



CPT/Inf (93) 13

**Report to the Government
of the Federal Republic of Germany
on the visit to Germany carried out by the
European Committee for the Prevention of Torture
and Inhuman or Degrading
Treatment or Punishment (CPT)
from 8 to 20 December 1991**

The Government of the Federal Republic of Germany has agreed to the publication of this report and of its response. The Government's response is set out in document CPT/Inf (93) 14.

Strasbourg, 19 July 1993

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CONTENTS

Copy of the letter transmitting the CPT's report	7
Preface	9
I. INTRODUCTION.....	11
A. Dates of the visit and composition of the delegation.....	11
B. Establishments visited by the delegation	12
C. Consultations undertaken by the delegation	13
D. Co-operation of the authorities with the delegation	13
E. Context of the CPT's visit.....	14
F. Legal framework.....	14
II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED	15
A. Police establishments	15
1. Police custody: the practice	15
2. Torture and other forms of physical ill-treatment	15
3. Conditions of detention	16
a. introduction	16
b. material conditions in the police establishments visited.....	17
c. distribution of food	18
4. Fundamental safeguards against ill-treatment for persons detained by the police.....	19
a. introduction	19
b. information to a close relative or a third party / access to a lawyer.....	19
c. access to a doctor	21
d. information on rights.....	22
e. conduct of interrogations	22
f. custody registers.....	23

B. Detention Centres for aliens.....	24
1. Introduction	24
2. Ill-treatment	24
3. Conditions of detention	25
4. Medical issues	26
C. Prisons.....	27
1. Introduction	27
2. Torture and other forms of physical ill-treatment	28
3. Solitary confinement/segregation of prisoners.....	30
4. Conditions of detention in general	34
a. Bavaria: Straubing Prison	34
i. <i>material conditions of detention</i>	34
ii. <i>prison regime</i>	34
iii. <i>food</i>	35
b. Berlin: Moabit and Tegel Prisons	35
i. <i>material conditions of detention</i>	35
ii. <i>prison regime</i>	37
c. Saxony: Waldheim Prison.....	40
i. <i>material conditions</i>	40
ii. <i>prison regime</i>	40
5. Medical services in the establishments visited.....	42
a. introduction	42
b. medical care in general	42
i. <i>Bavaria/Berlin</i>	42
ii. <i>Saxony</i>	43
c. psychiatric units	44
i. <i>Forensic Psychiatry Department in Straubing Prison (Haus III)</i>	44
ii. <i>Psycho-Neurological Unit in Tegel Prison</i>	47
d. solitary confinement and the use of instruments of physical restraint for medical reasons	48
e. HIV-related issues.....	49
f. drug-related issues	50
g. status and training of prison health care staff	50

6.	Other issues related to the CPT's mandate	52
a.	discipline	52
b.	complaints and inspection procedures	53
c.	contact with the outside world	55
d.	execution of sentences in the prisoner's own social environment.....	57
D.	Psychiatric institutions	59
1.	Waldheim Psychiatric Institution	59
2.	Hochweitzschen Psychiatric Hospital	60
a.	introduction	60
b.	living conditions.....	61
c.	patient treatment.....	62
d.	patients' rights	63
3.	Final comments	63
III.	RECAPITULATION AND CONCLUSIONS.....	65
A.	Police establishments	65
B.	Detention Centres for aliens.....	66
C.	Prisons	66
D.	Psychiatric institutions	69
E.	Action on the CPT's recommendations, comments and requests for information	70
APPENDIX I		
	SUMMARY OF THE CPT'S RECOMMENDATIONS, COMMENTS AND REQUESTS FOR INFORMATION	71
APPENDIX II		
	LIST OF PERSONS WITH WHOM THE CPT'S DELEGATION HELD CONSULTATIONS.....	87
APPENDIX III		
	LEGAL FRAMEWORK	89

Copy of the letter transmitting the CPT's report

Strasbourg, 23 October 1992

Dear Mr Meyer-Ladewig,

In pursuance of Article 10, paragraph 1, of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment, I have the honour to enclose herewith the report to the Government of the Federal Republic of Germany drawn up by the European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) after its visit to Germany from 8 to 20 December 1991. The report was adopted by consensus by the CPT at its fourteenth meeting, held from 28 September to 2 October 1992.

Unforeseeable circumstances have meant that the transmission of the report has taken slightly longer than initially envisaged. I hope that I may count upon the understanding of the authorities of the Federal Republic of Germany in this respect.

I would draw your attention in particular to paragraph 229 of the report, in which the CPT requests the authorities of the Federal Republic of Germany to provide an interim and a follow-up report on action taken upon its report. The CPT would be grateful if it were possible, in the event of the reports forwarded being in German, for them to be accompanied by an English or French translation.

More generally, the CPT is keen to establish an ongoing dialogue with the authorities of the Federal Republic of Germany on matters of mutual interest, in the spirit of the principle of co-operation set out in Article 3 of the Convention. Consequently, any other communication that the authorities of the Federal Republic of Germany might wish to make would also be most welcome.

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

Finally, I would be grateful if you could acknowledge receipt of this letter.

Yours sincerely,

Antonio CASSESE
President of the European Committee for
the prevention of torture and inhuman
or degrading treatment or punishment

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Preface

As the European Committee for the prevention of torture and inhuman or degrading treatment or punishment is a new institution, knowledge of its mandate and functions is inevitably limited. The CPT has therefore deemed it appropriate to begin the first of its reports to each Party by setting out some of the Committee's salient features. This should prove particularly helpful in differentiating the basis and aims of the CPT from those of two other Council of Europe supervisory bodies within the field of human rights: the European Commission and European Court of Human Rights.

Unlike the Commission and the Court, the CPT is not a judicial body empowered to settle legal disputes concerning alleged violations of treaty obligations (i.e. to determine claims ex post facto).

The CPT is first and foremost a mechanism designed to **prevent ill-treatment from occurring**, although it may also in special cases intervene after the event.

Consequently, whereas the Commission's and Court's activities aim at "conflict solution" on the legal level, the CPT's activities aim at "conflict avoidance" on the practical level.

This being so, the guiding maxim for the CPT when performing its obligations must be to "extend the widest possible protection against abuses, whether physical or mental" (quotation from the 1979 UN Code of conduct for law enforcement officials as well as from the 1988 Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, both adopted by the General Assembly).

The CPT's activities are based on the concept of co-operation (Article 3 of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment). The CPT's task is not to publicly criticise States, but rather to assist them in finding ways to strengthen the "cordon sanitaire" that separates acceptable and unacceptable treatment or behaviour. In fulfilling this task the CPT is guided by the following three principles:

- i) that the prohibition of ill-treatment of persons deprived of their liberty is absolute,
- ii) that ill-treatment is repugnant to the principles of civilised conduct, even if used in milder forms, and
- iii) that ill-treatment is not only harmful to the victim but also degrading for the official who inflicts or authorises it and ultimately harmful to the national authorities in general.

The CPT first of all explores the prevailing factual situation in the countries it visits. In particular it:

- i) examines the general conditions in establishments visited;
- ii) observes the attitude of law enforcement officials and other staff towards persons deprived of their liberty;
- iii) interviews persons deprived of their liberty in order to understand how they perceive (i) and (ii) and hear any specific grievances they may have;
- iv) examines the legal and administrative framework on which the deprivation of liberty is based.

Subsequently, the CPT reports to the State concerned, giving its assessment of all the information gathered and providing its observations. In this regard, it should be recalled that the CPT does not have the power to confront persons expressing opposing views or to take evidence under oath. If necessary, it recommends measures designed to prevent the possible occurrence of treatment that is contrary to what reasonably could be considered as acceptable standards for dealing with persons deprived of their liberty.

In carrying out its functions, the CPT has the right to avail itself of legal standards contained in not only the European Convention on Human Rights but also in a number of other relevant human rights instruments (and the interpretation of them by the human rights organs concerned). At the same time, it is not bound by the case law of judicial or quasi-judicial bodies acting in the same field, but may use it as a point of departure or reference when assessing the treatment of persons deprived of their liberty in individual countries.

To sum up, the principal differences between the CPT and the European Commission and European Court of Human Rights are:

- i) the Commission and the Court have as their primary goal ascertaining whether breaches of the European Convention of Human Rights have occurred. By contrast, the CPT's task is to prevent abuses, whether physical or mental, of persons deprived of their liberty from occurring; it has its eyes on the future rather than the past;
- ii) the Commission and Court have substantive treaty provisions to apply and interpret. The CPT is not bound by substantive treaty provisions, although it may refer to a number of treaties, other international instruments and the case law formulated thereunder;
- iii) given the nature of their functions, the Commission and the Court consist of lawyers specialising in the field of human rights. The CPT consists not only of such lawyers but also of medical doctors, experts in penitentiary questions, criminologists, etc;
- iv) the Commission and Court only intervene after having been petitioned through applications from individuals or States. The CPT intervenes ex officio through periodic or ad hoc visits;
- v) the activities of the Commission and Court culminate in a legally binding finding as to whether a State has breached its obligations under a treaty. The CPT's findings result in a report, and, if necessary, recommendations and other advice, on the basis of which a dialogue can develop; in the event of a State failing to comply with the CPT's recommendations, the CPT may issue a public statement on the matter.

I. INTRODUCTION

A. Dates of the visit and composition of the delegation

1. In pursuance of Article 7 of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment (hereafter referred to as "the Convention"), a delegation of the CPT visited Germany from 8 to 20 December 1991. The visit formed part of the Committee's programme of periodic visits for 1991. Germany was chosen by lot.

2. The delegation comprised the following members of the CPT:

- Mr Bent SØRENSEN, First Vice-President of the CPT (Head of the delegation);
- Mrs Nadia GEVERS LEUVEN-LACHINSKY;
- Mr Michael MELLETT;
- Mr Ergun ÖZBUDUN;
- Mr Stefan TERLEZKI.

The delegation was assisted by:

- Mr Robert DALY, Professor of Psychiatry at University College Cork, Clinical Director, Southern Health Board of Ireland (expert);
- Mr Gordon LAKES, former Deputy Director General of the Prison Service of England and Wales (expert);
- Mr Thomas BINDER (interpreter);
- Mrs Susan FERGUSON-GÜNTHER (interpreter);
- Mr Gustav KEMPERDICK (interpreter).

The delegation was also accompanied by the following members of the CPT's Secretariat:

- Mrs Geneviève MAYER;
- Mr Mark KELLY.

B. Establishments visited by the delegation

3. The delegation visited the following places of detention:

BAVARIA

Munich

- Criminal Investigation Department, Munich North, Johann-Fichterstrasse 6 IV,
- Police Station 13 (Schwabing), Johann-Fichterstrasse 6,
- Police Station 41 (Central Station), Arnulfstrasse 1,
- "Polizeipräsidium München", Löwengrube 3.

Straubing

- Straubing Prison,
- Straubing Police Station, Theresienplatz 1.

