area of land required for this has already

been calculated and communicated to the building and real estate management service of North Rhine-Westphalia.

Furthermore, outpatient psychological and psychiatric care in the prisons is to be improved by recruiting additional doctors, psychiatrists and psychologists. The Ministry of Justice of North Rhine-Westphalia is therefore conducting intensive personnel recruitment measures and has enhanced efforts to cooperate with other clinics. However, the strained personnel situation throughout the *Land* in the medical field is making these efforts considerably more difficult.

The psychological service at Gelsenkirchen Prison currently has five allocated posts which are filled by six persons (three of whom work part time). In addition, a consultant psychiatrist has been contracted who works on an hourly basis. Currently, there are no cases where mentally ill prisoners neither get suitable treatment in prison nor can be transferred to a suitable hospital.

The Justice Ministry has also developed the concept of “intensified psychiatric treatment of inmates in prison” (*Psychiatrisch intensivierte Behandlung von Gefangenen in den Justizvollzugsanstalten* - PIB), which is currently in the process of implementation with a high number of personnel. The concept includes a needs-based treatment service analogous to that of a psychiatric day clinic for prisoners who need post-inpatient care. However, it is also aimed at prisoners with severe and chronic psychological illnesses that do not necessarily need inpatient treatment.

As an accompanying measure, the Ministry of Justice has tested, with great chances of success, telemedicine in seven prisons. Due to telemedicine, additional doctor’s hours are made available in addition to the previous practice of physical presence by doctors in the fields of general practice, dermatology and psychiatry. Moreover, digital diagnostics by means of stethoscope, dermatoscope, otoscope, ECG, and devices to measure blood oxygen (known as P02 devices) are used. In 2022, this is planned to be extended to a further twelve prisons. In 2023, telemedicine will be implemented in the remaining prisons. The extensive of use of telemedicine – in the present context particularly by offering psychiatric consulting hours at prisons which do not have a sufficient number of (consultant) psychiatrists – enhances the specialist care provided to mentally ill persons.

Paragraph 73 (p. 43, comment)

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.

Providing support to opioid-addicted prisoners with a needs-based substitution therapy is an integral part of the medical treatment offered at **Bavarian** prisons. As of 31 March 2021, a total of 687 prisoners had received substitution therapy. The doctor in charge decides on the start, continuation and termination of substitution treatment based on the current guidelines for the substitution treatment of opiate addicts issued by the Federal Medical Association and in compliance with the preconditions set out therein. There is nothing to indicate that St. Georgen-Bayreuth Prison has deviated or is deviating from the stipulations of these guidelines in providing substitution therapy to opioid-addicted prisoners. Currently (as of 15 December 2021), a total of 17 prisoners are provided with substitution therapy at St. Georgen-Bayreuth Prison.

Paragraph 74 (p. 43, comment)

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.**

All the *Länder* offer comprehensive addiction treatment programmes in prison, especially substitution treatment. Against this backdrop, it is not considered necessary to introduce a needle and syringe exchange programme. Among the main arguments against introducing such a programme are reasons of security and order, in particular the need to avert potential danger to the life and limb of (fellow) prisoners and staff.

B.6. Other issues

a) Prison staff

Paragraph 76 (p. 43, recommendation)

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.

In **all the *Länder***, care is taken to ensure that the rights of transgender persons in custody are respected. There is no knowledge of any practice where transgender prisoners are addressed as "it". Pursuant to no. 10 of the Staff and Security Regulations for the Prison Service (*Dienst- und Sicherheitsvorschriften für den Strafvollzug*), prisoners are to be spoken to using polite forms of address which are common in society outside of prison. Frequently, the form of address to be used for a transgender person is settled during their admission meeting. In addition, some *Länder* reported that the issue of how to deal with transgender prisoners was also discussed as part of staff appraisals, meetings, supervisions and training.

B.6. b) Contact with the outside world

1.) Paragraph 77 (p. 44, recommendation)

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.

2.) Paragraph 77 (p. 44, comment)

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.

Maintaining social ties is a key element of the resocialisation efforts made by the **Bavarian** prison system since this contributes significantly to the reintegration of prisoners into society after their release. Contact with persons outside the facility should therefore be promoted. In order to compensate for the restrictions imposed due to the pandemic, particularly in the area of prisoner visits, all prisoners in Bavaria have had the opportunity since March 2020 to

conduct long-distance calls of at least 40 minutes per month without having to give any reasons for such calls.

The experience gained with extending the possibilities to make phone calls as a result of the pandemic has been carefully evaluated in the meantime. Since the results of this evaluation have been largely positive, there are plans to amend the existing legislation in Bavaria in such a way as to allow prisoners – including those on remand – to make phone calls without urgent reasons in the future. The Bavarian State Ministry of Justice has already drafted a bill to this effect.

Maintaining social relationships is an important and essential task of the prison system in **North-Rhine Westphalia** as well. An important building block in this context are telephone conversations. Section 24 (1) of the North Rhine-Westphalia Prison Act (*Strafvollzugsgesetz Nordrhein-Westfalen*) provides that prisoners may be allowed to have telephone conversations arranged by the prison to the extent that the spatial, staffing and organisational conditions in the prison so allow. In order to further strengthen the communication elements for allowing the prisoners to maintain social contacts, video telephony has been expanded – particularly in closed prisons. Video telephony is now possible in 29 prisons, with an upward trend. Since the beginning of the Covid-19 pandemic, 15 additional prisons have introduced it. Due to the contact restrictions occasioned by the pandemic, for the first time prisoners were allowed for an unlimited time to use “personal” mobile phones under controlled conditions in suitable open areas of the prison and taking into account the staffing situation.

Gelsenkirchen Prison has now introduced so-called “corridor telephony”. Since December 2021, prisoners have been able to make phone calls to contacts specifically authorised for this purpose. Prisoners make such calls via separate telephone accounts of their own which have a certain amount of call time credit. This way of implementing prisoner telephony will likely increase prisoners’ access to the telephone in closed sections for both women and men, in accordance with the CPT’s recommendation.

Paragraph 78 (p. 44, recommendation)

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.**

Pursuant to Article 27 (1), second sentence, of the Bavarian Prison Act, prisoners are entitled to a minimum visiting time of one hour per month. In many instances, however, prisoners at **Bavarian** prisons are granted visiting times which significantly exceed this statutory minimum requirement. The exact scope depends in particular on the spatial, organisational and staffing conditions in the individual prisons. Irrespective of the tense pandemic situation, visits in Bavarian prisons are currently possible to the extent of the statutory minimum entitlement, subject to strict protective measures.

In the other *Länder*, rules on minimum visiting times vary. In some *Länder*, the existing minimum entitlement already complies with the CPT's requirements (e.g. in **Lower Saxony** and **Brandenburg**). The visitation rules applicable in **Saarland** even go far beyond the CPT's recommendation. In other *Länder*, the minimum entitlement to visiting time is lower for adult prisoners. In practice, however, additional visiting time is frequently allowed. Moreover, the minimum entitlement to visiting time is higher for children under the age of 14. Visits by defence counsel, lawyers and notaries are not counted towards the minimum visiting time. Furthermore, due to the pandemic, video visits are currently offered as an additional option, which are also not counted towards the allowed visiting time. However, a legal entitlement to visiting time of one hour per week for all types of detention and in all prisons cannot be guaranteed throughout the system and at all times.

These options for visits are considered sufficient, particularly since some prisoners hardly ever exhaust them.

Paragraph 79 (p. 44, comment)

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.

There are no intimate or long-term visits in **Bavaria**. When adopting the Bavarian Prison Act (*Bayerisches Strafvollzugsgesetz*), the Bavarian *Land* legislature, for well-considered reasons, did not provide for unsupervised long-term visits, which, ultimately, would serve to enable intimate contacts. Among the main arguments against enabling intimate contacts are important reasons of security and order in the facility, as any monitoring of intimate contacts by prison staff would obviously have to be ruled out. In 2010, for instance, a homicide was committed in a prison outside Bavaria during a long-term visit. Moreover, given that prisoners' family situations are very different, allowing such contacts would result in disturbances and tensions between those who receive such visits and those who must be denied visits in the absence of a partner (who is prepared to participate in such a visit).

Irrespective of this, Bavarian prisons grant generous visits – within the limits of available capacities – and in some cases go well beyond minimum visiting times. Such visits contribute in particular towards maintaining family contacts. In addition, prisoners have the possibility to have direct contact with their partners over a longer period of time by taking part in family and marriage seminars, or, if they are deemed eligible, by being granted relaxed detention conditions.

For security reasons, there are no plans to introduce unsupervised long-term visits in **Saarland** either. However, special visits with expert supervision are offered and carried out on a broad scale.

In the other *Länder*, it is often the case that unsupervised long-term visits are offered and carried out in selected prisons but not on a comprehensive basis. Decisions on such visits are made on a case-by-case basis, in particular taking into account security-related factors.

Paragraph 80 (p. 45, recommendation)

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.

The extent to which remand prisoners are allowed contacts with the outside world depends mainly on the orders issued by the competent court in the specific individual case. At the federal level, section 119 (1) of the Code of Criminal Procedure provides that, insofar as necessary to avert the risk of flight, suppression of evidence or repetition, restrictions may be imposed upon a detained accused. In particular, an order may be made to the effect that visitation and telecommunications are subject to permission. Any order imposing restrictions must be justified on a case-by-case basis, demonstrating in specific terms that the restriction in question is necessary to avert a real danger to the purpose of remand detention. The court may modify or set aside the decision ordering restrictions if individual restrictions subsequently turn out to no longer be necessary.

Subject to the courts ordering any separate arrangements, remand prisoners in **Bavaria** and **North Rhine-Westphalia** (as well as in the other *Länder)* are allowed to receive regular visits and, as a rule, to communicate in writing with other persons without any restrictions.

Paragraph 81 (p. 45, recommendation)

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.

In individual cases, visits may be ordered to take place using a dividing window in order to prevent illicit items from being handed over. In the case of remand prisoners – who are generally detained because of the risk of them absconding and who frequently have addiction problems – St. Georgen-**Bayreuth** Prison usually only grants visits in "Visitors' Room II", which is equipped with a half-height dividing window made of Plexiglas and located in the interior part of the prison premises. "Visitors' Room I", where an "open" visitation approach applies, is located in the immediate vicinity of the prison gate, which is why prisoners who are at a risk of absconding are not allowed to use it. There are plans to allow those prisoners who are at a risk of absconding but are not expected to get involved in any

illicit handing over of items to receive visits without a dividing window being used. As a first step, however, extensive fire protection measures need to be put in place in the old buildings.

In the other *Länder*, the use of a dividing window is ordered only in substantiated individual cases, including in the case of remand prisoners, for instance, if this is necessary to protect individuals or to maintain security and order in the facility, in particular to prevent items from being handed over. It is thus an exception applicable to individual cases.

B. 6. c) Disciplinary sanctions

Paragraph 82 (p. 46, recommendation)

- 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, there should be a prohibition of sequential disciplinary sanctions resulting in an uninterrupted period of solitary confinement in excess of the maximum period.
- it should never be imposed on juveniles as a disciplinary sanction
- reference is made to Rule 60.6.a of the European Prison Rules

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.