BERLIN

- Moabit Prison,
- Tegel Prison,
- Police Detention Centre (GESA), Directorate 3, Kruppstrasse 2,
- Detention Centre for aliens, Polizeigewahrsam, Tiergarten, Kruppstrasse 15,
- Police Detention Centre (GESA), Directorate 5, Friesenstrasse 16,
- Prenzlauer Berg II Police Station, Directorate 1, Immanuelkirschstrasse 13.

SAXONY

Leipzig

- Police Directorate, Dimitroffstrasse 3-5,
- Police Station, Ritterstrasse 17-26.

Waldheim

- Waldheim Prison,
- Waldheim Psychiatric Institution, Hainicherstrasse 4.

Westewitz

- Hochweitzschen Psychiatric Hospital.

C. Consultations undertaken by the delegation

4. Apart from meetings with officials at the establishments visited, the delegation consulted federal authorities, the authorities of the Lander involved in the CPT's visit, representatives of non-governmental organisations and various other persons. A list of persons whom the delegation met is provided in Appendix II.

D. Co-operation of the authorities with the delegation

5. The delegation's meetings with the federal and Lander authorities at both the start and the end of the visit took place in a spirit of close co-operation. The authorities indicated to the delegation in a spontaneous and open fashion those areas which they considered to be causes for concern. The delegation greatly appreciated the frankness of the discussions.

6. In all the establishments visited, including those which had not received prior notice of a visit, the delegation had a very satisfactory reception from both officials and staff.

The authorities had clearly disseminated full information on the existence, role and powers of the Committee. In addition, in each of the Lander involved in the visit, a series of liaison officers for the ministries concerned (Justice, Interior, Health and so on) were appointed before the visit to provide the delegation with assistance, day and night. The delegation particularly wishes to stress the help it received, both during and after the CPT visit to Germany, from Mr Meyer-Ladewig, the federal liaison officer, and all the civil servants who acted as liaison officers for the Lander.

In the Police Detention Centre (GESA, Directorate 3) in Berlin, there was some confusion as to which persons deprived of their liberty the CPT could meet. The situation was very rapidly clarified, with the help of the police officers of the Centre and Lieutenant Krebs (one of the Committee's Berlin liaison officers).

7. Particular reference should be made to the delegation's visit to Straubing Police Station (Theresienplatz 1, Bavaria) and to the exemplary co-operation it received from the Director of Police, Mr Lange. In the course of this visit the delegation found a cell, the walls of which bore fresh blood stains. No note or explanation of this situation was to be found in the station's registers (cf. paragraph 45). Mr Lange immediately undertook an investigation, the results of which were handed to the Head of the delegation in Munich the next day.

8. The CPT welcomes the high degree of co-operation which its delegation received throughout its visit to Germany and, in particular, the very positive attitude of the authorities at all levels, which was fully in accordance with Article 3 of the Convention.

E. Context of the CPT's visit

9. The CPT's visit took place in the context of a country in a state of flux resulting from its unification. In view of this situation, the delegation chose to visit a representative cross-section of Lander: Bavaria (former FRG); Berlin (a combination of former DDR and former FRG) and Saxony (former DDR).

10. Unification had had direct repercussions on those responsible for law enforcement (police and prison officers) in the former DDR. Many such officials had been dismissed. Those who had not were in a precarious position, having either remained in their old posts or been transferred to others, sometimes in the old Lander, on temporary contracts (with the status of state employee) and at a lower level of pay (approximately 40 to 60%) than their civil service colleagues, while they awaited the procedure for assessing their suitability for civil service employment and appropriate training.

11. Law enforcement staff in the new Lander had also to receive instruction in the new legal system, such as, for example, the Criminal Code of the Federal Republic of Germany, which is based on the - for them novel - concepts of guilt and prevention, and the federal legislation on the execution of sentences, which aims at the social rehabilitation of prisoners through individualised treatment. In general, the legal landscape had been entirely changed, it having been necessary to enact wide-ranging legislation in all the areas which were traditionally the responsibility of the Lander (police, health, admissions to psychiatric institutions, etc.).

This long-running task was far from completion at the time of the CPT's visit.

12. The training of law enforcement officers was taking place in a particularly difficult economic and social context in the new Lander, characterised by tensions of different sorts (the discovery of unemployment, an increase in crime, the rise of extreme right-wing movements, and so on).

Moreover, the new Lander had to establish an infrastructure: administrative, judicial, police, educational etc. In the case of the police, for example, numerous problems relating to equipment, personnel and infrastructure made it necessary to introduce a transitional period until the end of December 1991, during which police activities were the responsibility of the joint Regional Police Office (set up in 1990 in the former German Democratic Republic), pending the establishment of regional directorates.

13. To sum up, the areas covered by the CPT's terms of reference were affected to a significant degree by the recent changes in German society.

F. Legal framework

14. A summary of some of the legal provisions in the Federal Republic of Germany which are relevant to the subject of the prevention of torture and inhuman or degrading treatment or punishment of persons deprived of their liberty is given in Appendix III.

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Police establishments

1. Police custody: the practice

15. Firstly, it must be emphasised that the police cannot detain an individual on their own authority beyond the expiry of the day following that of his apprehension (cf. Appendix III, paragraph 5). The period during which a person may be deprived of his liberty by the police before being brought before a judge cannot, therefore, in any circumstances exceed 48 hours. The continuation of custody beyond this period must be based on a judicial decision to issue an arrest warrant, as a result of which the person concerned is remanded in custody in a prison (although pending transfer to a prison, the person concerned may for a certain time continue to be detained in a police establishment).

16. According to the delegation's observations, people normally only remain in police stations for a relatively short time (a few hours). In the large cities visited (other than Leipzig) detainees were transferred shortly after their apprehension by the police to police detention centres. It should also be noted that apart from the initial questioning undertaken by the officers of the police station concerned to establish the subject's identity, questioning in criminal cases is the sole responsibility of the criminal police and often takes place in their premises.

2. Torture and other forms of physical ill-treatment

17. The CPT delegation heard no allegations of torture inflicted by the police, from either those detained by the police at the time of the delegation's visit or inmates seen in prisons. Nor did the delegation receive allegations of other forms of physical ill-treatment inflicted by the police, with the exception of an incident which apparently took place at Straubing Prison (Bavaria) in August 1990 (cf. paragraph 64). No other evidence on the subject of physical ill-treatment by the police was gathered by the delegation during its visit to Germany.

18. The delegation noted with satisfaction, in the Lander visited, the professional and courteous manner in which police officers conducted their relations with individuals deprived of their liberty.

19. The positive situation observed by the CPT's delegation during the visit is undoubtedly due, in large measure, to the importance and care attached to the professional training of police officers in Germany. In this regard, the CPT noted with interest the detailed information supplied on the content of training programmes in some Lander. **It wishes to stress the importance of the scrupulous implementation of such training programmes in all Lander.**

20. The information which the delegation received during its visit suggests that there is currently little risk of people deprived of their liberty by the police being physically ill-treated. **Nevertheless, the CPT would like to receive information on the number of complaints of ill-treatment by police officers made in Germany during 1991 and 1992 and on the number of disciplinary/criminal proceedings initiated, with an indication of sanctions imposed.**

21. In this context, the CPT has recently received a communication concerning the alleged ill-treatment of persons apprehended by the police during a demonstration which took place in Munich in July 1992. In particular, it was alleged that persons detained by the police at the Polizeipräsidium in Munich had their heads struck against a wall during the control of their identity and that those of foreign origin were treated in a particularly brutal way. Moreover, information was also received concerning the conditions in the police vans in which people were detained (several hours spent in direct sun, by groups of up to four, in cages measuring 1.5m²) and in the Munich Polizeipräsidium (up to 70 persons obliged to share cells measuring 30m²).

The CPT wishes to receive the comments of the German authorities on these allegations.

3. Conditions of detention

a. introduction

22. As already indicated, cells in police establishments are intended for relatively short stays. As a result, it cannot be expected that conditions of detention will be as good as those in other locations where individuals may be detained for longer periods. However, a certain number of basic material conditions must be satisfied.

23. All cells in police establishments should be of a reasonable size, having regard to the number of persons they are meant to accommodate, and should be adequately lit (sufficient to read by, sleeping periods excluded) and ventilated. In addition, the cells should be equipped to enable occupants to rest (for example, a fixed chair or bench), while those required to pass the night in custody should be provided with a mattress and clean blankets.

Those detained should be able to satisfy their natural needs as required, in clean and decent conditions, and should enjoy adequate washing facilities. They should be offered food at the normal times, including a full meal (i.e. something more substantial than a sandwich) at least once a day.

b. material conditions in the police establishments visited

24. In general, material conditions of custody in the police establishments visited were satisfactory. Cells were of a suitable size. Their equipment, state of maintenance, lighting and ventilation ranged from acceptable to very satisfactory. All the cells seen were equipped with a call button and the majority had toilets. Overall, access to sanitary facilities and their state did not give rise to any comments.

25. The situation observed at the central police station (Polizeipräsidium) in Munich was an exception.

Despite the efforts made to maintain the cells in a decent state of cleanliness, the conditions of detention were poor. The basic cause was the general state of dilapidation of the building which, among other things, made it impossible to provide proper lighting and heating (the officials could either overheat the cells or switch off the heating; they had chosen the former approach).

The delegation was also struck by the system for allocating prisoners, which appeared to be designed more to make the staff's work easier than to meet the legitimate needs of the prisoners. The majority of prisoners were in shared detention cells (for example, seven prisoners of five different nationalities in a cell of approximately 28 sq m), even though many other cells were empty. This situation contributed significantly to the stifling and fetid atmosphere in the occupied cells.

26. As regards the provision of mattresses and blankets to prisoners required to spend the night in custody, the delegation noted that they were provided in some establishments but not in others. The latter included the Berlin detention centres nos. 3 and 5, and the Prenzlauer Berg II (Berlin) and Munich no. 41 police stations, where prisoners spending the night in custody apparently only received paper sheets - even though the relevant regulations stipulated that blankets, in the case of Berlin, and blankets and mattresses, in the case of Bavaria, should be made available.

27. **The CPT recommends that the competent German authorities take the necessary steps:**

- **to remedy the material shortcomings observed in the Polizeipräsidium München with regard to the lighting and heating of cells, to generally upgrade that establishment's cells, and to review the system for allocating prisoners to cells;**
- **to ensure that any prisoner required to pass the night in police custody is supplied with a mattress and clean blankets.**

c. distribution of food

28. The arrangements for food distribution varied according to the establishment visited.

In Bavaria, the regulations in force stipulated expressly that any individual detained by the police must be offered an appropriate meal at the normal times. No complaints were received on this subject.

In Berlin and Leipzig, the situation was less clear cut. The Berlin detention centres (GESA) had relevant regulations ("Die Verwahrten sind angemessen zu verpflegen. Die Verpflegung besteht aus Frühstücks-, Mittags- und Abendkost"). Moreover, the delegation did see pre-packed meals for prisoners. However, the delegation was not convinced that these packaged meals were offered to prisoners in these centres on a systematic basis; several prisoners claimed to be hungry and were surprised to learn of the existence of these meals. In the police stations in Berlin and Leipzig, an improvised system operated, with officers being sent out, when necessary, to a nearby shop.