The general rule is that solitary confinement as a disciplinary sanction, i.e. "disciplinary detention"[3], may be imposed only as a measure of last resort due to severe or repeated misconduct and only on a case-by-case basis. Therefore, the sequential imposition of disciplinary detention is even less of an option. The duration of disciplinary detention is to be determined taking into account all the circumstances of the specific case at hand (including the severity and the consequences of the misconduct, the prisoner's behaviour in prison so far, the impact of the misconduct on the security and order in the facility, the prisoner's cooperation in clarifying the facts, acceptance of guilt and remorse etc.). The prisoner concerned is subject to medical supervision throughout the execution of disciplinary detention.

[3] "Arrest" as provided for in section 103 (1) no. 9 of the Prison Act (*Strafvollzugsgesetz*, StVollzG) is translated as "disciplinary detention". Section 104 (5) provides: "Disciplinary detention shall be executed in solitary confinement". Thus, the sanction as such ("Arrest") is translated throughout the document as "disciplinary detention", while the method of execution ("Einzelhaft") is translated as "solitary confinement". Since this distinction is not always made clear in the CPT texts in English, this footnote is meant to serve as guidance for German practitioners.

In most *Länder*, there is the statutory possibility of imposing disciplinary detention on adult prisoners for a maximum period of four weeks. **Brandenburg** is an exception: the prison legislation adopted in 2013 no longer provides for the imposition of disciplinary detention. In **Hamburg**, **Hesse** and **Saxony**, the maximum duration is two weeks. In the remaining *Länder*, imposing disciplinary detention for a longer period than 14 days is, in practice, likely to come into consideration in very rare cases only.

For juveniles, the maximum duration is correspondingly shorter; in most cases, it is two weeks. In **Hamburg**, the maximum duration is one week. Here, too, it is likely that, in practice, less than the maximum duration will generally be imposed. Juvenile prisons in **Schleswig-Holstein** do not impose disciplinary detention at all, irrespective of the legal possibility to do so.

The *Länder* make very restrictive use of disciplinary detention. The **Berlin** Prison for Women very rarely imposed disciplinary sanctions on prisoners at all in 2020 – i.e. in 29 cases. None of them involved disciplinary detention. Likewise, in **Lower Saxony**, the prison with the highest capacity did not impose it in a single case in 2021.

A statutory reduction of the maximum duration of disciplinary detention to two weeks would, however, result in no adequate response being available in the case of particularly severe, possibly repeated, misconduct. This applies in particular to serious attacks on staff members. In many cases, such conduct is also subject to criminal sanctions. However, it often takes many months for the respective criminal proceedings to be concluded with final and binding effect, during which time an immediate response is necessary to maintain security and order in the facility.

Paragraph 83 (p. 46, recommendation)

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).

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.

Disciplinary punishment of prisoners should never involve a total prohibition of family contact and any restrictions on family contact as a punishment should be imposed only when the offence relates to such contact.

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.

In **Bavaria**, Article 110 (1) no. 7 of the Bavarian Prison Act allows communication with persons outside the institution to be restricted to urgent matters for a period not exceeding three months as a disciplinary sanction. Where, in justified individual cases, contacts with persons outside the prison are restricted for the duration of disciplinary detention, this merely extends, in the practice of St. Georgen-Bayreuth Prison, to visits and telephone calls. Prisoners are allowed to correspond with others in writing without any restrictions including during disciplinary detention. They may bring writing utensils with them to the detention cell or subsequently apply to be provided with such utensils. Incoming mail is handed over immediately. This means that disciplinary punishment of prisoners does not involve a complete ban on family contact.

The **Baden-Württemberg** Prison Act (*Justizvollzugsgesetzbuch Baden-Württemberg*) also provides for the restriction of contacts with the outside world as a disciplinary sanction. If prisoners' communication with persons outside the prison is restricted, they must be given the opportunity to communicate this to a person with whom they correspond or from whom they receive regular visits. However, the CPT's recommendation on family contacts will be included in future legislative considerations.

In the remaining *Länder*, the *Land* legislation largely does not provide for any restriction of contacts with the outside world as a disciplinary sanction.

Paragraph 84 (p. 47, recommendation)

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. 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.

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.

In **Bavaria**, the general rule is that disciplinary detention pursuant to Article 111 (5), first and fifth sentences, of the Bavarian Prison Act is executed by holding the prisoner concerned in solitary confinement. During the execution of the measure, prisoners' rights under Article 72 of the Bavarian Prison Act (right to possessions for recreational purposes) are suspended unless otherwise ordered.

On 14 July 2016, St. Georgen-Bayreuth Prison ordered, with effect for its remit, the partial abolition of the suspension of prisoners' rights under Article 72 of the Bavarian Prison Act. This means that from the fifth day of disciplinary detention onwards, persons in disciplinary detention may be issued with educational books from the prison library. Upon commencing disciplinary detention, prisoners are informed of the possibility to be issued with books.

In the other *Länder*, access to reading material is largely permitted during the execution of disciplinary detention. Several *Länder* expressly stipulate that the right to possess reading materials is exempted from the rights that are suspended during the execution of disciplinary detention.

Where access to reading material is partially restricted, this is based on the rationale that, especially in cases where the duration of disciplinary detention is short – which is usually the case –, restricting access to reading material may prevent situations where the prisoner does not perceive the significance of the sanction as intended by the legislature. Further exceptions apply to cases where reading material is used in an abusive manner which may endanger the security and order of the facility (e.g. if used for transporting drugs).

Paragraph 85 (p. 47, recommendation)

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.

In **Bavaria**, each prisoner receives information about the Bavarian Prison Act and the house rules upon admission. These contain information on how prisoners can lodge an appeal. There is no statutory requirement for prisoners to be provided with a copy of any disciplinary decisions, including instructions on legal remedies. Upon request, prisoners are – of course – informed about the avenues of legal redress available to them.

In practice, however, most prisoners accept disciplinary sanctions ordered against them, as shown by the small number of appeals and/or applications for court rulings in accordance with section 109 et seqq. of the Prison Act and oral statements by those concerned. Prisoners who, in order to challenge a disciplinary sanction, file an application for a court ruling receive from the chamber responsible for execution of sentences a copy of the prison's statement in this regard, including annexes, in the context of the court proceedings. This is normally the dossier concerning the disciplinary procedure together with the reports by members of staff on which it is based. A qualified interpreter will be present at the hearing if the prisoner does not have sufficient command of the German language.

Pursuant to the legal provisions applicable in **Berlin**, the disciplinary decision is to be disclosed to the prisoner verbally and is to be recorded in writing together with the reasons (cf. section 97 (5) of the Berlin Prison Act). At the Berlin Prison for Women, prisoners are now provided with written disciplinary decisions in addition to the written instructions on legal remedies.

Pursuant to section 81 (6) of the **North Rhine-Westphalia** Prison Act, the main reasons for the decision imposing a disciplinary sanction are to be recorded in writing and disclosed to the prisoner concerned verbally. Upon request, the prisoner is to be provided with the written statement of reasons as well. It is deemed sufficient that prisoners are informed upon admission about their right to complain and about the opportunity to take court action against (disciplinary) decisions of the prison authorities, and that, in addition to that, their statutory rights and available avenues to lodge complaints are explained to them when actual disciplinary proceedings are carried out. The fact that complaints, petitions and motions are filed with the execution of sentence divisions in relation to imposed disciplinary sanctions

demonstrates that prisoners are indeed aware of the respective avenues of legal redress available to them.

In other *Länder*, the situation is similar. The decision is disclosed verbally to the prisoner concerned and recorded in writing with a brief statement of reasons. Prisoners can be provided with information on legal remedies together with the house rules which they receive upon admission. In some *Länder*, the prisoners concerned are provided with the written statement of reasons upon request. In addition, they have the right to inspect the files. In **Saxony-Anhalt**, the prisoners concerned are, as a rule, provided with both the disciplinary decision and the instructions on legal remedies.

Paragraph 86 (p. 47, recommendation)

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 healthcare 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).

Those *Länder* which provide for disciplinary detention require a medical doctor to be consulted on whether the person concerned is fit for undergoing disciplinary detention before the measure is executed. The prisoners concerned are under medical supervision while in disciplinary detention.

This is necessary on account of the duty of care, since only the prison doctor can establish beforehand whether any health-related restrictions pose an obstacle to disciplinary detention being executed. Thus, prison doctors are themselves not involved in taking disciplinary decisions, they are merely involved in their capacity as experts so as to ensure that the execution of disciplinary detention does not have any harmful consequences for the prisoner concerned. Indeed, involving the medical service before a disciplinary sanction is imposed serves precisely to protect the prisoners concerned (and their health) and may result in the measure not being imposed. Not consulting a prison doctor until the execution of disciplinary detention has begun would in many cases prove too late if the prisoner's health were to suffer on account of the sanction having already commenced. It is not felt that involving the medical service puts a lasting burden on the doctor-patient relationship. On the contrary, it is assumed that the medical service (in contrast to a third-party doctor consulted in a particular case) knows the patients entrusted to its care well and will accurately point out any risk to their health. The prison doctor in particular, with whom the prisoners are familiar, can play a

calming and, if necessary, de-escalating role during disciplinary proceedings. Should prisoners get the impression in individual cases that the measure concerned is ordered by the doctor, this could be counteracted through communication. Doctors have sufficient awareness of how to hold a discussion with the prisoners concerned. Thus, no additional burden is placed on the sensitive doctor-patient relationship that exists in prison. Even if involving the doctor does lead to a loss of trust in a particular case, such involvement cannot be dispensed with in the context of disciplinary and special security measures. Whether such a measure will foreseeably result in health damage can only be validly determined by a doctor. Dispensing with medical expertise would involve unacceptable risks to the health of the prisoner concerned. Especially in the context of intrusive measures, the protection of health takes precedence over a potential disruption of the relationship between the doctor and the prisoner concerned.
In **Schleswig-Holstein**, in cases where the health-care unit or prison doctors are involved in the incident underlying a disciplinary measure, prisons are requested to commission different, external doctors for the hearing.

B 6. d) Security-related issues

Paragraph 87 (p. 48/49, recommendation)

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.

Following the National Agency for the Prevention of Torture's visit in January 2019, St. Georgen-**Bayreuth** Prison, for the purpose of video surveillance of the "vandalism-proof" cell, put in place a system which pixelates images captured of the toilet area.

By contrast, placement in a specially secured cell under surveillance, including the use of technical devices, is a different and more severe special security measure. It is very carefully considered and substantiated in accordance with the statutory requirements and is imposed only on prisoners with considerable mental health issues, in particular if they are at an acute risk of suicide or self-harm. Therefore, video surveillance of the toilet area in the specially secured cell is indispensable given that, in the past, attempts to commit suicide in the pixelated area have been made in other prisons. Without it, such self-harm could not be detected and, in the best interests of the prisoner concerned, stopped in time. The alternative

would be constant and direct surveillance, which – apart from requiring considerable staff resources – would be far more stressful for the prisoner concerned.

Section 69 (2) no. 4 of the **North Rhine-Westphalia** Prison Act refers to the sporadic or uninterrupted observation of prisoners, including the use of technical devices, as a special security measure. Subject to the general conditions laid down in section 69 (1) of the North Rhine-Westphalia Prison Act, such a measure may be imposed on prisoners if, based on their conduct or on account of their mental state, there is an increased risk of their escaping or committing violent attacks against persons or property or a risk of self-harm or suicide. Against this backdrop, prisons in North Rhine-Westphalia have been instructed to partially pixelate sanitary areas to protect prisoners' privacy whenever there is video surveillance of plain cells, disciplinary detention cells or regular cells. According to the instructions, it must also be possible to terminate such pixelation in individual cases where there are indications of a risk of self-harm or suicide and if placement in a specially secured cell is not required or not possible. In specially secured cells subject to uninterrupted video surveillance, however, there is no partial pixelation of sanitary areas in order to prevent the risk of self-harm.

Prisoners placed in specially secured cells include persons at acute risk of suicide. Therefore, any manipulative and self-harming behaviour in the toilet area should remain clearly visible in order to be able to intervene in time. In addition, there is the danger of prisoners swallowing and excreting dangerous items (such as razor blades or drugs). It may therefore be crucial in a given case that such situations are clearly recognised in time.

As regards the proposed frequent personal supervision by staff in the case of agitated prisoners or those prone to self-harm, it should be noted that prisoners placed in specially secured cells are visited by staff members at irregular intervals. Additional visits are not feasible with the available staff resources.

Paragraph 88 (p. 49, recommendation)

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.

In the case of prisoners who, on account of an evident risk of suicide or self-harm, are placed in a specially secured cell containing no dangerous objects, having them remove their clothes and providing them with rip-proof outer clothing is indispensable for their protection.

At **Bayreuth** Prison, too, prisoners are deprived of their own clothing, following an individual assessment, as a separate measure in addition to placement in a specially secured cell containing no dangerous objects. Where this is not necessary in terms of risk, the prisoner concerned would in any case not be placed in a specially secured cell, but rather, as a less severe measure, in a vandal-proof cell frequently subject to video surveillance. As a rule, prisoners who are in an exceptional mental state or an extremely agitated state and who are initially placed in a specially secured cell due to a risk of harm to others are provided with rip-proof paper underwear because, as experience shows, an initial risk of harm to others may quickly turn into self-aggressive behaviour. As specially secured cells are equipped with floor heating, footwear does not seem to be necessary. Of course, prisoners are offered footwear when they leave the specially secured cell.

At **Gelsenkirchen** Prison, prisoners placed in specially secured cells are provided with a mattress and a blanket as well as with rip-proof disposable underwear which is very difficult and time-consuming to use for self-harming purposes.

A thorough search (involving the removal of clothing) may also be useful and necessary in the case of prisoners who are not at obvious risk of suicide and who need to be placed in a specially secured cell (for example because they might take razor blades with them). Since prisoners are usually in an exceptional state during/upon placement in a specially secured cell, there is generally at least a risk of self-harm given the causes giving rise to such placement of prisoners with behavioural issues. This means that, shortly after the incident giving rise to such placement, it is generally not possible to make a completely conclusive and reliable assessment of the prisoner concerned.

Where prisoners are placed in specially secured cells on account of an acute risk of suicide, it is necessary to have them remove their clothes for the purpose of suicide prevention since clothing can be used in an abusive manner to commit suicide or self-harm. In such cases, replacing their clothes with rip-proof clothing does not seem to make sense in terms of preventing further suicide attempts. The decision on the removal or replacement of clothes is always taken following a consideration of the specific case at hand and having due regard to self-protection.

Paragraph 89 (p. 49, recommendation)

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.

Prisoners subject to segregation also generally have the possibility of exercising outdoors (that is, being outside alone) for at least one hour per day, unless this is not possible in individual cases for reasons of self-protection or protection of others.

The special security measure of restricting outdoor exercise is not imposed in isolation but, as a general rule, only in conjunction with the ordering of placement in a specially secured cell. Generally, this measure is only imposed where there is an acute risk of self-harm or violence against other persons to protect the prisoners concerned, their fellow inmates or members of staff. If, on account of the exceptional mental state such prisoners are in, there is reason to fear that they might exhibit self-aggressive behaviour or attack the staff members present, restricting their right to outdoor exercise may be unavoidable. In such cases, the staff's right to physical integrity takes priority over the prisoners' right to an hour of outdoor exercise. In such situations, temporarily forgoing outdoor exercise is generally less stressful for the prisoners concerned than being allowed outside alone and being subject to security measures such as hand- and ankle-cuffs.

As soon as the prisoners' mental state allows it, the above-mentioned measures are terminated immediately so that they can engage in outdoor exercise with other prisoners again.

In **Hamburg**, depriving young remand prisoners of their right to spend one hour outside is ruled out by law under section 81 of the Hamburg Act on the Execution of Remand Detention. While this is permissible in the case of juvenile prisoners, it is likewise not imposed in practice.

Paragraph 90 (p. 49, recommendation)

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.

At **Gelsenkirchen Prison**, the placement of relevant equipment in the anteroom of the specially secured cell serves to ensure that necessary measures can be carried out rapidly and to minimise the burden for all those involved. The see-through door – deliberately not placed in the direct view of the prisoners brought there – of the storage cabinets ensures that the necessary equipment may be accessed and requested immediately. This also facilitates completeness checks.

Paragraph 93 (p. 50/51, recommendation)

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.

All *Länder* make efforts to minimise the interference with basic rights which is involved in requiring prisoners to remove all their clothes.

A strip-search is ordered in individual cases only if searching the prisoner using a hand-held scanning device, for example, or in a manner which does not involve the prisoner removing any clothing, is deemed insufficient.

When male prisoners are required to remove their clothes, only men may be present; when female prisoners are required to remove their clothes, only women may be present. This must be carried out in private. Other prisoners may not be present.

As far as the removal of clothing is concerned, some of the *Länder* already follow the CPT's recommendation, i.e. clothing is removed successively or in two stages (e.g. in **Berlin, Brandenburg** (with exceptions being permissible only in isolated cases which must be documented), **Bremen, Hamburg** (to some extent), **Mecklenburg-Vorpommern, Schleswig-Holstein**). In addition, some *Länder* have announced that they will take the CPT's recommendation as an incentive to raise awareness of this issue amongst prison staff.

Some *Länder* reject the idea of searches involving the removal of clothing in two stages (e.g. **Bavaria, Baden-Württemberg, Hesse, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate, Saarland, Saxony**). The reason given for this is that, if prisoners remove only part of their clothing, they might attempt to hide items they are carrying on them in the clothing on the other part of their body. This would make the search process more difficult to manage and, ultimately, less safe. Moreover, it would cause the search process – which would still affect the prisoners' privacy quite considerably, particularly when they remove clothing below the waist – to be prolonged as a whole. Consequently, the burden placed on the prisoners concerned would actually increase time-wise. Alternatively, searches are carried out, for example, by having the prisoner concerned first remove all clothing except for their underpants. The time during which the prisoner is subsequently required to remove his/her underpants is then kept to a minimum in the interests of all those involved.

Lower Saxony has pointed out that the search can be divided up into two stages, i.e. the removal of clothing and the actual search. While removing their clothing, prisoners at prisons in Lower Saxony are generally not monitored by staff; unless this process takes place behind a privacy screen, staff members turn away from the prisoners concerned in order to respect their sense of modesty. The same procedure is followed while they put their clothes back on after the search has been completed. If the removal of clothing took place in two stages, the prisoner concerned would need to be monitored the entire time while removing their clothing and putting it back on, in order to prevent them from moving any items they might have brought with them from one article of clothing and hiding them under another. This would defeat the very purpose of the search. To the extent that allowing prisoners to keep some of their clothing on during the search may yield a "benefit" in terms of protecting their sense of modesty, any such benefit is likely to be offset by the constant monitoring which is necessary while they remove their clothing and put it back on. In addition, the procedure, which is unpleasant for all those involved, would be protracted.

Moreover, **Saxony-Anhalt** has pointed out that the practice of removing clothes is influenced to a great extent by the subjective feelings of the prisoners concerned. For instance, a procedure where clothing is removed successively or in stages, especially the period during which the prisoners concerned are dressed only above the waist, might not be perceived by them as a more respectful and less embarrassing procedure.

B. 6. e) Admission procedure

Paragraph 94 (p. 51, recommendation)

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.

At St. Georgen-**Bayreuth** Prison, the house rules, which provide prisoners with information on the most important regulations, rights and duties, are available in 22 languages (German, Albanian, Arabic, Bulgarian, Croatian, Czech, Dutch, English, French, Georgian, Greek, Hungarian, Italian, Kurdish, Polish, Portuguese, Romanian, Russian, Serbian, Spanish, Turkish and Vietnamese). The admission brochure entitled *Zugangssdrache* ("admission dragon"), which is considerably more detailed, is only available in German, however. Due to the volume of the brochure, translating it into various languages does not seem feasible.

In **Berlin**, pursuant to section 7 (1) of the Berlin Prison Act, an admission interview is to be conducted with the prisoners immediately after admission. During this interview, their present situation is discussed and they are informed of their rights and duties. Where necessary, interpreters are to be called upon to assist in communicating with prisoners. Prisoners are supplied with a copy of the house rules or otherwise given permanent access to them. The relevant prison acts, the acts they refer to and the statutory instruments and administrative provisions adopted in implementation thereof are to be made available to prisoners upon request. Prisoners are provided with the house rules in a language they can understand. The house rules also contain information on the available possibilities to lodge complaints and avenues of legal redress. Illiterate prisoners are provided with the house rules in a pictorial format.

In addition to an illustrated version of the house rules for prisoners who cannot read or write, prisons in **North Rhine-Westphalia** can draw on model house rules drafted in German and featuring pictograms, which can then be adapted to their specific conditions. These model house rules have been translated into 16 of the languages most commonly used in prisons. These translations are available for download on the *Land* intranet for all prisons.

At Gelsenkirchen Prison, an interpreter is called upon if needed in order to provide prisoners with the necessary information in their national language or, where appropriate, in a specific dialect.

Paragraph 96 (p. 51, request for information)

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.**

The prison system of **North Rhine-Westphalia** places particular emphasis on the psychological care of prisoners – particularly of women who were victims of gender-based violence prior to their imprisonment. The competent Ministry developed the concept of "intensified psychiatric treatment of inmates in prison" (PIB), which is currently being implemented with a high number of personnel and which was piloted in a unit for female prisoners at Bielefeld-Brackwede Prison. There are doubts, however, as to whether the present request for information actually relates to this project, since some of the parameters referred to by the CPT (establishment of a working group, opening of a new unit) do not apply to the PIB project but cannot be attributed to any ongoing project either.

B. 6. f) Complaints procedure

Paragraph 97 (p. 51/52 recommendation)

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.

In **Bavaria**, maintaining an internal complaints register is neither prescribed by law nor considered necessary. It was reported that all staff members at St. Georgen-**Bayreuth** Prison are generally aware of any areas of discontent among prisoners.