In none of the establishments was the distribution of food recorded.

29. **The CPT recommends that the competent German authorities review the practical application of the system for distributing food to persons detained by the police. In this connection, it recalls the remarks made in paragraph 23 above.**

In addition, it would be desirable for the times at which meals are distributed to be recorded (cf. paragraph 45 below).

4. Fundamental safeguards against ill-treatment for persons detained by the police

a. introduction

30. The CPT attaches particular importance to three rights for persons detained by the police:

- the right of those concerned to inform a close relative or third party of their choice of their detention,
- the right of access to a lawyer,
- the right to request a medical examination by a doctor of their choice.

The CPT considers that these rights constitute three fundamental safeguards against the ill-treatment of persons detained which should apply from the very outset of custody (that is, as soon as those concerned are obliged to stay with the police).

Moreover, it considers it equally fundamental that such persons be informed without delay of all of their rights, including the three mentioned above.

b. information to a close relative or a third party / access to a lawyer

31. The right of a person detained by the police to inform a member of his family or a third party of his choice of his detention is provided for in two provisions of the Code of Criminal Procedure: sections 163c and 114b. Section 163c, paragraph 2, stipulates that a person (whether or not suspected of a criminal offence) apprehended by the police for the purpose of establishing his identity is immediately entitled to have a member of his family or a third party of his choice informed of his situation. He must be given an opportunity to do this personally, unless he is suspected of having committed a criminal offence and it would not be in the interests of the inquiry for the information to be given by the detainee himself.

Section 114b stipulates that the judge is responsible for informing a member of the family of a person arrested (i.e. once an arrest warrant has been issued by the judge for the individual's detention), or a third party of his choice, of his arrest. If the interests of the enquiry allow, the individual may be authorised to do this personally.

Apart from these two provisions, there is no other text spelling out the right of a person apprehended by the police on suspicion of having committed a criminal offence to inform a member of his family or a third party of his choice.

32. In practice, it appears from information received by the CPT's delegation that a person apprehended by the police on suspicion of having committed a criminal offence, who has not (or not yet) become a "Beschuldiger"¹ very rarely has the opportunity to inform a near relative or a third party of his apprehension. As regards a "Beschuldiger", it appears that the criminal police do sometimes grant him an opportunity to inform a near relative or a third party of his loss of liberty, if this is considered to be compatible with the needs of the enquiry.

33. With regard to access to a lawyer, the Code of Criminal Procedure (sections 163a and 136, first indent) provides expressly that at the start of the first interrogation, a "Beschuldiger" must be informed of his right to consult a lawyer of his choice before any questions are put to him.

It seems that before becoming a "Beschuldiger", a person may spend a certain time in police custody as a "Verdächtiger". During the time that a person remains a "Verdächtiger", he has no right of access to a lawyer and in practice he is very rarely accorded such a possibility.

34. In this context, it should be stressed that the period immediately following deprivation of liberty by law enforcement officers is the one during which the risk of intimidation and ill-treatment is at its greatest. The CPT therefore considers it essential that the rights to inform a member of one's family or a third party and to have access to a lawyer be guaranteed as from the very outset of police custody (and not only from the moment when the detained person is formally "arrested" by a judge or officially interrogated by the police/public prosecutor). Of course, the exercise of the first of these rights could be subject to certain exceptions designed to protect the interests of justice.

35. **The CPT therefore recommends the following measures to the German authorities:**

- **that persons apprehended by the police be entitled as from the outset of their custody:**
 - **to inform a family member or a third party of their choice (for example, the consul of their country) of their detention by the police;**
 - **to have access to a lawyer: this right should include the right to contact and the right to be visited by the lawyer (in both cases under conditions guaranteeing the confidentiality of the discussions) and, in principle, the right to his presence during questioning;**
- **that any possibility exceptionally to delay the exercise of the right to inform a family member or third party should be clearly circumscribed and made subject to appropriate safeguards (for example, any delay to be recorded in writing with the reasons for the decision and the authorisation of a higher authority to be sought);**

¹ A person is considered to be a "Beschuldiger" when he is suspected of a criminal offence and is the subject of a criminal inquiry. Prior to the commencement of a criminal inquiry, a person apprehended by the police on suspicion of having committed a criminal offence has the status of "Verdächtiger".

- **that the police authorities should be required to inform immediately anyone whom they detain of his rights to inform a family member or a third party of his situation and to have access to a lawyer.**

Finally, the CPT would like to receive information on any legal aid system for persons in police custody which might exist in Germany.

- c. access to a doctor

36. The delegation was informed by officers at the police stations and GESAs visited that doctors were called in when prisoners requested them. In addition, in accordance with the relevant instructions issued by the Lander (with which the delegation was supplied), any prisoner who appeared to require assistance or whose state of health was in doubt, was systematically seen by a doctor. Recourse was had to emergency services doctors, private practitioners operating stand-by services at the place of detention itself or police doctors. All requests for and visits by doctors were recorded. The delegation heard no complaints about medical assistance during time spent in police custody.

37. **In this context, the CPT wishes to recommend the following measures:**

- **that a person detained by the police be able, if he so wishes, to be examined by a doctor of his choice (in addition to any examination carried out by a doctor called by the police authorities),**
- **that any medical examination be undertaken out of the hearing and, preferably, out of the sight of police officers,**
- **that the results of the medical examination as well as relevant statements by the detainee and the doctor's conclusions be formally recorded by the doctor and made available to the detainee and his lawyer.**

38. Of course, it is also essential for police officers to be able to detect when a detainee is in need of medical assistance, even when he does not request such assistance. In this connection, the delegation noted that Mr Lange, the Director of Police of Straubing (Bavaria), had taken the initiative of organising training for police officers, given by a doctor, to familiarise them with different types of behaviour (for example, that of a diabetic). In Berlin, the delegation noted a Health Department brochure for officials, entitled "Helfen, Schützen, Handeln", dealing with people with mental illnesses or other problems (elderly people, alcoholics, drug addicts, epileptics etc).

The CPT considers that these two initiatives are particularly valuable and offer examples which could be more widely followed.

d. information on rights

39. The CPT has already stressed the importance which it attaches to people detained by the police being immediately informed of all their rights (see paragraph 30 above), including those referred to in paragraphs 30 to 37 above. To ensure that persons in police custody are duly informed of their rights, **the CPT recommends that a form setting out those rights be given systematically to such persons at the outset of their custody. The form should be available in different languages. The person concerned should also certify that he has been informed of his rights (see also, paragraph 45).**

e. conduct of interrogations

40. In accordance with section 104, paragraph 1, of the Basic Law, detained persons may not be subject to physical or mental ill-treatment. In addition, section 136a of the Code of Criminal Procedure states that an accused person's freedom to determine and exercise his will shall not be impaired by ill-treatment, fatigue, physical constraint, the use of medicines, torture, deception or hypnosis.

41. As indicated above (paragraph 16), interrogations are as a rule carried out by the criminal police, under the authority of the public prosecutor. It emerged from discussions with officers of these services that persons who were being questioned could, at any time, ask for the interrogation to be interrupted in order to eat, rest or discuss matters with their lawyer. Any break in the examination was noted in writing in the record. However, there were no specific rules on the maximum length of interrogations (according to police officers, prisoners could be questioned for up to twelve hours, on condition that they showed no signs of fatigue). They also stated that they were required, if requested by the person in custody, to inform him of their name and identity number.

42. In addition to the provisions of section 136a of the Code of Criminal Procedure and certain more or less explicit regional instructions, the CPT considers that it would be particularly useful for police officers to have a code of conduct for interrogations, setting out in detail the procedure to be followed on a number of specific points. The code should deal inter alia with the following: the systematic informing of the detainee of the identity (name and/or number) of those present at the interrogation; the permissible length of an interrogation; rest periods between interrogations and breaks during an interrogation; places in which interrogations may take place; whether the detainee may be required to remain standing while being questioned; the questioning of persons who are under the influence of drugs, alcohol, medicine, or who are in a post-traumatic state. It should also be required that a record be systematically kept of the time at which interrogations start and end, of the persons present during each interrogation and of any request made by the detainee during the interrogation.

The position of specially vulnerable persons (for example, the young, the mentally handicapped) should be the subject of specific safeguards.

It therefore recommends that such a code of conduct for interrogations be drawn up for German police forces.

43. The delegation noted that police interrogations were usually recorded manually, even though the electronic recording of interrogations was permitted under the current legal provisions (in particular the Code of Criminal Procedure).

The CPT considers that the electronic recording of interrogations represents a useful safeguard against ill-treatment (as well as having advantages for the police). **It therefore recommends that the German authorities examine the possibility of making such recording a standard practice. The system to be introduced should offer all appropriate guarantees (for example, use of two tapes, one of which would be sealed in the presence of the detainee and the other used as a working copy).**

f. custody registers

44. In general, the custody registers inspected by the delegation were correctly maintained and contained detailed information on a wide range of aspects of detention conditions. Nevertheless, it noted that no reference was made in the registers to certain topics, such as the times food was provided.

The delegation was surprised by the complexity of the custody register system used in GESA Directorate 5 in Berlin. It appeared that the system was based on the different teams of officers, with each team opening its own register. As a result, the relevant information on the detention of one individual might well be spread over several registers.

45. The CPT considers that the fundamental safeguards granted to persons in police custody would be reinforced (and the work of police officers quite possibly facilitated) if a single and comprehensive custody record were to exist for each person detained, on which would be recorded all aspects of his custody and action taken regarding them (when apprehended and reasons for that measure; when told of rights; signs of injury, mental illness, etc; unusual events during custody; when next of kin/consulate and lawyer contacted and when visited by them; visits by a doctor; when offered food; when interrogated; when taken before the competent magistrate, transferred or released, etc.). For certain matters (for example, items in the person's possession; the fact of being told of one's rights and of invoking or waiving them), the signature of the detainee should be obtained and, if necessary, the absence of a signature explained. Further, the detainee's lawyer should have access to such a custody record.

The CPT recommends that the German authorities examine the possibility of establishing such an individualised custody record.

B. Detention Centres for aliens

1. Introduction

46. The CPT delegation visited a detention centre for aliens in Berlin, the "Polizeigewahrsam Tiergarten". The occupants had been deprived of their liberty under the aliens' legislation and not for any criminal offences (cf. Appendix III, paragraphs 23 et seq.).

47. The establishment has an official capacity of 123 places (including 16 for women), made up of 15 dormitory-cells for eight occupants and three individual cells for special cases. At the time of the delegation's visit, 75 foreign nationals were being detained.

48. The period of detention varied from a week to several months. From its examination of the detention register, the delegation noted that one person had been detained there since 28 August 1991 (that is three months and two weeks), another since the end of September and a third since mid-October; sixty had been in detention since November 1991. Staff pointed out that the length of these periods of detention was partly explained by the decision to delay the expulsion of many foreign nationals until the situation in their countries of origin returned to normal (cf. Appendix III, paragraph 25).

2. Ill-treatment

49. The delegation heard no allegations of ill-treatment of persons detained in the Centre and found no other evidence of such treatment.