At **Gelsenkirchen** Prison, individual complaints by prisoners receive a case number and are filed and saved in the *Registra* system, with different types of complaints receiving different types of case numbers. Simple complaints are filed in the prisoner's personal file and linked to the prisoner book number.

Conclusions regarding the areas in which there are increasing numbers of complaints by prisoners can be drawn from the requests for comments received from various bodies, meaning that a further registration system for this purpose does not appear to be absolutely necessary. The prison management and unit heads are already aware/informed of the main areas of complaint.

B. 6 g) Covid-19 pandemic and the measures taken

Paragraph 100 (p. 52, comment)

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).

In **Bavaria**, prisoners who are placed in quarantine for new admissions due to the Covid-19 pandemic can have human contact to a certain degree, although aspects of infection prevention must always be taken into account. Prisoners who show no symptoms of disease are allowed to exercise outdoors even during this quarantine albeit separately from prisoners who have already been detained for a longer time. They are encouraged to keep a distance of at least 1.5 metres from their fellow prisoners. Prisoners are also in contact with members of the specialist services – above all for reasons of suicide prevention – where this is considered necessary in a particular case. However, contact with fellow prisoners indoors is generally not possible as the risk of infection would be too high.

In **North Rhine-Westphalia**, the purpose/goal of ensuring extensive protection of the health of all individuals in a prison through suitable measures has been deemed sufficiently important to warrant a 14-day quarantine for newly-admitted prisoners. If a failure to implement such a quarantine were to lead to an increased number of infections, this might necessitate unforeseeable – medical – measures (isolation of infected individuals, quarantine for their contacts, potentially extensive medical treatment) and also raise the question of whether the requirements for health care in prison have been met with suitable means.

Any suicide risk that may arise can also be dealt with within the framework of quarantine. Conversations can be held with the relevant specialist services, provided the relevant hygiene rules are complied with. Under certain conditions, outdoor periods can also be granted. Beyond that, any further security measures deemed necessary within the framework of suicide prevention must be decided upon on a case-by-case basis. This means that, depending on the specific circumstances, prisoners can engage in human contact if precautionary measures are adhered to.

Paragraph 103 (p. 53, comment)

At Berlin Prison for Women, the possibility to use VoIP calls had been introduced for inmates 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.**

The possibility to use VoIP calls exists not only at the Prison for Women, but at all **Berlin** prisons, and it will be kept available further.

C. Psychiatric establishments

C. 1

1. Preliminary remarks

The Ministry of Labour, Social Affairs and Integration of **Saxony-Anhalt** pointed out that Lochow has a capacity of 76 places.

Paragraph 109 (p. 55, request for information)

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 future 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.

In view of the persistently high occupancy rates in forensic psychiatric facilities, the Social Affairs Office of **Hamburg** decided in October 2019 to structurally expand the clinic for forensic psychiatry at Asklepios Clinic North – Ochsenzoll. In April 2020, 17 places were taken into operation after renovations. In November 2021, another 16 places were gained through reallocation to the forensic psychiatric department. This means that 325 places are now available.
With two forensic-psychiatric wards being set up at the central hospital of Hamburg Remand Prison, another 18 places for provisional placements under section 126a of the Code of Criminal Procedure (*Strafprozessordnung*, StPO) will be taken into operation. In the medium term, there are plans to expand the forensic psychiatric facility at Ochsenzoll and to thereby increase the number of places to up to 373.

The Ministry of Labour, Social Affairs and Integration of **Saxony-Anhalt** confirmed that Uchtspringe Forensic Psychiatric Clinic has been facing an increase in the number of patients and that, at the time of the visit, its official capacity had been exceeded. It pointed out, however, that this had not yet been the case in the two previous years. Only in November 2019 was the capacity of 264 beds exceeded – for the first time since 2014.

As regards Uchtspringe, a correction must be made regarding the number of additional beds mentioned in the report that are planned to be added by 2024 by building two new wards. In addition, further measures have since been taken to increase the capacity:

The planned construction of two new wards that have a **total** capacity of 30 beds (not 30 each) has been postponed from 2024 and is now expected to commence at the beginning of 2025 due to procurement problems.
In view of the further increase in occupancy rates, funds for the construction of another two wards with a **total** of 36 beds were included in the budget plan for 2022 and the following years. It might be possible for these beds to be taken into operation from **January 2026**. However, there has been somewhat more progress with regard to the reopening of another ward that is currently being used for other purposes: Following the necessary basic renovations, building no. 33 will serve as a ward with 20 beds. It is currently expected to commence operation in the fourth quarter of 2023.

At Lochow, a new building is currently being built as a modular construction. It will house wards with a total of more than 40 beds and may be taken into operation from the second quarter of 2023.

An increase in case numbers can be observed in **Brandenburg**, too. In 2021, both clinics for forensic psychiatry exceeded their capacity. Ways of improving the conditions by expanding capacities are currently being assessed.

In **Schleswig-Holstein**, new buildings will be built in the short term both in Neustadt and in Schleswig. In Neustadt, the construction of a new building for 60 patients will increase the rate of single occupancy rooms in high security units to 75 percent, which will help to provide a better quality of treatment.

C. 3. Living conditions

Paragraph 111 (p. 56, recommendation)

Reference in paragraph 144 (p. 72)

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).

In **Hamburg**, patients are largely provided with tear-proof blankets and pillows. In addition, they can use a second, almost untearable blanket as an underlay.

As part of upcoming basic renovations and the expansion of the acute/admission ward, special injury- and destruction-proof furniture will be purchased. For this purpose, a meeting will take place in early 2022 with a company that sells reinforced furniture for hospitals and psychiatric clinics.

In **Brandenburg**, the clinics have thus far refrained from providing bed linen in crisis intervention rooms. The use of suicide-proof linen was suggested by the supervisory authority and will be considered in the individual facilities.
In **Schleswig-Holstein**, the CPT's requirements are being fulfilled. Further optimisation – e.g. with even more suitable furniture – is considered an ongoing task there.

Paragraph 112 (p. 56/57, comment)

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.
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.

Patients from 18 of the 21 total wards of **Hamburg**'s forensic psychiatric facility benefit from unrestricted access to outdoor areas during the day, if their health so permits. In individual cases, restrictions may be necessary for security reasons.

For example, a restriction to one hour of outdoor exercise per day might be required due to safety regulations or medical circumstances. Such safety regulations exist for two acute/admission wards and one sub-acute ward (risk of flight, introduction of safety-sensitive objects, drugs).

At the psychiatric units in Hamburg's hospitals, nearly all closed wards have a secured outdoor area with direct access from the protected ward. Where this is not possible for structural reasons, patients are accompanied outside on a daily basis if possible.

In **Saxony-Anhalt**, the restriction to one hour of outdoor exercise at Uchtspringe Forensic Psychiatric Clinic only applies to secluded patients.
Seclusion is a special security measure that can only be ordered and enforced if the patient poses a risk. Since outdoor exercise for these patients is generally more personnel-intensive, restricting the time spent outdoors to a minimum is often – yet not always – necessary for organisational reasons. Patients from the regular wards are usually allowed to spend an amount of time outdoors that goes significantly beyond the minimum time.

Access to outdoor areas is very important and a matter of great concern for **Bavarian** supervisory authorities and clinics. All patients have a statutory right to spend at least one hour outdoors every day. Of course, they can additionally spend time outdoors beyond this minimum time as far as the structural, staffing and organisational circumstances in the individual facilities allow. This issue is also monitored as part of the annual inspection visits.

Where the relaxations applicable to an individual patient in **Brandenburg** allow, he/she can have unrestricted access to outdoor areas during the day.

In **Bremen**, patients in forensic psychiatric facilities are to be granted regular outdoor exercise. Generous outdoor areas in the clinic's courtyard are used for this purpose.

In **Saarland**, half of the wards of the forensic psychiatric detention facilities have freely accessible outdoor areas attached to them. These can be accessed by patients at their own discretion and are used as a communal courtyard, for leisure activities and as additional space for therapy. In all high-security units, patients who do not benefit from relaxations regarding the measures applicable to them can visit the in-house patients' café and the inner courtyard in addition to their one hour of outdoor exercise. With the construction of a new building, the CPT's recommendations will be implemented for all areas of the forensic psychiatric facility.
For patients committed under public law, access to outdoor areas is also regulated by law. In practice, however, unrestricted access to outdoor areas is often impossible due to structural conditions.

In **North Rhine-Westphalia**, daily outdoor exercise of at least one hour must be granted where the health of the person in question so permits. The same applies to forensic psychiatric facilities in **Saxony**. Beyond that, longer outdoor exercise can be granted following a favourable medical assessment and subject to the framework conditions established in the order of the measure or the committal.
In the psychiatric facilities, unrestricted outdoor exercise during the day is to be facilitated in individual cases if the patient in question has a favourable medical assessment.

All patients in forensic psychiatric facilities in **Schleswig-Holstein** have access to outdoor areas. Patients from high-security units and other specially secured units can access the inner courtyards. Patients from units with a lower security level can also participate in group outings which take place very often. However, unrestricted access to the courtyards is very difficult to implement on some wards, since it first has to be seen whether the patients –

particularly those on the admission and crisis intervention wards – can live together in an orderly way. Other high-security wards take a rather generous approach towards access to outdoor areas.

In forensic psychiatric facilities in **Thuringia**, regular access to outdoor areas must be guaranteed. In general, all facilities try to enable outdoor exercise beyond the minimum of one hour for as long and as often as possible.
In Thuringia's psychiatric clinics, access to outdoor areas is guaranteed. However, regardless of whether or not a secured outdoor area exists, unrestricted access is impossible due to the strained personnel situation.

C. 4. Staff and treatment

Paragraph 115 (p. 57, recommendation)

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.

Hamburg:
The individual treatment and integration plans indicate the treatment goals, the therapeutic means and the responsible staff members (especially the primary nurse and therapist). This information is known to patients. Patients are continuously and directly informed about their therapeutic progress – mostly during regular ward rounds – and participate in the drafting and subsequent modification of their treatment plans.
The treatment plans (**see Annex**) are drafted by the responsible specialist services and the treatment team, including the primary nurse. The patients are involved, too. They are given the treatment plan and can make comments and have their personal goals and specific objectives included. Afterwards, the treatment plan is signed by the patients, the responsible therapists and the responsible senior physician.
The treatment and integration plans in forensic psychiatric facilities are updated every six months, at which point they are orally discussed with the respective patients. In addition to a retrospective assessment and evaluation of the treatment status, the treatment plans also include specific future-oriented treatment goals.

These can be accessed by all members of the care and treatment team, including via the clinic's digital drives. As far as the care team is concerned, the primary nurse and their substitutes are heavily involved in status updates and the implementation of the applicable treatment plans.