The delegation was impressed by the attitude of the police officers in charge of the Centre and by their efforts to look after the foreign nationals detained there.

50. However, the delegation was surprised to learn from the officers that they had received no special training for their duties in the Centre which, in contrast to the situation in GESA's, went well beyond the temporary custody of suspects.

In this connection, it should be emphasised that the supervisory staff of a detention centre for aliens have a particularly onerous task. Firstly, there will inevitably be communication problems due to linguistic barriers. Secondly, many aliens will find the fact that they have been detained, when they are not suspected of any criminal offence, difficult to accept. Thirdly, there is also a risk of a rise in tension between the different nationalities involved.

The CPT delegation noted that these three potential problem areas were all applicable to the Centre in Berlin.

51. The police officers assigned to supervisory duties in such centres must therefore be carefully selected and should possess well-developed qualities in the field of interpersonal communication. In addition, the supervisory staff should be familiarised with the different cultures of the detainees and at least some of the officers concerned should have appropriate language skills (for example, in Turkish, Russian or other central or eastern European languages).

The CPT recommends that these factors be taken into account when police officers are assigned to supervisory duties in detention centres for aliens (cf. also paragraph 58).

3. Conditions of detention

52. The material conditions of detention at the Centre were acceptable. The dormitory-cells were of a reasonable size for the anticipated number of occupants (45 sq m for 8 occupants) and suitably equipped. The lighting and ventilation were adequate.

The sanitary facilities - situated outside the cells - were of an acceptable standard and the delegation heard no complaints about the possibility of access to them.

53. The dormitories were left open during the day, thus enabling detainees to circulate freely throughout the premises. A television room was available for their use. Detainees were also provided with reading and other recreational material (cards).

54. Detainees were entitled, in practice, to at least one hour's outdoor exercise each day. The area set aside for this purpose was acceptable.

In this connection, the CPT noted that the relevant regulations only provided for a compulsory minimum of 30 minutes per day. In practice, one hour of exercise out of doors is widely recognised to constitute a fundamental guarantee for people deprived of their liberty. **The CPT recommends that the regulations be amended accordingly.**

55. Detainees were authorised to receive visits from their family or friends and to have contacts with religious and consular representatives. Moreover, during the day (7 am to 10 pm), they could contact, and receive visits from, a legal advisor, without restrictions or surveillance. The premises provided for this purpose were satisfactory.

It should also be noted that the Detention Centre had detailed internal regulations which were available to detainees and produced in several languages.

56. The conditions of detention at the Centre could be considered satisfactory in the case of detainees whose stay was relatively short (that is, up to a few weeks).

However, as already indicated above (paragraph 48), persons could remain in detention in the Centre for quite long periods, sometimes up to several months. For many people, to be subjected for such a length of time to such a limited regime of activities as that described above could undoubtedly constitute a stultifying experience.

The CPT recommends that the German authorities explore ways of making a more extensive range of activities available to the detainees, particularly those who remain in detention for long periods.

57. The Berlin Detention Centre was not equipped with kitchens and therefore had to have meals delivered to detainees. Police officers indicated that the meals were identical for all the detainees. They felt that this posed a considerable problem, in the light of the different religions represented. However, detainees were authorised to have food brought in, at their own expense.

The CPT notes that the Centre's regulations stipulate that account should be taken of religious dietary practices. They also provide for the provision of special diets, should this be necessary. **The CPT recommends that steps be taken to ensure that these provisions of the Centre's regulations are applied in practice.**

4. Medical issues

58. The issue of self-harm was identified as a particular problem confronting staff. This again highlights the need to exercise great care in selecting supervisory staff for such detention centres. The staff should have the necessary skills to identify early indications of such behaviour and, if necessary, provide the required support to those concerned.

With particular reference to the Berlin Detention Centre, **the CPT considers that the extent of the problems identified by the staff might justify the provision of support from a person qualified in psychiatry or psychology.**

C. Prisons

1. Introduction

59. The delegation visited four prisons in three Lander. In Bavaria, it visited Straubing prison, in Berlin, Moabit and Tegel prisons, and in Saxony, Waldheim prison.

60. Straubing Prison is an establishment for sentenced prisoners. The buildings were constructed in 1900 and have been recently renovated. The official capacity is for 825 prisoners, all men and normally serving sentences of five to eight years imprisonment. The prison also holds all the prisoners in Bavaria serving life sentences (which in practice may be in the order of 15 years). On the day of the visit, there were 815 prisoners, of whom 207 were foreigners (85 Turkish nationals, 40 Yugoslavs etc).

The majority of the prisoners are accommodated in two separate buildings (Haus I and Haus II), linked by a corridor. Haus III contains the Forensic Psychiatry Department of the Land of Bavaria, which is responsible for prisoners of the Land who require neuropsychiatric treatment or assessment.

61. Moabit and Tegel Prisons are both situated in the western part of the City of Berlin. Since unification, the prisons in the eastern section of the city have been closed and the prisoners reallocated to prisons in the western section.

Moabit Prison is essentially an establishment for those remanded in custody, though it also contains some convicted prisoners. Tegel prison is for prisoners serving sentences.

The two establishments date from the end of the nineteenth century and have subsequently been extended by the addition of more modern buildings.

Moabit Prison has an official capacity of 913. On the day of the visit, there were 1,110 prisoners (825 remanded in custody, 233 serving sentences and 25 detained for other reasons). Tegel Prison has an official capacity of 1,400 prisoners; on 4 December 1991, there were 1,074 inmates. In both establishments, there was a significant percentage of foreign nationals.

62. Waldheim Prison is situated in the countryside. Most of the prison buildings were constructed in the last century. It is notorious for having held numerous opponents of the former East German regime and having been the scene of summary executions. In the 1950s, up to 5 000 prisoners had been accommodated, while in the years preceding unification, there were generally between 1 200 and 1 400 inmates. At the time of unification, the majority of prisoners benefited from a pardon, were released following a reduction in sentence or were transferred to other prisons.

The prison's official capacity, once approximately 3 000 prisoners, has, in the light of major reconstruction work, been provisionally reduced to 127. On the day of the CPT's visit, 42 prisoners were being held, the majority convicted offenders.

201 prison officials were attached to the prison. The Director of the establishment, Mr Rückert, had been temporarily transferred from Bavaria.

2. Torture and other forms of physical ill-treatment

63. With two exceptions, the delegation heard no allegations - either from prisoners or from other sources - of torture or other forms of physical ill-treatment inflicted in the prisons visited.

64. The first exception concerned Straubing Prison, where the delegation heard a series of allegations by prisoners and from a variety of other sources of physical ill-treatment of prisoners in August 1990, associated with incidents in the establishment. It appears that 117 prisoners refused to return to their cells after exercise and climbed onto the prison roof. Some 400 police officers were called in to deal with the situation. The prisoners were allegedly shut up in the prison concert hall and beaten by the police, then placed in cells and once more beaten, this time by prison officers.

The CPT was informed that following these events, an official enquiry was launched and the Director of the establishment was transferred.

The CPT would like the German authorities to provide a detailed report on the above-mentioned incident and the results of the enquiry which was held.

65. The above mentioned allegations lead the CPT to raise a general issue. The intervention of outside security forces can often engender a high risk of ill-treatment of prisoners and therefore calls for special safeguards. More specifically, it would be desirable for any such interventions to take place in the presence of the civil and legal authorities responsible for public order. **The CPT would welcome the comments of the German authorities on this issue.**

66. The second exception involves Tegel Prison. The delegation heard allegations that prisoners had, in the recent past, been placed in a specially designed cell situated in one of the basements of the establishment and sprayed with cold water. The cell in question was subsequently discovered by the delegation.

The physical conditions of this cell, and of those adjacent to it, are a source of concern to the CPT. It will return to this issue in more detail later (paragraph 98 below).

With regard to the allegations of prisoners being sprayed with water, such a practice would clearly be quite unacceptable. **The CPT recommends that the German authorities establish whether prison officers at Tegel Prison commit on occasion abuses of this nature and, if necessary, take appropriate remedial action.**

67. In addition to the two situations referred to in paragraphs 64 and 66, it should be noted that certain prisoners in different establishments visited complained of isolation or segregation regimes to which they were subjected. This issue will be dealt with in detail in paragraphs 72 to 83 below.

68. On a day-to-day basis, prison officers and prisoners at Straubing, Moabit and Tegel appeared to maintain good relations. The CPT delegation noted the professional and humane manner in which most prison officers conducted their dealings with prisoners.

Nevertheless, some allegations of provocative behaviour by staff were heard. Further, the delegation found that at Straubing, the prison atmosphere was affected by the widespread disquiet among prisoners about the activities of the Forensic Psychiatry Department (cf. paragraph 135 below).

69. The delegation observed that there was very considerable tension in the relations between prison officers and prisoners at Waldheim.

The core of remaining prisoners - the majority of them serving long sentences - had the feeling of being rejected and forgotten by society. They described themselves - while refusing to be treated as such - as the dregs of society (a description, moreover, which was also heard from certain members of staff).

This feeling of rejection was reinforced by a widespread suspicion towards anyone who had belonged to, or worked for, the institutions of the former German Democratic Republic. The delegation had the impression that very little was needed for the situation to collapse into violence; indeed, it heard prisoners make verbal threats against staff.

Among the staff, a great lack of confidence was evident, accompanied by a feeling of uncertainty and confusion in their new prison environment.

The CPT recommends that the German authorities give particular attention to the relations between staff and prisoners in Waldheim Prison and in similar establishments in the new Lander. Above all, it is most important to strive to create an atmosphere of trust and mutual understanding.

70. As a general principle, the CPT attaches great importance to the training of prison staff, and to that of other law enforcement officials. There is arguably no better guarantee against the ill-treatment of a prisoner than a properly trained prison officer.

The CPT would add that aptitude for interpersonal communication should be a major factor in the recruitment of prison staff and that during training, special emphasis should be placed on developing interpersonal communication skills, based on respect for human dignity. Such skills will often enable a prison officer to defuse a situation which might otherwise degenerate into violence. More generally, they will help to reduce tensions and improve the quality of life in prisons, to the benefit of all concerned.

The CPT recommends that the German authorities take these considerations fully into account in the recruitment and training of prison staff in the new Lander.

71. Finally, the CPT would like to receive information on the number of complaints of ill-treatment by prison officers made in Germany during 1991 and 1992 and on the number of disciplinary and/or criminal proceedings initiated, with an indication of sanctions imposed.

3. Solitary confinement/segregation of prisoners

72. The CPT pays particular attention to prisoners who - for whatever reason (disruptive behaviour or "dangerousness", the needs of a criminal investigation, disciplinary reasons, at their own request) - are held under conditions resembling solitary confinement.

The principle of proportionality calls for a balance to be struck between the requirements of the situation and the imposition of a solitary confinement-type regime, which can have very harmful consequences for the person concerned. Solitary confinement can, in certain circumstances amount to inhuman and degrading treatment; in any event, all forms of solitary confinement should last for as short a time as possible.

73. In the prisons visited, the delegation met a certain number of prisoners undergoing non-voluntary solitary confinement, under sections 88 and 89 of the Act Concerning the Execution of Prison Sentences (hereinafter referred to as "the Act") (cf. Appendix III, paragraph 14): in the so-called "S" cells in Straubing, in the solitary confinement unit of Tegel prison, and a gypsy held in a cell in an ordinary unit in Waldheim.

The delegation also met a group of ten prisoners in Tegel detained separately from the other prisoners in a distinct unit, apparently on the basis of section 17, paragraph 3, of the same Act (cf. paragraph 102 below).

74. In Straubing Prison, the delegation noted, on consulting the relevant registers, that prisoners had sometimes been kept in non-voluntary solitary confinement for long periods. For example, at the time of the delegation's visit, a prisoner had been held in non-voluntary solitary confinement for 13 months. Moreover, it emerged from the registers that it was fairly common practice to keep prisoners in non-voluntary solitary confinement for periods of up to six months.

75. The cells set aside for solitary confinement (the "S" security cells) were correctly equipped. However, it appeared from discussions with prisoners and staff that the activities of the prisoners were confined to reading and writing in the cell, together with one hour of outdoor exercise each day. No work was available, even in the cell, and no collective, sporting or recreational activities were provided.

It is interesting to note that the isolation cells were so designed that, from within the cell, no human contact with other prisoners was possible. Once inside the cell with all the doors closed, prisoners could not hear any of the usual prison sounds. The cells were located at the intersection of the wings of a building and were reached through a door opening onto a corridor, which served as a form of antechamber and where the showers were also situated. Each corridor contained two cells. In principle, there were no guards in the corridors and the occupants of the cells had no opportunities for visual or other forms of sensory contact with other prisoners or prison officers. Thus, apart from intermittent dealings with staff and occasional visits from relatives or lawyers, these prisoners were effectively isolated from all forms of human contact.

76. In Tegel Prison, the delegation saw the solitary confinement cells in the TA III solitary confinement unit. From a material point of view, these resembled the establishment's standard cells. The prisoners normally remained in non-voluntary solitary confinement for relatively brief spells (sometimes a few days), although some were isolated for much longer periods. One of the prisoners whom the delegation met alleged that he had spent more than three years in non-voluntary solitary confinement.

The principal out-of-cell activity for such prisoners was one hour of outdoor exercise each day; the rest of the time was spent inside the cell. Social contacts were very limited: contact with staff during routine inspections and any visits from relatives or lawyers.

77. At Waldheim Prison, the delegation met a gypsy prisoner who spent the greater part of his time locked up in his cell, partly for his own protection and partly because he was considered a disruptive element. This prisoner was apparently persecuted and harassed by other prisoners. When the delegation met him, he had been in solitary confinement for three weeks and had reportedly only been taken out of his cell to collect his meals. Apparently, he was unable to take daily outdoor exercise and had no opportunities for other activities.

78. It is widely acknowledged that all forms of isolation without appropriate mental and physical stimulation are likely in the long term to have damaging effects, resulting in changes in social and mental faculties. The delegation's observations revealed that the regime applied to prisoners undergoing prolonged periods of non-voluntary solitary confinement in the establishments visited did not provide this necessary stimulation.

The CPT therefore recommends that the German authorities immediately adapt the solitary confinement arrangements in those establishments (as well as in any others where comparable conditions prevail), in order to provide the prisoners concerned with purposeful activities and guarantee them appropriate human contact.

79. The mental and physical state of all prisoners placed in solitary confinement must be the subject of special attention. The CPT has noted that in certain specific cases, the Act provides for supervision by a medical officer, for example when a prisoner is placed in a specially secured cell under section 88, paragraph 2, sub-paragraph 5 (section 92) or in cases of disciplinary detention under section 103 (section 107).

80. For its part, the CPT considers that whenever a prisoner, whatever the reason for his solitary confinement, asks for a medical doctor - or a prison officer asks for one on his behalf - the doctor should be called immediately to examine the prisoner. The results of the medical examination, including an assessment of the prisoner's mental and physical state and, if necessary, the likely consequences of continuing solitary confinement, should be set out in a written report, to be sent to the relevant authorities.

The CPT recommends that the German authorities take all necessary steps to ensure that the regulations and practice in this area are in accordance with the requirements set out in this paragraph.

81. As far as legal safeguards for prisoners placed in solitary confinement are concerned, recourse to such a regime should be limited to exceptional cases which are clearly defined. **In this connection, the CPT would like to receive clarification of:**

- **the relationship in practice between sections 88 (2) 3 and 89 of the Act;**
- **the notion of "Gründen, die in der Person des Gefangenen liegen" ("reasons inherent in the prisoner's person"), laid down as a criterion for solitary confinement in section 89 (1).²**

² Section 89 (1) reads as follows:

"(1) die unausgesetzte Absonderung eines Gefangenen (Einzelhaft) ist nur zulässig, wenn dies aus Gründen, die in der Person des Gefangenen liegen, unerlässlich ist."

82. It also goes without saying that solitary confinement should not last any longer than strictly necessary. This means that the decision to place someone in solitary confinement must be regularly reviewed. In addition, prisoners should, as far as possible, be fully informed of the reasons for their solitary confinement and, as the case may be, for its renewal. This will enable them, among other things, to make effective use of the remedies available for contesting the decision.

The Act, in its present form, does not contain clear and detailed provisions on the above matters.

83. The CPT therefore recommends that the German authorities take the necessary steps to ensure that:

- **any prisoner placed in solitary confinement or whose solitary confinement has been renewed is informed in writing of the reasons for the decision, unless compelling security requirements dictate otherwise;**
- **the prisoner be given an opportunity to present his views on the matter to the relevant authority before any final decision on placement in, or renewal of, solitary confinement is taken;**
- **placement in solitary confinement for an extended period should be subject to a full review at least every three months, if necessary based on a medical-social report;**

The CPT would also like to receive the following information from the German authorities:

- **a full explanation of the manner in which the provisions of section 89 (2) of the Act are applied in practice;**
- **up-to-date statistics on solitary confinement placements exceeding one year, together with the legal basis for each decision (section 89, the needs of a criminal investigation, etc.).**

4. Conditions of detention in general

a. Bavaria: Straubing Prison

i. material conditions of detention

84. Straubing Prison had benefited from a major programme of modifications and improvements which was completed in 1988. As a result, the material conditions of detention were very good.

85. The majority of prisoners had individual cells of a reasonable size (approximately 8 m²). In addition, there were some 50 cells, also of reasonable dimensions, with several occupants. The cells were all well equipped and had proper lighting and ventilation. Each had a tiled sanitary annex.

86. More generally, the delegation was favourably impressed with the state of cleanliness of the prison premises.

ii. prison regime

87. The activities programmes for ordinary prisoners (those not subject to any form of solitary confinement) were of an excellent standard. In particular, the number and variety of **work opportunities** was very impressive. They ranged from simple manual work to work which required advanced technical qualifications (printing, bookbinding and carpentry workshops; manufacture of skis, tennis rackets, parts for cars etc). The establishment offered 670 jobs, 650 of which were filled at the time of the visit. Employment was provided both by the prison administration department and by private companies. The work often had considerable vocational value. In addition, there were many **apprenticeship** opportunities, leading to qualifications recognised outside.

In total, approximately 100 different **vocational training** courses were offered and were followed by about 200 prisoners. **Education**, including higher education, also occupied an important place in the activities programmes. Moreover, the prison library contained some 20 000 works in several languages.

Facilities for **sporting activities** were also of an excellent standard.

88. Overall, Straubing Prison provided a regime of a high standard, capable of achieving, in practical terms, the objective of social rehabilitation set by the Act.

89. Nevertheless, the delegation observed that a certain number of prisoners were deprived of work "through their own fault" ("durch eigenes Verschulden").

The CPT has received allegations that this description is applied, among others, to prisoners who refuse to work for private firms. In this connection, it notes that, according to section 41, paragraph 3, of the Act, the employment of a prisoner in an enterprise run by a private contractor is subject to his formal consent; however, this provision is apparently still not in force.

The CPT would welcome the German authorities' comments on the above-mentioned allegations.

iii. food

90. As stated in the Explanatory Memorandum to the European Prison Rules, food is inevitably a focus of special interest to people who are bound to the monotony of institutional regimes by virtue of imprisonment. It follows that even good food can, if it is poorly presented or badly served, be a source of serious discontent within a prison.

In this connection, the CPT wishes to draw to the German authorities' attention that several complaints were made to the delegation by inmates at Straubing Prison about the preparation and presentation of their food and about provocative behaviour by certain prison officers when serving it.

b. Berlin: Moabit and Tegel Prisons

i. material conditions of detention

91. In **Moabit Prison**, the majority of prisoners had individual cells of a reasonable size (approximately 8 sq m). A very few cells, again of appropriate dimensions, were designed for several occupants.

The cells were equipped with sanitary facilities (toilet and washbasin) and had adequate lighting and ventilation.

The cells were very clean; however, this could not conceal the inherent dilapidation of the whole complex, including the cell blocks. The delegation was informed that no modernisation programme was scheduled.

The CPT invites the German authorities to initiate a modernisation programme for the cell units, including, inter alia, the partitioning off of the sanitary facilities in the cells.

92. Because of the establishment's overcrowding (cf. paragraph 61), a certain number of prisoners were accommodated two to an individual cell. **The CPT wishes to stress that the size of these cells (not to mention the absence of partitioning for the sanitary facilities) renders them hardly suitable for such an occupancy level.**

93. The delegation visited a group of nine cells situated in the basement of unit TA II. These cells, each of about 7 sq m, had double doors and were equipped only with a wooden bed. The unit had a communal toilet located next to the cells. At the time of the CPT's visit, these cells were not in service and the staff could not recall when they were last used.

This group of cells had probably served in the past as a disciplinary or solitary confinement unit.

94. In their current state, these cells did not appear to the delegation to be suitable for detaining anyone. **The CPT recommends that, in the absence of substantial physical upgrading, these cells should remain out of service. Any improvements should set out to provide the cells with adequate lighting and ventilation and physical facilities adapted to their intended use, and should ensure that prisoners would have access to toilets whenever they required.**

95. Finally, the question of the former - and notorious - high security unit must also be raised. At the time of the visit, it was being used as a storage facility. The unit was divided into several entirely separate sections comprising respectively 2, 4 or 6 cells, each of a satisfactory size (approximately 13 sq m) and equipped with a washbasin and toilet. Each section had its own shower unit. The delegation noted that the unit was still in a good state of repair and that some of the closed circuit TV surveillance equipment remained in place.

The CPT wishes to stress that the bringing back into service of these facilities, for whatever purpose, should be subject to the removal of certain undesirable physical features associated with the unit's former high security function and the establishment of a positive and stimulating prison regime.

The CPT would also like to be informed of any decision to bring these facilities back into service.

96. In **Tegel Prison**, the prisoners had individual cells. With one exception (i.e. the cells reserved for "dealers" - see paragraph 103), they were adequate in size, ranging from 8 to as much as 10 sq m. The cells were equipped with sanitary facilities (toilet and washbasin). In the new buildings dating from the 1960s, the sanitary units were partitioned off. The ventilation and lighting were adequate and the state of cleanliness of the cells satisfactory.