In **Bavaria**, it is legally prescribed with regard to forensic psychiatric facilities that a treatment and enforcement plan must be drawn up and that the plans, as well as any changes to those plans, must be discussed with the person concerned. In 2018, the Forensic Psychiatry Office (*Amt für Maßregelvollzug*) instituted a working group on treatment and enforcement plans in order to explain the legal requirements to forensic psychiatric facilities and to ensure that they are put into practice. The working group established a minimum standard regarding the contents of the treatment and enforcement plans and developed a treatment plan template. Among other things, the minimum standard encompasses the current treatment goals, treatment measures and aspects related to security and relaxations. With regard to treatment measures, information should be recorded on who is carrying out the treatment and their profession, the frequency of the measure, its start date and the patient's specific expectations. Compliance with these minimum standards is subject to review.
As far as committals under public law are concerned, drafting of the treatment plan is regulated by the Bavarian Mental Health Act (*Bayerisches Psychisch-Kranken-Hilfe-Gesetz*). The final administrative provisions, which are currently still being agreed, also explicitly state that the committed person has to be involved in the drafting of the treatment plan.

In **Brandenburg**, the documentation procedure has recently been revised (*RV Dokumentation 4-1-2021*). The requirements for treatment planning are now described in detail and the supervisory authority carries out spot checks several times a year to see whether these requirements are fulfilled.
In **Bremen**, the necessary therapy measures are determined every three months in an individualised treatment plan and discussed with the respective patient according to the provisions of the Bremen Mental Health Act (*Bremer Gesetz über Hilfen und Schutzmaßnahmen bei psychischen Krankheiten*). The visiting commission carries out regular inspections. In **Lower Saxony**, the drafting of a treatment plan is regulated in the Act on Penal Measures of Correction and Prevention (*Niedersächsisches Maßregelvollzugs-gesetz*, Nds. MVollzG). In **North Rhine-Westphalia**, an individualised treatment plan has to be drawn up immediately and the patient in question has to be involved. The treatment plan has to be explained to the person concerned and agreed with them and their legal representatives. In addition, the conclusion of a treatment agreement has to be offered and encouraged.

It is legally prescribed that, in forensic psychiatric facilities, the treatment plans must state the specific and individually tailored measures. The persons concerned, their legal representatives and, where applicable, other persons must be included in the drafting process for this.
In forensic psychiatric facilities in **Saarland**, the CPT's recommendation are fully implemented. Treatment is regulated in the Mental Health Act (*Gesetz über Hilfen bei psychischen Erkrankungen*), a draft of which is currently making its way through the legislative process.

In **Saxony**, there is regular contact between patients and the responsible staff members in accordance with the Saxon Mental Health Act (*Sächsisches Gesetz über die Hilfen und die Unterbringung bei psychischen Krankheiten*). Treatment plans are individually discussed, adapted and agreed upon.
In **Schleswig-Holstein**, treatment and integration plans are regulated in the Act on Penal Measures of Correction and Prevention (*Maßregelvollzugsgesetz,* MVollzG). They must be reviewed at the latest after six months. Patient involvement includes the discussion and handing out of treatment and integration plans.
In **Thuringia**, the recommendations have generally already been implemented. The only exception is that the treatment plans do not have to indicate the responsible member of staff. Together with the responsible facilities and technical and legal supervisory authorities, guidelines for treatment planning in Thuringian forensic psychiatric facilities were developed. The technical and legal supervisory authorities also continuously carry out spot-checks of the treatment plans.
These plans are drafted, discussed and implemented with the participation of the patient as prescribed by the Thuringian Mental Health Act (*Thüringer Gesetz zur Hilfe und Unterbringung psychisch kranker Menschen*).

Paragraph 117 (p. 58/59, recommendation)

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.**

In **Hamburg**, all patients receive extensive information from a doctor prior to any anti-androgen treatment. This information is provided on a case-by-case basis and in the form of

doctor-patient consultations, i.e. orally. This is the only way for the doctor to make sure that the patient has understood all the essential facts. Information leaflets serve as preliminary guidance and provide context before the consultation, during which specific information is provided in a language that the patient can easily understand. In particular, this includes information on the indication (lowering of the testosterone level; alleviation of sexually deviant fantasies and motivations; reduction of the risk of reoffending) and the (possible) duration of the treatment.
Patients have provided written consent. In individual cases, patients were re-informed on the basis of the updated consent forms that are now available.
Before receiving any anti-androgen treatment, patients are informed by a doctor of all the potential effects and side-effects of the treatment as well as the possibility for withdrawal of their consent and any possible consequences of discontinuing the treatment. This is also repeated during the treatment as part of the therapeutic relationship. Documentation beyond the medical consultations is possible – where this has been discussed – as part of the annual court hearings (in the hearing records).

The **Bavarian** Act on Penal Measures of Correction and Prevention (*Bayerisches Maßregelvollzugsgesetz,* BayMRVG) permits measures to treat mental disorders which interfere with a patient's physical integrity only if the patient concerned has consented thereto in writing. This consent can only be given after the person concerned has been informed by the doctor treating him/her and on the basis of his/her free will (informed consent). The current Administrative Provisions regarding the BayMRVG specify that the person concerned must be given comprehensive information in a form that reflects their level of understanding and that they must not be subjected to any undue pressure. The threat of disadvantages if a patient refuses treatment is only permissible as an exception where these disadvantages are a necessary consequence of the condition in which the person concerned would likely remain or end up in if he/she does not receive the treatment.
Where specific treatment measures contradict the natural will of the person concerned (so-called forced treatment), they are only permissible (without consent) in narrowly-defined exceptional circumstances provided for by law. Anti-androgen treatment against a patient's will is only possible if there is a court order to this effect.
In **Bremen**, an indication for anti-androgen treatment is based on the following principles:
The patient has to be comprehensively informed by a doctor of the effects and side-effects of the treatment as well as of the fact that the effects may be ongoing even after the treatment has been discontinued. This information must be provided as part of intensive therapeutic work and discussion.

In **Brandenburg**, **Saxony**, **Schleswig-Holstein**, **Thuringia** and **Saarland**, the comments and recommendations are already being complied with. In Thuringia, the technical and legal supervisory authorities are also regularly present at the facilities, which means that patients and staff members can contact them directly.
In **North Rhine-Westphalia**, written consent for anti-androgen treatments was not previously obtained in all facilities. This is now going to change.

Paragraph 118 (p. 59, recommendation)

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.

In **Hamburg**, injuries exhibited by a patient upon admission to the forensic clinic are documented in writing in the admission note and additionally photographed. Both the note and the photo are kept in the patient's file. Injuries that are clearly indicative of ill-treatment are brought to the attention of the competent prosecutor. Where possible, contact with the patient's legal custodian is sought where the patient exhibits serious mental disorders.

In **Saxony-Anhalt**, all patients are medically examined immediately after their admission. If injuries are found during this examination, they are recorded in the patient's file. If the type of injury and/or a comment by the person concerned gives reason to suspect physical mistreatment by the police officers in charge of his/her transfer or in the context of the person's prior living/care situation, the medical director and the facility's management must always be informed. The latter will then take further measures to examine this suspicion. Until now, the establishment of a formal procedure has not been considered necessary. Discussions are still required in order to determine whether and, if so, in what form changes to this practice will be implemented in the future.

As regards forensic psychiatric facilities in **Bavaria**, the BayMRVG stipulates that every patient has to immediately undergo a medical examination upon admission. This medical

examination serves to assess the general state of health of the persons concerned as well as their fitness for placement in a forensic psychiatric facility. As regards committals under public law, the Bavarian Mental Health Act contains an identically-worded provision. The hospitals mostly document the results of those examinations in care records which are kept electronically in most facilities. Since there is no legally prescribed procedure regarding the reporting of injuries to the public prosecution office or the documentation of examinations upon admission, these may vary from facility to facility. The CPT's comment will be used as an opportunity to raise awareness among Bavarian facilities with regard to the recording and reporting of injuries.

In the forensic psychiatric clinics of **Brandenburg**, a physical examination takes place upon admission, during which injuries are documented. During this examination, doctors also inform patients of their right to lodge a complaint.

In **Lower Saxony**, the recommended documentation is already being carried out in practice. At this juncture, a general comment should be added regarding forensic psychiatry in Lower Saxony: The CPT's report was sent to all ten forensic psychiatric facilities together with a request for consideration, feedback and/or implementation. The facilities' feedback showed that, like in the above-mentioned example, the CPT's recommendations had largely already been implemented for some time in the medical-therapeutic context, on the wards and during the administrative process before admission.

In **Saarland**, all patients in forensic psychiatric facilities are examined by a doctor in the context of their admission. Any injuries found are documented and – if the patients give their consent – photographed. If there are relevant indications of mistreatment, the police or public prosecution office is informed.

The draft Mental Health Act, which is currently making its way through the legislative process, provides for an obligation to comprehensively inform the persons concerned about the results of their medical examination; it also details their rights during their placement.

In **Saxony**, patients are comprehensively examined by a doctor upon admission. The results thereof are documented. Injuries are not systematically reported to the competent public prosecution office unless the patient expressly requests this or mentions that mistreatment may be the cause of the injury.

In **Schleswig-Holstein**, patients are medically examined on the day of their admission to a forensic psychiatric facility. The results of this examination, which consists of standardised steps, is documented. Visible injuries or the lack of injuries in cases where patients claim mistreatment are always documented and reported to the public prosecution office after verification. In practice, such injuries occurred on extremely rare occasions during the transfer by the police and they were always known to the public prosecutor.

In forensic psychiatric facilities in **Thuringia**, it is ensured that injuries found during the admission of patients are always properly and comprehensively documented by doctors according to the rules regarding the medical screening on admission. The Thuringian Mental Health Act already contains rules regarding this medical screening on admission to psychiatric clinics. However, the amendment will also provide for comprehensive obligatory documentation.

C. 5 Means of restraint

Paragraph 130 (p. 64/65, recommendation)

1. 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.

2. 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:

2.1 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.

2.2 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;

2.3 all patients subject to seclusion are provided with adequate clothing (if necessary rip-proof/suicide-proof), a blanket and a pillow;

2.4 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;

2.5 once the use of means of restraint has been terminated, a debriefing of the patient takes place;

2.6 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);

2.7 a comprehensive written policy on restraint is put in place in every psychiatric hospital, in the light of the remarks made in paragraph 122.

Hamburg:

Re 1.

Every type of seclusion, be it a temporary placement in a crisis intervention room or patients being locked up in their room, requires a doctor's order pursuant to section 32 of the Act on Penal Measures of Correction and Prevention of Hamburg (*Hamburgisches Maßregelvollzugsgesetz*, HmbMVollzG). Every such placement is substantiated and documented on special forms (**see Annex**). In order to avoid the application of restraint, knowledge is needed about how to avoid escalating situations and how to manage them. Various training programmes on these issues are offered to staff (**see Annex**). After each measure of restraint, there are comprehensive debriefings.

Re 2.1.

Pursuant to the HmbMVollzG, placement in a specially secured room containing no dangerous objects is permissible as a special security measure. Where this is put into practice, the isolated person has to be supervised and cared for "on the spot" (*an Ort und Stelle*).

Persons subject to *Fixierung* must to be personally cared for in a suitable manner at all times.