97. In brief, the material conditions were satisfactory, and even very good in the modern and renovated parts of the prison. With regard to this, the delegation was told that it had not been possible to continue the modernisation work on the nineteenth century buildings.

The CPT invites the German authorities to continue the interrupted modernisation works.

98. In the basement of B wing of building TA III, the delegation found a group of four cells (see also paragraph 66), close to a very noisy ventilation system. One of the cells was of an oval design (approximately 10 sq m) and had a very high ceiling. The other three cells were long and narrow. All of the cells were equipped with glass panels situated high up to permit surveillance from an observation gallery, along which ran the water piping system, with valves and stopcocks at regular intervals. Alongside these panels, there were small square openings in the cell roofs.

According to the relevant register, the oval cell was last used, prior to the delegation's visit, on 12 July 1991. A prisoner was placed there from 9.30 am on that day until 3.00 pm on 13 July. The Director explained to the delegation that the cell had in fact been used in exceptional circumstances for violent prisoners. As regards the three narrow cells, at the time of the visit they were being used for storage and the delegation received no indications that they had been used recently for detention purposes.

In view of their location and design, the delegation considered that this group of cells should not be used for detention purposes. In this connection, it should be pointed out that Tegel prison has other cells which are quite suitable for the detention of violent prisoners.

The CPT recommends that the German authorities formally take out of service these cells as places of detention.

ii. prison regime

99. In **Moabit Prison**, a certain number of **workshops** were in operation (for example, for bookbinding, painting, metalwork, shoe repairs and work for outside firms), to which should be added domestic activities, such as gardening, building maintenance, cleaning, cooking, etc.

In total, the establishment had about 450 jobs available³, that is for about 50% of the prison's population. Convicted prisoners were given priority in the allocation of available jobs.

A number of **educational and training** opportunities were available (language courses, literacy classes, general secondary education, painting etc). However, staff reported that the demand for education and training substantially exceeded the supply. According to the teaching staff whom the delegation met, only about 350 prisoners (ie one third) took part in educational and training activities. It emerged clearly from these discussions that material constraints - shortage of premises, personnel and finance - restricted considerably the scope for extending these activities.

Moreover, opportunities for **sport** left a great deal to be desired. It should be noted, for example, that the prison had no gymnasium. This was widely deplored by both staff and prisoners.

³ Figure provided by the prison administration in its monthly report on the state of activities (October 1991)

100. The organisation of an activities programme in an establishment like Moabit, with its large and rapid turnover of prisoners, is not an easy task. Nevertheless, the delegation observed that too many unconvicted prisoners were left in their cells in enforced idleness for long periods. This is an issue which requires special attention.

The CPT recommends that the German authorities explore ways of improving the activities programmes in Moabit Prison. The programmes to be implemented should aim at ensuring that prisoners have the opportunity to spend a reasonable part of the day (eight hours or more) outside their cells, engaged in purposeful activities of a varied nature (group association activities, education, sport, work with vocational value).

Prisoners serving sentences should benefit from programmes adapted to the objectives of penal treatment.

101. In **Tegel Prison**, the activities provided for prisoners subject to the ordinary regime can be described as very good. A significant feature of this establishment was the stress it placed on offering prisoners stimulating work and/or vocational training adapted to their particular needs.

The prison was able to offer every prisoner work and/or vocational training. The range of available activities (carpentry, printing, metalwork, glasswork, turning, electrical work, masonry, apprenticeship opportunities) was impressive. The educational (secondary and higher) and sporting activities on offer were also of a high standard. Unlike Moabit, Tegel had a reasonably good gymnasium.

102. However, attention should be drawn to the situation of the prisoners (ten at the time of the visit) accommodated on the top floor of Block 01 of TA I, commonly referred to as the "Dealer Unit". These prisoners were detained separately from the rest of the prison's population, apparently under section 17, paragraph 3, of the Act, because they were thought to have been involved in drug trafficking in the establishment.

103. The prisoners were allowed one hour of outdoor exercise each day in winter (two in summer) and four hours (6.00 to 10.00 pm) out of their cells for communal activities. Two television rooms were at their disposal.

They were not offered any work, other than cleaning their unit. Nor was any educational provision made for them and they were only allowed a limited number of books (three per month). Allegations were also made that they were unable to take part in religious activities.

Finally, it should be noted that, although properly equipped, the cells in this unit were small (about 5.5 sq m).

104. The occupants of this unit were subjected to a very poor prison regime as compared with the conditions in the remainder of the prison, It should be added that it was not unusual for prisoners to be held for several months in the unit.

The CPT fully understands the need to exercise appropriate control over prisoners suspected of drug dealing. Nevertheless, the conditions of detention in the Dealer Unit were not satisfactory. In this connection, it should be stressed that the segregation of small numbers of prisoners over long periods can have harmful effects on their psychological well-being. The conditions of detention should therefore be designed to counter that risk. The atmosphere should be as relaxed as possible and each prisoner should be offered stimulating activities. It is precisely with regard to this latter aspect that the Dealer Unit leaves much room for improvement.

105. The CPT therefore recommends that the German authorities take immediate steps to improve the prison regime for prisoners detained in Block 01 of TA I in Tegel, by introducing a programme of work and educational activities capable of providing them with intellectual and social stimulation. It would also be highly desirable for these prisoners to be kept in cells of the standard size for the establishment.

106. More generally, and on the same lines as its proposals regarding solitary confinement (cf. paragraph 83), **the CPT recommends to the German authorities that:**

- **any prisoner detained separately under section 17, paragraph 3 (1) and (3), of the Act be informed in writing of the reasons for the decision, unless compelling security requirements dictate otherwise;**
- **the prisoner be given an opportunity to present his views on the matter to the relevant authority before any final decision on separate detention is taken;**
- **the application of separate detention should be subject to a full review at least every three months.**

c. Saxony: Waldheim Prison

i. *material conditions*

107. At the time of the visit, only two detention units were in service: a four-storey cell block - TA I, known as the "Bremen" - with 28 prisoners, and a three-storey block - TA IV, known as the "Spezial" - with 14 prisoners.

108. It is difficult to comment on material conditions in Waldheim Prison since the whole of it was undergoing reconstruction. The conditions were undoubtedly of a significantly lower standard than those seen in the other Lander. Nevertheless, given the state of total transition in which the establishment found itself, these conditions could be deemed acceptable. Each prisoner had an individual cell of reasonable size (about 10 to 12 sq m). The cells had the necessary basic equipment (bed, table and chair, cupboard, washbasin). The lighting and ventilation were adequate. The cells in TA IV were also equipped with a toilet.

The delegation also saw the detention and special security cells which, according to the Director, had not been used since unification because they did not conform to minimum standards - a statement which was confirmed by the prisoners whom the delegation met.

109. With regard to the future, the CPT hopes that in carrying out the work of renovating the prison, the authorities will take full account, inter alia, of the relevant provisions of the European Prison Rules, in particular those in paragraphs 14 to 18.

ii. *prison regime*

110. At the time of the CPT's visit, Waldheim had few of the characteristics of a prison. This was particularly striking in the case of the activities programme, which was at the same time very flexible and very poorly provided for. The 42 prisoners spent most of their time outside their cells (which were open from 5.30 in the morning to 7.15 in the evening, with the possibility of an extension to 10.00 pm) on work connected with renovating the prison or on maintenance, domestic, printing, etc. activities. Steps were being taken to modernise the workshops and extend the range of activities. There were no opportunities for education, sport or recreation, apart from a few badminton and volleyball matches. Here again, projects to improve the infrastructure were underway.

111. Clearly, the major difficulties involved in improving the activities programmes in such an intensive period of restructuring cannot be ignored. Nevertheless, it appeared to the delegation that more could be done to stimulate prisoners to make better use of their free time. Moreover, given the limited numbers concerned, it should not be too difficult to introduce at least a modest educational activities programme.

The CPT recommends that the German authorities explore ways of improving the range of activities offered to prisoners currently detained in Waldheim.

112. Looking further ahead, it is clear that the establishment of a comprehensive programme of activities is very clearly linked to the question of the future role of the prison. In this connection, the information received by the delegation on the spot was very limited in scope.

The CPT would like to receive information on current plans relating to the future role of Waldheim, including on the capacity and the prison programmes envisaged.

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113. Finally, the CPT noted that under the terms of section 144, paragraph 2, of the Act, the Federal Minister of Justice is authorised to produce regulations on a certain number of material aspects of conditions of detention: volume of air, ventilation, floor space, size of windows, heating and equipment of the cells.

The CPT would be grateful for copies of any such regulations.

5. Medical services in the establishments visited

a. introduction

114. The principal features of prison medical services are described in the seventh title of the Act (sections 56 et seq.), the provisions of which also apply to prisoners detained on remand (sections 56 and 57 of the Order regarding detention on remand). The provisions of the seventh title provide a firm basis for ensuring that prisoners receive the care which their state of health requires. In this regard, section 61 might be cited: "As to the type of health examinations and preventive medical services as well as the extent of these benefits and of the benefits regarding therapeutic treatment, including the supply of aids, the relevant provisions of the Code of Social Law and the regulations made in pursuance thereof shall apply." During the visit, several of the people spoken to underlined that in Germany, the general principle was that prisoners were entitled to the same level of medical care as those living in the community at large.

The importance placed on preventive services (section 57 of the Act) should also be noted.

b. medical care in general

i. *Bavaria/Berlin*

115. The CPT delegation observed that the general medical facilities in Straubing, Moabit and Tegel Prisons were entirely satisfactory.

116. The medical/paramedical teams in each establishment were adequately staffed and there were proper arrangements for access to specialist medical care.

The Berlin prisons had a centralised medical service. This comprised a team of some 30 full-time doctors and over 200 nurses/nursing assistants, also full-time, for a prison population of approximately 4,700.

In Straubing, there were five full-time doctors, seven nurses/nursing assistants and nine prison officers with qualifications in the field of psychiatric nursing care.

The medical equipment and premises in the three prisons visited ranged from adequate to very good, even if some of the accommodation in Moabit was rather antiquated.

117. In conversations with prisoners, the delegation heard few complaints about the quality of non-psychiatric medical care (cf. however, paragraphs 147 et seq. below). Of those that were made, most appeared to be rather minor.

However, some allegations were heard in Tegel Prison that it could take a considerable time for a doctor to arrive in cases of emergency.

ii. Saxony

118. At the time of the CPT delegation's visit to Waldheim Prison, the medical service was provided by one full-time doctor, who was both a general practitioner and a neuropsychiatrist. The doctor was not present on the day of the visit (a Sunday) and the delegation met the two staff employed as nurses for the establishment, one of whom had been in post for 25 years and the other for 17.

119. It is very difficult to offer an assessment of the medical facilities and staff, since - like the rest of the prison - the medical service was in a state of transition. Nevertheless, certain points can be made about existing features and future developments.