However, this care must not lead to a deterioration of the patients' symptoms, for example because the constant presence of a stranger makes them nervous. It also has to be examined – with due regard to the restrained person's disorder as well as the triggers and perpetuating elements underlying their situation in which there is an exceptionally high risk of self-harm or harm to others – whether the immediate presence of the person providing care in the room in which *Fixierung* is taking place should be temporarily dispensed with in individual cases, if there are reasons to expect that this may allow a quicker termination of the restraint measure.

In individual cases, the immediate presence of the person providing care can thus be temporarily dispensed with if it is ensured that there is permanent visual and hearing/earshot contact with the person subject to *Fixierung* from outside the room and if there are reasons to expect that this may allow a quicker termination of the restraint measure.

CCTV monitoring on the basis of section 43 (2) HmbMVollzG is suitable in cases where constant personal care would further destabilise patients subject to *Fixierung*, for example due to paranoid fears. If, in the forensic psychiatric facility in Hamburg, the person providing constant care is not present in the restrained person's room in a particular case, there is constant CCTV monitoring combined with visual checks via a window between the crisis intervention room and the ward staff room. As an addition to the viewing window, video surveillance allows for permanent visual contact and serves to avert considerable danger to

the life and limb of the persons concerned. Hearing/earshot contact is possible via an intercom system which allows for permanent communication at normal volume.

Re 2.2 and 2.4:

All patients placed in a crisis intervention room are regularly provided with short therapeutic contacts in their room, for example during ward rounds or when meals or medications are delivered. Only where patients are highly agitated and aggressive is the communication and care temporarily provided through a door hatch so as to reduce the frequency of aggressive attacks. The need for this is re-evaluated several times a day.

Patients subject to seclusion are visited every day as part of ward rounds. Usually, patients subject to seclusion are given the opportunity to smoke and use this time for face-to-face human contact. Activities, contact with the outside world and reintegration are enabled as far as possible in light of the patients' mental state and behaviour, which may involve an increased risk of escape, of violent attacks against persons or property, or of suicide or self-harm.

There is also daily human contact when meals are handed out. In order to facilitate access to an outdoor area for one hour, an additional staff member is deployed, or the patient has to access the outdoor area alone due to the increased security need. In order to allow even aggressive and dangerous patients to benefit from one hour of access to an outdoor area, they are taken outside alone in a secure manner.

Re 2.3.

Clothing and bed linen that fulfil the security requirements are provided sufficiently.

Re 2.5.

After termination of the restraint measures, a comprehensive debriefing takes place in the form of individual doctor-patient conversations.

Re 2.6 and 2.7:

Every type of special placement including supervision is documented on the relevant forms (**see Annex**). As part of the introduction of a new hospital information system (M-KIS, probably available as of February 2022), the possibility of establishing a central register to record the frequency and duration of different types of security measures will be considered.

Saxony-Anhalt:

The Social Affairs Ministry of Saxony-Anhalt submitted a number of comments on the CPT's statements under the heading C.5. "Means of restraint":

The measure referred to in German as "Isolation" by the CPT is called "Absonderung" in Saxony-Anhalt. The Ministry does not share the CPT's view that the administration of rapid tranquillisers constitutes chemical restraint.

The administration of tranquillisers at Uchtspringe Forensic Psychiatric Clinic in the context of "emergency medication" can, in the Ministry's view, by no means be equated with a *Fixierung*, as the medication, which is administered in an appropriate dosage, does not deprive the persons concerned of their ability to move in the same way a *Fixierung* does. However, since a rule on forced treatment was introduced in section 9a ("Forced medication in the area of health care") of the Act on Penal Measures of Correction and Prevention of Saxony-Anhalt (*Maßregelvollzugsgesetz Sachsen-Anhalt,* MVollzG LSA*)* in the framework of the legal amendment of 25 March 2021, the administration of "emergency medication" against the will of the person concerned is now considered forced treatment within the meaning of Article 9a MVollzG LSA. This means that such "emergency medication" is subject to judicial review even when there is an immediate danger, as is typically the case. Therefore, the following comments regarding *Fixierung* do not apply to the administration of "emergency medication".

Re 1.

According to the Report, 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. This concerned in particular women at Uchtspringe, as almost all of them were accommodated in triple rooms." This statement was investigated. As a result of this investigation, the Social Affairs Ministry expressly asked for assurances that the applicable law is not violated in this facility, i.e. that patients are not held in seclusion rooms for longer than necessary.

Re 2.1.

The CPT's claim that some of the individual orders for *Fixierung* had indicated that the patient was to be supervised via CCTV rather than directly by a continuously present staff member (*Sitzwache*) could not be verified. Personal supervision of persons subject to *Fixierung* by a continuously present staff member was standard procedure at Uchtspringe Forensic Psychiatric Clinic even before the Federal Constitutional Court issued its decision in 2018. The exception under section 20a, fourth sentence, MVollzG LSA – the permissibility of which is certainly disputable – has not been made use of yet. Unfortunately, this fact was not

addressed during the discussion following the visit, which meant that it could not be clarified which orders the CPT had referred to.

Re 2.2.

Decisions to deny outdoor exercise are always taken on a case-by-case basis. This requires an examination as to whether less severe measures (e.g. handcuffs or deployment of more staff) should be taken instead. However, in the view of the Social Affairs Ministry of Lower-Saxony, the right of the person concerned to outdoor exercise meets its limits where the physical integrity of those caring for them is massively jeopardised.
As regards the status of the measures taken to enable face-to-face human contact during the seclusion of patients that were mentioned in the report, there have been no changes yet.

Re 2.3.

The CPT described a particular case where a secluded person was held in a crisis intervention room whilst naked and without a blanket or pillow.
The Social Affairs Ministry agreed with the comment that such practice could be considered degrading by the person concerned.
At the same time, it provided reasons justifying the described case, which could occur again in a similar way. For example, the recommended “special garments” could not be used in all cases because there was a risk that patients would clog the toilet with them.
The Ministry also pointed out that the facility now provides special “rip-proof/suicide-proof” bedding for secluded patients.

Re 2.4.

In Saxony-Anhalt’s forensic psychiatric facilities, doctors review the necessity of continuing seclusion orders at least once per day. As soon as it is tenable, the patient concerned is re-integrated into the ward environment, usually in phases. How exactly this is done depends on the individual case and is usually based on various factors, which is why it is difficult to have a “clearly described pathway”. Whether and, if so, in what form this recommendation will be implemented in the future still has to be discussed.

Re 2.5.

The CPT’s impression that “a comprehensive debriefing” did “often” not take place will be used as an opportunity to review the current practice and to make changes where needed.

Re 2.6.

The forensic psychiatric facilities keep registers in which the beginning and end of all special security measures and of each *Fixierung* as well as the reasons for these measures are recorded. All further information can easily be retrieved from the patients' files as these are kept meticulously. Until now, expanding the established register has not been considered necessary. Whether and, if so, in what form changes will be implemented in the future still has to be discussed.

Re 2.7.

Until now, it has not been considered necessary to establish an internal written policy for *Fixierungen* as the requirements and framework conditions for *Fixierungen* and other means of restraint like seclusion are comprehensively and clearly regulated in the MVollzG LSA. For the ordering of means of restraint, forms must be filled out which check, step-by-step, whether the legal prerequisites have been met and which can provide rules for the execution of these means of restraint. Subsequently, the restraint measures are executed by the medical staff according to the highest standards. However, the comment will be taken as an opportunity to compile procedural instructions that encompass the well-known rules as well as a comprehensible information sheet for the patients concerned.

Other *Länder*:

Re 2.1.

In **Bavaria**, the BayMRVG provides that persons subject to *Fixierung* must be continuously supervised and cared for by a member of staff. The administrative provisions further specify that constant one-on-one care has to be provided by a member of staff who has been briefed for such tasks by a doctor. The same applies to committals under public law.
In the clinics of the *Land* **Brandenburg**, procedures have been put into place regarding the handling of secluded patients and patients subject to *Fixierung*. Patients can contact a member of staff at all times.
In **Bremen**, patients subject to *Fixierung* benefit from continuous direct personal supervision (*Sitzwache*). In **North Rhine-Westphalia**, there is already a rule stipulating that, during a *Fixierung*, constant personal supervision by a qualified member of staff has to be ensured. In **Saarland**, it has to be ensured that patients subject to seclusion or *Fixierung* are continuously supervised by a nurse, both personally and via CCTV. In **Saxony**, the Mental Health Act stipulates that constant supervision must be carried out during a temporary *Fixierung*. This means that one-on-one supervision by therapeutic or care staff has to be ensured during security measures that serve the purpose of the respective patient's

placement and are indispensable in order to prevent or eliminate a significant disturbance of the safety and order in the hospital.
In **Schleswig-Holstein**, one-on-one supervision of patients in forensic psychiatric facilities who are subject to *Fixierung* is prescribed by law.
In **Thuringia**, continuous direct personal supervision (*Sitzwache*) is obligatory for any *Fixierung* according to the ThürMRVG. Exceptions from this rule are only possible in medically justified cases, for example if there are contraindications. The ordering and execution of such continuous direct personal supervision (*Sitzwache*) during a *Fixierung*, and any justification for forgoing it in exceptional cases, are monitored by the technical and legal supervisory authorities. There are also plans to expressly implement the above-mentioned recommendation as part of the revision of the Thuringian Mental Health Act by providing for uninterrupted one-on-one supervision by therapeutic or care staff in cases of temporary *Fixierung*.

Re 2.2.
In **Bavaria**, as far as the patient's health allows, secluded persons have the possibility to have human contact and to access the outdoor areas in accordance with their right to spend one hour per day outside. In the clinics of **Brandenburg**, real face-to-face human contact takes place every day during a patient's placement, for example as part of attempts to terminate a patient's seclusion. As far as patients are fit to reach agreements, it is also possible for them to access outdoor areas.
In **Bremen**, patients can be accompanied outside, for example to smoke. Further regulation is considered necessary in this respect.
In line with the requirements, secluded persons in **North Rhine-Westphalia** can spend at least one hour per day outside if their health so permits. In **Saarland**, patients are regularly checked on in their rooms. During these visits, human contact and interaction are encouraged and suitable activities suggested.
In **Thuringia**'s forensic psychiatric facilities and psychiatric clinics, these recommendations are already being implemented. For the vast majority of security measures that include seclusion, regular access to outdoor areas is guaranteed. Where the patient's condition and the staffing situation allow, outdoor exercise is even granted several times a day. Face-to-face human contact also usually takes place several times a day.

Re 2.3.

In **Bavaria**, the decision on whether adequate clothing, blankets and pillows are provided in seclusion rooms is taken on a case-by-case basis in the framework of a proportionality test, taking account of the well-being and health of the person concerned.
In **Brandenburg**, this has already been implemented in one clinic. In the other clinic, implementation is currently being considered. In **Bremen**, patients placed in so-called observation rooms are provided with bedding and clothing. In **North Rhine-Westphalia**, secluded patients are provided with pillows, blankets and their own clothing or tracksuits, unless their individual risk situation precludes this. In **Saarland**, rip-proof and suicide-proof clothing and bedding are kept in storage for secluded patients and handed out if ordered by a doctor. In **Saxony**, secluded patients are provided with adequate clothing and bedding. In **Thuringia**, the recommendation is implemented in the same way.

Re 2.4.

Depending on the patient's health, such activities are of course offered in **Bavaria**. In particular, so-called communication screens can be used for this. The facilities will again be made aware of the recommendation. In the clinics of **Brandenburg**, patients have the possibility to contact the outside world. They are also offered meaningful activities.
Depending on their constitution, patients held in so-called observation rooms in **Bremen** have access to reading material and a radio; visits and phone calls are possible.
In **North Rhine-Westphalia**, access to radio, TV, newspapers and books is, as a rule, possible in all clinics and also for secluded patients. They are also given opportunities to have conversations. In some cases, it is also possible to use media walls. Depending on the constitution of the secluded person, telephone conversations with relatives are also possible. In line with the obligation to provide treatment, assessments are made every day (as part of staff conversations and ward rounds) to see whether reintegration is possible. If possible, stress tests are carried out.
In **Saarland**, it is possible for patients in all crisis intervention rooms to listen to the radio or to music of their own choice. One special crisis intervention room is equipped with an injury- and destruction-proof electronic media wall. Depending on the patient's health and abilities, further suitable media will be provided. Contact with the outside world is facilitated in particular by telephone calls.
In **Saxony**, patients who have to be secluded for a longer period of time are offered activities, reading material and radio. Furthermore, personalised visiting rules and telephone calls allow them to keep contact to the outside world. During the daily therapeutic contact, a plan is also developed together with the patient as to how he/she can be re-integrated back into association with others as quickly as possible. In principle, outdoor exercise for at least one hour per day is possible in forensic psychiatric facilities in **Schleswig-Holstein**.

In **Thuringia's** forensic psychiatric facilities and clinics, these recommendations are, in general, also already being implemented. Depending on the patients' condition, they are provided with suitable materials with which to occupy themselves. In addition, the clinics are very keen to successively re-integrate these patients into the normal wards as quickly as possible. The suggestion that there should always be a clearly described pathway for their re-integration will be presented to the facilities.

Re 2.5.

In **Bavaria**, debriefings following incidents involving aggression and means of restraint are conducted in a timely manner depending on the patient's state of health and, wherever possible, together with the care worker responsible for the patient concerned and his/her therapist. Since 2019, it has also been regulated by law that, upon termination of a *Fixierung*, the person concerned has to be informed that he/she can have the permissibility of the measure retrospectively reviewed by a court. In the facilities of **Brandenburg**, patients have the possibility of participating in a debriefing after every application of restraint. They are informed of their right to lodge complaints. A record of the debriefing is kept in the patient's file.

In **Bremen**, debriefings take place. When the reasons for seclusion cease to exist in **North Rhine-Westphalia**, a debriefing takes place and plans are made for the re-integration of the patient concerned back into association with the other patients. In forensic psychiatric facilities in **Saarland**, patients are informed of the possibility to lodge a complaint both during the measure and afterwards, during the debriefing. Pursuant to the **Saxon** Mental Health Act, a debriefing has to take place after termination of the security measure as soon as the patient's condition allows.

In **Schleswig-Holstein**, daily visits take place during every seclusion, and a debriefing takes place after termination of the special security measures.

In **Thuringia**, the situation and the measures taken are addressed therapeutically both while the measure of restraint is being applied and afterwards. As part of the revision of the Thuringian Mental Health Act, a debriefing after termination of the use of restraint or coercive measures is to become obligatory.

Re 2.6.

During the inspection visits carried out in 2021 in **Bavarian** forensic psychiatric facilities, checks of the documentation of restraint measures showed that lists of such measures were still compiled by hand in some cases. In order to simplify and standardise this process, forms on special security measures and means of restraint are currently being drawn up. In the future, this form will then be fed into the Forensic Information System (FIS). This electronic recording system will help the facilities to keep track of the frequency and duration of the

different types of security measures in digital form. In addition, the implementation of the relevant statutory regulations and a reduction of restraint measures has been the goal for a number of years. For this purpose, the technical supervisory authority has been collecting data on restraint measures applied, including information on the length and frequency of such measures, and carries out on-site checks of the relevant records kept. For committals under public law, an anonymous register was introduced in accordance with the Bavarian Mental Health Act. All placements, all means of restraint and every *Fixierung* are recorded by the facility's management in encrypted and anonymised form and reported to the technical supervisory authority once per year.

In **Brandenburg**, the forensic clinics keep a special register. In forensic psychiatric facilities in **North Rhine-Westphalia**, documentation is carried out in the electronic patient file, among other methods. There is no central register. As regards committals under public law, all means of restraint and special security measures have to be documented. Documentation is mainly done in the framework of the patient's file and not separately in a special register or file. In addition, in 2017, the Mental Health Act introduced an obligation to report means of restraint applied in the context of a placement in a forensic psychiatric facility. Based on this, the number of forced medications and special security measures applied (restriction of outdoor activities, placement in a special room, holding instead of *Fixierung*, and *Fixierung* in the form of restriction of movement with the help of mechanical devices) are reported to the health ministry once per year in anonymised form.

In **Saarland**, all measures are subject to a constant process of reflection that also involves the patients, although their active participation is dependent on their health condition. As part of this process, all measures – including those taken to avoid *Fixierung*/seclusion – are documented comprehensibly, comprehensively and completely in writing. At short, regular intervals, doctors carry out checks according to each patient's individual situation.

In **Saxony**, the documentation obligation is regulated by law. Proper documentation includes information on the order, the reasoning for the measure, the measure's progress, the type of supervision, the measure's duration and an indication of the possibility of subsequent judicial review and of the debriefing.

In **Thuringia**, every security measure at a forensic psychiatric facility is registered and documented both in a special part of the patient file and in statistics kept by the technical and legal supervisory authority. The ways in which psychiatric clinics document applications of restraint are currently quite diverse. For this reason, the above-mentioned amendment of the Thuringian Mental Health Act will provide for a general documentation obligation.

Re 2.7.

During the inspection visits carried out in 2021 in **Bavaria**, the documentation of forced treatments and restraint measures in the facilities was checked. It was found that written policies for the application of restraint do exist to a large extent. To promote the proper implementation of this recommendation, all facilities will additionally be informed about it, and the drafting of internal policies in the individual facilities will be promoted.

The clinic in **Bremen** has a policy for the avoidance of restraint measures. Whenever means of restraint are applied, there must be documentation showing that less severe measures have already been tried. As regards medication, patients' wishes not to take any drugs must be taken into consideration.

At the forensic psychiatric facilities in **North Rhine-Westphalia**, there are numerous instructions on the use of means of restraint, which are laid down, inter alia, in electronic handbooks, the ward rules and the security concept.

In **Saarland**, the implementation of this recommendation by the forensic psychiatric facilities is currently being examined.

A draft of a Mental Health Act is currently making its way through the legislative process there. This act will contain provisions regarding treatment and special security measures in situations of acute danger (as can already be found in section 11a of the Saarland Placement Act [*Saarländisches Unterbringungsgesetz*, UBG] of 21 May 2020).

In **Saxony**, written policies regarding the application of means of restraint exist and/or relevant further training is regularly offered at the forensic psychiatric clinics.

Since forensic psychiatric facilities in **Thuringia** are attached to psychiatric hospitals, they have to follow the respective institution's rules and policies regarding measures involving deprivation of liberty. The clinics fulfil the comprehensive requirements provided by the ThürMRVG with regard to security and restraint measures. The lawfulness of the individual measures is checked by intervention commissioners. These also ensure that security measures are used as uniformly as possible at the three forensic psychiatric facilities in Thuringia. The Thuringian Mental Health Act contains specific statutory requirements for the application of security and restraint measures at the forensic psychiatric clinics in Thuringia. The planned amendment of the act will dedicate a section to this topic and contain rules which will, inter alia, implement the requirements set out by the Federal Constitutional Court.

Paragraph 131 (p. 65, comment)

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, 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 furniture (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.

In **Saxony-Anhalt**, seclusion is often carried out in so-called crisis intervention rooms. These rooms are (still) very sparsely furnished. As the CPT noted in its report, changes have already been initiated. As soon as the occupancy situation allows, the lying areas referred to as "concrete platforms" by the CPT will be removed or the crisis intervention rooms equipped with these platforms will no longer be used.

C. 6 Safeguards

b. Involuntary treatment

Paragraph 136 (p. 67/68, comment)

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.

Saxony-Anhalt decided that in order for a doctor to order means of restraint in the field of health care (section 9a MVollzG LSA), judicial authorisation is necessary.
As regards the procedure for obtaining such judicial authorisation, the relevant provisions refer to the Act on Proceedings in Family Matters and in Matters of Non-Contentious Jurisdiction (*Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit*, FamFG). The court must obtain an expert opinion on the necessity of the measure from a psychiatrist who is not the doctor carrying out the involuntary treatment.
It has been shown in practice that the courts fulfil this requirement. However, this also frequently prolongs the duration of the proceedings.

Paragraph 137 (p. 68/69, recommendation)

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.

In **Hamburg**, the procedure for carrying out medical treatment, against the patient's natural will, of the disorder which led to their forensic placement is regulated in section 10 HmbMVollzG.
Before such treatment can take place, there must have been a long period of time during which serious attempts were made – for as long as necessary and without any undue pressure – to gain the consent of the patient on the basis of trust.
The most time-consuming part of this process is the judicial review of a patient's application for a court ruling against this involuntary treatment, which is filed with the division responsible for execution of sentences.
There are plans to accelerate this time-consuming step in the authorisation procedure for involuntary treatment. Ways to achieve this are currently being assessed.

In **Bavaria**, a review of the documentation of forced treatment and restraint measures carried out in 2021 also showed that, unfortunately, the judicial authorisation procedure sometimes takes up a lot of time. However, these were individual cases where, as an exception, individual stages of the proceedings lasted longer than usual. One issue is the general lack of psychiatric experts, whom the courts often call upon to examine applications for forced medication. However, this is a known issue and was the subject of inter-departmental working groups both at the *Land* and the federal level, where suggestions for improvements were drawn up. Besides this, Bavaria allows for so-called “imminent danger treatments” (*Gefahr-in-Verzug-Behandlung*) both in the case of forensic psychiatric detention and in the case of committals under public law. In these cases, the court only decides on the forced treatment retroactively so that, in absolutely exceptional cases, a quick procedure is possible.

In **Brandenburg**, any decision on involuntary treatment is usually reviewed by an independent body within two weeks.

The clinic in **Bremen** has a policy for the avoidance of restraint measures. Prior attempts to use less severe measures must always be documented, and patients’ wishes not to take any drugs must be taken into consideration.

In **North Rhine-Westphalia**, forced medical treatment that is aimed at establishing a patient’s capability of self-determination is regulated in section 10 *StrUG NRW*. In addition to the essential preconditions for the permissibility of such forced treatment, as formulated by the Federal Constitutional Court, this provision also contains a requirement for judicial authorisation. The time needed for this court decision cannot be influenced.

In **Saarland**, the MRVG is currently being revised. The CPT’s recommendations will be taken into account in this process.

Saxony’s main priority is motivating patients to undergo treatment voluntarily so that restraint measures are not necessary. Delays in the treatment of patients with mental disorders against their natural will may result from the procedural requirements, especially the authorisation by the adult guardianship court that is needed for such treatment.