120. As far as facilities and equipment are concerned, the delegation saw two large rooms, each containing nine beds, which were meant to serve as a hospital. They were not of an acceptable standard; in particular, they included - without any separation - washbasins, toilets and cooking facilities. The delegation was informed that these two rooms were rarely used, which is not surprising in view of the limited number of prisoners being held in the establishment.

The delegation also noted that some of the medical supplies (bandages, sterile instruments, syringes etc) and medicines had passed their expiry date (certain of the latter had a 1987 expiry date).

121. The delegation was informed that new medical facilities were planned, with construction due to start in 1992. It was apparently intended to build a 20-bed infirmary.

As far as the immediate future is concerned, the CPT invites the German authorities to ensure that all medical supplies and medicines in the establishment are within their expiry date.

122. The CPT also wishes to stress that in developing the medical services, full account should be taken of the prison's geographical isolation and its distance from the nearest prison hospital (for example, a rapid and guaranteed access to appropriate means of transport for transferring patients to the relevant medical or hospital facilities should be guaranteed).

123. The situation regarding the medical and paramedical staff at the time of the delegation's visit may be considered acceptable, given the very small number of prisoners being held. However, the delegation was not sure that someone with the necessary experience to provide immediate care was always present at weekends. **The CPT recommends that someone qualified to provide first aid should always be present in the establishment, preferably a person with a recognised nursing qualification.**

c. psychiatric units

i. *Forensic Psychiatry Department in Straubing Prison (Haus III)*

124. As already indicated (paragraph 60 above), this Department is responsible for prisoners in the Land - whether remanded in custody or convicted - who require neuropsychiatric assessment or treatment. In particular, the Department receives prisoners suffering from acute psychoses and requiring emergency treatment. The prisoners are referred to the Department either at their own request or by the health services and administrative authorities of Bavarian prisons (including Straubing itself). Depending on the circumstances, patients are either hospitalised in the Department or treated on an outpatient basis. According to the head psychiatrist, an average of 380 inpatients and 600 outpatients are treated each year.

125. The Department contained some 40 beds, divided into shared rooms and individual cells. Four individual special security cells were equipped with a closed-circuit TV monitoring system and means of physical restraint. Four other individual cells were reserved for patients who had just been admitted.

126. The Department was situated in a house within the prison perimeter but nevertheless quite separate from the rest of the establishment. It was an old building in an excellent state of preservation. The building's internal fittings were modern. The premises were agreeably decorated and furnished. The rooms for several occupants and the ordinary individual cells were properly equipped (bed, bedside table, shelves, washbasin and toilet) and of a reasonable size. **Nevertheless, it is regrettable that some of the rooms with several occupants had no cupboards, with the result that patients' clothes were left lying on the floor.**

Given their purpose, the high security cells can also be considered as satisfactory from a physical standpoint.

127. Although the physical conditions under which patients were accommodated were not a cause of concern, the same cannot be said of their treatment, several aspects of which gave rise to very serious reservations.

128. Firstly, the delegation's observations on the spot showed that the Department's therapeutic activities consisted essentially of the prescription of drugs. At the time of the visit, little or no occupational therapy, psychological support, psychotherapy, group activity or other forms of social therapy were provided. Further, the amount of outdoor exercise was far below that which is desirable in a unit of this kind.

In this regard, the CPT has noted that in 1990, a Committee of Enquiry of the Bavarian Parliament recommended the establishment of a therapeutic climate in the Department and that, very recently, steps were taken to install a workshop.

For its part, the CPT recommends:

- **that steps be taken immediately to develop a programme of therapeutic activities in the Department, bringing into play the full range of psychiatric treatments;**
- **that the amount of daily outdoor exercise offered to patients be substantially increased.**

129. The second major reservation relates to the attitude of the head psychiatrist to depressive illnesses. In the course of a meeting with the delegation, he very much minimised the importance of depression in prison. As a result, he rarely prescribed antidepressants. He expressed the view in this regard that malingerers were very common in penal environments.

The CPT cannot support the views of the head psychiatrist. Depressive illnesses are unfortunately a common feature of prisons (cf. also paragraph 137 below). Any failure to diagnose or treat such a condition can have dramatic consequences, and in particular can increase the risk of suicide. It appeared to the delegation that many of the prisoners they met could have benefited from treatment for depressive illness.

The CPT recommends that appropriate steps be taken to ensure that more attention is given to depressive illnesses in Straubing Prison.

130. A third reservation relates to the recording of treatments administered to patients, in particular those carried out without their consent in accordance with section 101 of the Act. In this regard, the CPT has noted the conclusions of the psychiatric expert of the Parliamentary Committee of Enquiry in 1990, according to which, with the exception of treatments with the drug Leponex, it had not been possible to establish from the medical records of the seven patients considered whether the neuroleptics administered had been given with their consent, or without their consent in compliance with the above-mentioned provision.

It emerged from discussions with the head psychiatrist that he did not consider it appropriate, or even possible, to seek patients' consent on a systematic basis.

131. The CPT attaches great importance to the ethical requirement of the "free and informed" consent of every patient to his treatment. Any derogation from this fundamental principle should be based upon clearly and strictly defined exceptional circumstances. In order to ensure complete openness in this regard, all relevant information must be carefully recorded.

The CPT recommends that all treatment administered to patients be immediately recorded in their medical records, accompanied by an indication of whether or not the treatment is voluntary and any relevant declarations by the patients. In cases where treatment is administered without patients' consent, the reasons for so doing must be stated.

132. In this regard, the CPT has taken note of information recently provided to it by the German authorities concerning the most recent visit to Straubing Prison by one of the members of the Standing Advisory Council for the Forensic Psychiatric Department in Straubing Prison set up by the Bavarian Ministry of Justice in 1990. The member had concluded that as far as could be seen, the recommendations which he made at the time of the parliamentary enquiry (cf. paragraph 130 above) relating to the recording of information had been implemented.

The CPT would welcome any other comments on this subject which the German authorities consider appropriate.

133. In addition, it would be desirable, in the case of the treatment of a patient without his consent, to provide appropriate guarantees, in the interests of both patients and medical staff. Such a system could consist, for example, of an on-site, independent second medical opinion or of the transfer of the patient to a closed section of a psychiatric hospital outside the prison system.

134. In addition, in the light of certain allegations which it heard at Straubing prison, **the CPT wishes to emphasise that consent to treatment can only be considered to be free and informed if it is given in the absence of threats or unreasonable pressure.**

135. More generally, the delegation was struck by the sinister reputation which surrounded the department, in the eyes of both Straubing prisoners and a number of interested bodies outside. In particular, many prisoners spoken to expressed a general fear of being sent to the department. It was seen as a threat rather than a therapeutically interesting alternative.

Such a reputation could normally be expected to be a source of concern. Yet the delegation was surprised by the fact that, far from being concerned by this reputation, the head psychiatrist welcomed it, arguing that it facilitated his task.

For its part, the CPT considers it most inappropriate for a medical unit to arouse such feelings of fear and quite unacceptable that they should be fostered. Such a situation is likely to discourage many persons who need care from calling on the unit's services.

136. Finally, it must be stressed that the department has a very difficult task, since it is responsible for prisoners some of whom suffer from severe mental disorders. In units dealing with such cases, it is important that the staff receive all necessary assistance in their work. Stimulation and support from outside are most desirable to ensure that the department does not become cut off from the world at large. In this regard, it emerged from discussions with the head psychiatrist that he saw no need for such external stimulation and support; what is more, he did not in any event see who could provide it. The CPT considers his position on this point to be indefensible.

The CPT recommends that steps be taken to ensure greater participation by outside individuals and bodies in the life of Straubing Prison's Forensic Psychiatric Department. To this end, it would stress in particular the desirability of close and ongoing co-operation between the staff of the department and the Standing Advisory Council referred to above (cf. paragraph 132).

ii. Psycho-Neurological Unit in Tegel Prison

137. The Psycho-Neurological Unit was located in a separate building from the rest of the prison and was opened in 1967. It cares for patients from all the Berlin prisons who require neuropsychiatric assessment or treatment. According to the psychiatrist in charge of the unit, patients were most frequently admitted for severe depressive conditions (cp. paragraph 129). It originally had a capacity for 60 patients but this was reduced to 46 in order to avoid individual rooms being used to accommodate several patients. Approximately 130 to 160 patients were treated annually. The length of stay varied considerably: some prisoners remained in the unit until the end of their trial, after which they were transferred to an ordinary psychiatric institution or a prison; others might serve the whole of their sentence in the unit.

The unit possessed both individual rooms and small dormitories. The material conditions of accommodation were on the whole acceptable.

138. As regards everyday life within the unit, some patients spent a large part of the day locked in their rooms/dormitories, in particular those accommodated in the ground floor section. They were allowed to leave their rooms and move about the section only as from 5.30 p.m. Patients in the first floor section enjoyed a more flexible regime; they could circulate around the section during most of the day and in the evenings. Patients in the unit were entitled to at least one hour of outdoor exercise per day, which might be extended to up to three hours in the Summer.

Some forms of organised activities were offered to patients: group therapy, artistic and occupational therapy activities. However, the delegation noted that they were of a very modest level. A few patients were authorised to leave the unit to work in the prison workshops.

To sum up, many of the patients spent most of their time locked up in their rooms or at best confined to their sections, in a state of enforced idleness.

The CPT recommends that steps be taken to develop therapeutic activities in the unit.

139. In addition to the problem of an inadequate level of therapeutic activities, the delegation noted that in certain dormitories, some highly disruptive patients were seriously compromising the quality of life of other patients. **Existing arrangements concerning the location of patients might usefully be reviewed.**

140. Any form of treatment without the patient's consent must be the subject of appropriate safeguards. The psychiatrist in charge of the unit explained that, in principle, treatment was not administered to patients without their consent. If a patient was unable to give his free and informed consent, treatment was only given if there was a serious danger to his life or health (cf. section 101 of the Act). However, in the latter case, there was no obligation to register relevant information or to call on a second opinion.

In this regard, the CPT would recall the recommendation and comment made respectively in paragraphs 131 and 133 above.

- d. solitary confinement and the use of instruments of physical restraint for medical reasons

141. In the basement of Moabit hospital, the delegation visited cells used for solitary confinement. The cells were used in particular for prisoners with suicidal tendencies. It appeared to the delegation that the location and physical environment of these cells were hardly conducive to improving the psychological state of a desperate person.

Moreover, the delegation was not sure that persons placed in these cells could benefit from all the necessary support.

The CPT recommends that the German authorities review the existing arrangements for prisoners at Moabit with suicidal tendencies. They should be placed in a salutary environment, benefit from counselling, support and appropriate association, and should, for as long as is necessary, be kept under a special observation scheme.

142. In the Tegel Psycho-Neurological Unit, the delegation saw the solitary confinement section, whose physical conditions were acceptable. It provided temporary accommodation for patients whose behaviour could pose a threat to their safety, or to that of other patients. From information recorded, it emerged that the solitary confinement section had been used 64 times in 1991 (less frequently than in 1989 and 1990). However, it was not possible to establish from the records, the precise number of patients involved and the length of the solitary confinement. Similarly, it was impossible to determine how often use was made of instruments of physical restraint. Nevertheless, it appeared from discussions with the medical staff that recourse to such instruments was not unusual.