Of course, the authorities responsible for forensic psychiatric detention in **Saxony-Anhalt** do everything they can to avoid unnecessary prolongation of patients’ suffering. For instance, where there are indications that means of restraint may be necessary, the preconditions for the ordering of this measure by a doctor are examined immediately; where possible, this order is also issued promptly and judicial authorisation is applied for without undue delay. None of the authorities in Saxony-Anhalt can directly influence the duration and outcome of these court proceedings.

As regards the forensic psychiatric facilities in **Thuringia**, court decisions on applications regarding forced treatment are, in most cases, made quickly.

Paragraph 138 (p. 69, request for information)

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.

In **Hamburg**, patients subject to involuntary treatment are informed of their forced medical treatment two weeks before its commencement through a written announcement that also lists all possible legal remedies.

C. 6 c. Inspection and complaints procedures

Paragraph 141 (p. 70, comment)

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.

In **Hamburg**, all patients are provided with written ward rules upon their arrival (**see Annex**), which also explain the rules regarding patients' visiting rights, mail deliveries etc. The contact details of the supervisory commission's complaints body are visibly displayed on the ward. In addition, all patients are orally informed about the legal basis of their placement again by the (senior) doctor admitting them. They are explicitly informed of their right to contact their lawyer at all times.

In **Saxony-Anhalt**, too, patients are comprehensively informed upon their arrival about the rules that are applicable during their time in the facility. In addition, the house rules are currently being revised and will contain a section on the various possibilities to lodge complaints. Furthermore, an information leaflet for patients which will summarise their rights and obligations is currently being drafted.

Brandenburg reported that comprehensive information about patients' rights is provided during the admission interview and then again before, during and after any forced treatment. Written information is provided in a variety of languages on the individual wards. In forensic psychiatric facilities in **Schleswig-Holstein**, information about patients' rights and possibilities to lodge complaints is available in various foreign languages and in easily comprehensible language on all wards. All staff members are instructed to point out this

information to patients when they arrive and to provide more detailed information during ward consultations.

C. 7. Other issues

a. Contact with persons outside the hospital

Paragraph 142 (p. 70, comment)

1. 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.

The visitation rules in Hamburg are in line with the provisions applicable to hospitals pursuant to the Covid-19 Regulations of the Free and Hanseatic City of Hamburg (*Hamburgische SARS-CoV-2-Eindämmungsverordnung – HmbSARS-CoV-2-EindämmungsVO*).

2. 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.

The forensic clinic in **Hamburg** bought tablets in order to enable patients to have video calls with their next-of-kin. This possibility is made use of extensively.

In **Bavaria**, the introduction of video telephony at forensic psychiatric facilities was expressly endorsed during the inspection visits in 2021 and it is now used in almost all Bavarian facilities. Likewise, video telephony is possible at the forensic clinics in **Brandenburg**, **Saarland** and **Schleswig-Holstein**. In **Saxony**, video telephony is largely possible and very popular with patients. In all three forensic psychiatric facilities and several psychiatric clinics in **Thuringia**, patients are now provided with the possibility to use video telephony. There are plans to retain this beyond the end of the pandemic.

Under the currently applicable law, patients placed in a facility in **North Rhine-Westphalia** under the Mental Health Act have the right, in principle, to use mobile phones and the internet. This right can be restricted only to the extent necessary to prevent harm to the health of the person concerned or serious threats to security or orderly co-existence. The use of possibilities to take pictures or make video or sound recordings must be regulated

separately, as this could entail risks regarding the rights and protection of third parties. This must be taken into consideration when introducing the possibility to make video calls.

C. 7. B. Disciplinary measures

1. Paragraph 143 (p. 71, recommendation)

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

2. Paragraph 143 (p. 71, comment)

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.

The Social Affairs Ministry of **Saxony-Anhalt** pointed out the following:
In **Saxony-Anhalt**, the disciplinary sanction “disciplinary detention” is equivalent to the disciplinary sanction “separate accommodation during free time for a maximum period of four weeks”, which is only permissible under the applicable regulations if the person concerned has culpably violated an obligation imposed upon him/her.
This is also a discretionary provision. It follows from the two requirements that a critical approach must be taken with regard to the measure and the choice of means, and that therapeutic measures must always be given priority.
In this connection, the Ministry also pointed out that the fact that other *Länder* chose not to include the possibility of disciplinary sanctions in their laws on penal measures of correction and prevention does not necessarily mean that there could be no sanctions for misconduct by patients. Rather, there was a danger that there would be other interferences with patients’ rights which would be more difficult to review.
Irrespective of this, the CPT’s recommendations will be taken into consideration during the procedure to amend the MVollzG LSA.

Bavaria, too, still views the abolition of disciplinary sanctions critically. Past experience has shown that, in the absence of such sanctions, measures that were supposed to have a disciplinary effect were simply declared to be therapeutic measures that could be justified with medical reasons. This ultimately meant that, in contrast to disciplinary proceedings, there was no prescribed procedure to adhere to.
In the field of forensic psychiatric detention, disciplinary sanctions are mainly relevant with regard to patients placed in forensic psychiatric clinics under section 64 of the Criminal Code.

As regards committals under public law, disciplinary sanctions are neither regulated by law, nor are they known to be applied at all.
In forensic psychiatric facilities in **Brandenburg**, disciplinary sanctions (restrictions on visiting rights, possessions and the acquisition of items) are legally possible and are used. The CPT's suggestion will be considered in the context of the next amendment of the Mental Health Act of Brandenburg. There are no legally permissible disciplinary sanctions in forensic psychiatry in **Bremen**, **North Rhine-Westphalia**, **Saarland** and **Saxony**.
In **Thuringia**, the ordering and application of disciplinary sanctions in forensic psychiatric facilities is regulated by law. However, these sanctions are only applied very restrictively and with the involvement of the intervention commissioner. Nonetheless, these measures are necessary in order to sanction misconduct that is not caused by a mental disorder and is therefore controllable. For patients placed in a forensic psychiatric facility under section 64 of the Criminal Code and for patients suffering from a personality disorder, disciplinary sanctions are necessary in order to guarantee an orderly co-existence. The Thuringian Mental Health Act, on the other hand, does not contain provisions regarding disciplinary sanctions. There are no plans to change this with the upcoming amendment.

C. 7. C. Security-related issues

1. Paragraph 144 (o. 72, request for information)

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.

2. Paragraph 144 (p. 72, recommendation)

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

In **Hamburg**, newly-arrived patients are placed in an admission room, which is equipped to conform with security requirements, for the purpose of diagnosis, Covid testing (PCR) and the necessary risk assessment. The duration of their stay in these rooms depends on the results of the Covid test and the assessment of their individual risk of self-harm or harm to others.

Further equipment in line both with patients' needs and security requirements (special destruction- and injury-proof furniture and suicide-proof bedlinen) will be provided in the course of the upcoming renovations (see also the comments re. paragraph 111).

Paragraph 145 (p. 72, recommendation)

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.

In **Hamburg**, patients about to be admitted are asked to undress only to the degree necessary to rule out the possibility that they are bringing dangerous objects/substances into the forensic psychiatric facility. Examinations of intimate body parts used for hiding objects (e.g. gluteal fold) and examinations of body cavities are not part of the routine admission procedure and are only ordered if there is a specific suspicion, in which case they can only be carried out by a doctor. As a matter of principle, female patients are examined by female staff only.

No shortcomings in this area are, as of yet, known in **Bavaria**. However, the facilities will once again be made aware of this issue. The topic was not brought up during the many conversations with patients that took place during the inspection visits. In **Brandenburg**, searches are carried out in a manner respectful of human dignity. In forensic psychiatric facilities in **Bremen**, body searches are carried out by a staff member of the same sex as the patient, who undresses in two stages so that only one part of the body – the upper or lower part – is undressed at a time.
Individual risk assessments are already standard procedure in forensic psychiatric facilities in **North Rhine-Westphalia** and **Saxony**. Where a patient has to undress for a body search, this search is carried out in a manner respectful of human dignity.
In forensic psychiatric facilities in **Saarland**, strip-searches only take place as part of the medical examination and are always carried out by qualified personnel. Searches are conducted in a respectful procedure involving two stages. The draft of a Mental Health Act, which is currently making its way through the legislative process, will contain a provision regarding body searches in line with this recommendation.
In **Thuringia**'s forensic psychiatric facilities and psychiatric clinics, these recommendations are already being fully implemented.

Paragraph 146 (p. 73, recommendation)

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.

This security measure, which is very rarely applied in **Hamburg**, is used only when there is an acute risk of the patient concerned causing harm to others or an acute risk of flight. Any need for restraint is established on the very same day by the responsible senior physician. This has to be documented in the transport list.
There are no plans to abolish the practice – exercised restrictively and only in individual cases – of hand- and/or ankle-cuffing patients with mental disorders while they are in a secure outdoor yard. It is stipulated by law that dangerous patients have to be restrained in a forensic psychiatric facility for the protection of the general public. The use of any such restraint measures has to be based in each individual case on a balancing of the necessary security requirements and the need to keep restrictions imposed on the patient concerned to an absolute minimum.

Saxony-Anhalt: In practice, this special security measure is only ordered where the relevant preconditions are met and is only applied to secluded patients, if at all. It is the less severe alternative to a complete denial of outdoor exercise.

In **Bavarian** forensic psychiatric facilities, hand- and/or ankle-cuffing of patients while they are in a secure outdoor yard has to be reduced to a minimum and may only take place after a strict proportionality test and if the legal preconditions are met. For example, where the measures are to last for a longer period of time, prior authorisation by the competent court is required. Similar rules apply to committals under public law.
Bremen shares the view that the possibility to hand- and/or ankle-cuff patients to protect staff and other patients should not be completely prohibited. It is, however, important to only apply this measure in justified individual cases.
In the closed area of **Brandenburg**'s forensic clinics, patients are not hand- and/or ankle-cuffed. This is only needed during necessary leave from the forensic psychiatric facility if the patient does not benefit from the relaxation of measures.
In **North Rhine-Westphalia**, patients are, as a rule, not hand- and/or ankle-cuffed while they are in a secure outdoor yard. However, due to a relevant indication, a patient may have to be restrained (hand-cuffed) in individual cases in order to protect the patient and/or the staff. In **Saxony**, hand- and ankle-cuffs are used in secure outdoor areas only in justified individual cases and based on an express order by a specialist doctor in order to enable the person concerned to benefit from outdoor exercise.

In **Saarland**, patients with mental disorders are not hand- and/or ankle-cuffed while they are in a secure outdoor yard. In **Thuringian** forensic psychiatric facilities and psychiatric clinics, patients are not hand- and/or ankle-cuffed while they are in a secure outdoor yard either.

C. 7. d.

The use of surgical castration in the context of treatment of sexual offenders

Paragraph 1 (p. 73, comment)

In this connection, the CPT welcomes the fact that, according to the information received from the German authorities, 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.

Like the CPT, the Federal Government welcomes the positive developments since 2013 and will carefully observe all future developments.