The CPT wishes to stress that a severely mentally disturbed and violent patient should be treated through close supervision and support, combined, if necessary, with sedation. Resort to instruments of physical restraint shall only very rarely be justified.

143. It goes without saying that the scrupulous recording of any use of solitary confinement or of instruments of physical restraint is a fundamental safeguard against possible abuse and, more generally, represents an essential tool of good management. **The CPT therefore recommends that the German authorities take appropriate steps to ensure that any placement in a solitary confinement cell and any use of instruments of physical restraint, whether or not this is in a medical context, is duly recorded, with a reference to the grounds and the length of time involved.**

e. HIV-related issues

144. In the two old Lander visited (Bavaria and Berlin), different screening policies were followed. In the Land of Berlin, all new arrivals were offered an HIV test on a voluntary basis. In Bavaria, by contrast, the test was compulsory on admission. In Saxony, no policy on screening tests had yet been drawn up at the time of the visit.

Existing advisory arrangements at Tegel Prison did not appear to be effective. It is essential that those concerned should receive appropriate counselling both before and, if necessary, after any screening test.

145. **There is no medical justification for the isolation or segregation of an HIV positive prisoner who is not ill.** The delegation noted that in Moabit and Tegel Prisons, HIV+ prisoners who were well were detained under normal conditions. Further, no evidence of segregation was found in Straubing Prison.

Nevertheless, the delegation did hear allegations that for a prisoner in Germany, the fact of being HIV positive could lead to different types of isolation and discrimination, for example solitary confinement, the prohibition of certain forms of work, etc. **It would welcome the German authorities' comments on these allegations. More generally, it would like to receive any directives or guidelines drawn up by the federal or Lander authorities on the approach to be adopted towards HIV+ prisoners and those who have developed AIDS.**

146. **The CPT also wishes to stress the importance of a continuing programme of information for prisoners in general and prison staff on the subject of AIDS (risks of transmission and means of protection).** It should be noted that the information on this subject which was distributed in Waldheim Prison at the time of the CPT delegation's visit was particularly poor.

The CPT would also like to receive information on the policies in the different Lander on the provision of condoms to prisoners.

f. drug-related issues

147. The delegation was particularly struck by the extent of the drug problem in the Berlin prisons, particularly Tegel. Confirmation of the size of the problem came from a wide range of people, including representatives of the authorities. The delegation heard allegations from various sources about recent deaths from overdoses, above all at Tegel. **With regard to this, the CPT wishes to draw the German authorities' attention to the numerous allegations received suggesting that prison officers are involved in the drug trafficking which apparently takes place in Tegel Prison.**

148. The delegation noted that the opportunities to benefit from detoxification programmes were extremely limited: Moabit Prison hospital offered a substitution programme to a few prisoners, shortly before their release. Apparently, nothing similar was provided for prisoners serving long sentences.

In brief, the approach to the drug problem was based principally on enforcement, being designed to avoid the establishment and extension of drug networks in prisons (cf, in particular, paragraphs 102 et seq. above). It would be helpful if this approach could be supplemented by appropriate treatment programmes.

149. The CPT recommends that the German authorities substantially reinforce existing treatment programmes in the Berlin prisons for drug-addicted prisoners, whatever their status (detained on remand, serving a sentence, etc).

g. status and training of prison health care staff

150. The health care staff in any prison is potentially a staff at risk. Their duty to care for their patients (sick prisoners) may often enter into conflict with prison management and security considerations. This can give rise to difficult ethical questions and choices.

In order to guarantee their complete independence in health care matters, the CPT considers it important that such personnel should be aligned as closely as possible with the mainstream of health care provision in the community as a whole.

151. The CPT notes that both doctors and nurses are employed by the regional Ministries of Justice, on either a permanent or a contractual basis. Nevertheless, several doctors assured the delegation that the entire body of care staff enjoyed total clinical independence.

The CPT would like to receive details of the existing guarantees of such independence.

152. The CPT also considers it very important that the quality and effectiveness of medical work should be assessed and the available resources controlled by a qualified medical authority and not by the bodies responsible for finance or security.

It would like to know whether this is the case in Germany.

153. The CPT would add that its delegation noted with interest that the work and training of doctors while in a prison medical service is fully recognised for the purposes of career development in the outside health service.

154. As regards paramedical staff, the CPT has noted that under section 158 of the Act, sick prisoners shall be nursed by persons who are in possession of a licence under the Nursing Act (Krankenpflegegesetz), which involves a three-year training. However, the same provision also stipulates that when such qualified people are not available, prison staff who have been given some training in health care may also be employed.

The CPT would like to know the approximate ratio of the first and second categories of staff employed in nursing care and to receive more information on the precise content of the training which prison staff are required to have in this area.

6. Other issues related to the CPT's mandate

a. discipline

155. The basic features of the disciplinary system are described in Appendix III (paragraphs 15 to 17) of the report.

156. Several types of disciplinary sanction are available, which may be applied concurrently. They include disciplinary detention for a period not exceeding four weeks. This sanction may only be imposed in cases of serious or repeated offences on the part of the prisoner. According to the delegation's observations, disciplinary detention was used with circumspection in the establishments visited.

157. The material conditions of the disciplinary cells visited can generally be described as acceptable (in the case of Waldheim, see paragraph 108 above). The cells were equipped with a bed and a mattress, the latter apparently being left with prisoners during the day, as well as a table and chair. The majority of the cells were equipped with a toilet. The lighting and ventilation were adequate, with the exception of the disciplinary cells in wing A/0 of Haus II in Straubing where, despite the ventilation, the atmosphere was oppressively stuffy. **The functioning of the ventilation system in these disciplinary cells should be checked.**

158. The CPT has noted that according to section 107, paragraph 1, of the Act, prisoners subject to disciplinary detention are kept under medical supervision. **In this connection, it refers to the recommendation in paragraph 80 above, which also applies to prisoners in disciplinary detention.**

159. Under section 103 (paragraph 1, sub-paragraph 6) of the Act, and section 68 (7) of the Order Regarding Detention on Remand, the right to daily outdoor exercise may be forfeited for a week as a form of disciplinary sanction. The CPT considers that such a rule is unacceptable. The requirement of daily outdoor exercise is widely recognised as constituting a basic safeguard for all prisoners.

The CPT recommends that the legal provisions authorising the forfeiture of outdoor exercise as a disciplinary sanction be repealed.

It would also like more information on the situations to which section 88, paragraph 2 (4) ("der Entzug oder die Beschränkung des Aufenthalts im Freien") of the Act, and section 63, paragraph 1 (6) ("Beschränkung oder zeitweiliger Entzug des täglichen Aufenthalts im Freien") of the Order Regarding Detention on Remand, might apply.

160. Further, the CPT does not consider it desirable for prisoners in disciplinary detention to be deprived of all forms of activity - including reading - in their cells. **It would welcome information on current practice in this area.**

161. Finally, prisoners should be entitled to challenge disciplinary measures imposed on them before an appropriate authority. The CPT has noted that a prisoner may contest such a sanction before a court (cf. sections 109 et seq. of the Act). However, it emerges from section 121 (paragraph 2) that when the applicant is unsuccessful, he must pay the cost of the proceedings and any necessary expenses. Although bearing in mind section 120, paragraph 2, of the Act (application mutatis mutandis of the provisions of the Code of Civil Procedure concerning legal aid), the CPT wonders whether, for many prisoners at least, section 121, paragraph 2, may not have an excessively dissuasive effect with regard to their use of the above-mentioned judicial remedy. **It would welcome the German authorities' comments on this point.**

On the same topic, the CPT would like to receive information on the relationship between the judicial and administrative remedies open to prisoners wishing to challenge a disciplinary sanction.

b. complaints and inspection procedures

162. Effective complaints and inspection procedures are basic safeguards against ill-treatment in prisons. Prisoners should have avenues of complaint open to them, both within and outside the prison system, and be entitled to confidential access to an appropriate authority. The CPT attaches particular importance to regular visits to all prison establishments by an independent body (for example, a visiting committee) with authority to receive and, if necessary, take action upon prisoners' complaints and to inspect the establishment's premises.

163. The CPT has noted that different internal and external remedies are available to prisoners in Germany and that they can communicate by confidential letter with various national and international authorities (cf. Appendix III, paragraph 20). **The CPT invites the German authorities to add the President of the CPT to this list of authorities.**

In Bavaria, the CPT delegation heard allegations that letters of reply from parliamentarians to prisoners were received opened by the latter. **The CPT would welcome the German authorities' comments on these allegations.**

164. With regard to prison inspections, the CPT has noted that provision is made for visits by certain administrative authorities, parliamentarians, regional parliamentary committees and penal institution advisory councils (Anstalten Beiräte).

165. The CPT has noted in particular that section 162 of the Act requires the establishment of an Advisory Council in every penal institution. According to section 163, the Councils' functions are to:

- participate in the organisation of the prison regime and in the treatment of prisoners;
- support the Director with proposals for improvement;
- help the prisoners' social integration after release.

In order to achieve this, section 164 authorises them to accept requests and suggestions, gather information on various aspects of detention and the regime, visit the prison and meet prisoners in private.

In Berlin and Bavaria, the CPT delegation was able to meet representatives of the relevant Advisory Councils. It emerged that in Berlin the Councils conceived their role very much as being that of a "watchdog", whereas in Bavaria much greater emphasis was placed on the function of supporting the Director.

166. Potentially, the Advisory Councils are a very important safeguard for prisoners. However, their effectiveness will be conditional on an efficient organisation of their activities in the establishment, the provision of appropriate training for their members in performing their statutory tasks and (perhaps above all) on their ability to make themselves seen as a body quite distinct from the prison staff and administration (with regard to the latter point, the delegation had the impression that the Berlin Advisory Councils were more successful than the Council in Straubing prison).

To be effective, an Advisory Council or certain of its members should undertake regular - preferably weekly, and at least monthly - visits to the establishment. During these visits, the members must be "visible" to both the prison authorities and staff and the prisoners. More specifically, Council members should not limit their activities to seeing individuals who have expressly requested to meet them but should take the initiative by visiting the prison's detention areas and entering into contact with inmates.

Naturally, particular care should be given to the issue of how Council members are appointed. In this connection, the CPT notes that the Act confines itself to prohibiting institutional staff from being members, all other aspects being left to the discretion of the Lander. In order to ensure that the members of these Councils are impartial - and seen to be impartial - it is highly desirable that an authority other than the prison administration should be responsible for their selection. Moreover, as far as possible, their composition should reflect the different elements of the local community.

As far as the Councils' functions and powers are concerned - and without in any way questioning their role of providing advice and support to prison directors - it is essential that, should the need arise, they be empowered to enter into direct contact with governmental and/or parliamentary authorities. Indeed, in certain situations, to fulfil their functions effectively, Councils must be able to address themselves to someone other than just the head of the establishment concerned.

Finally, in the interests of transparency and of stimulating debate on the prison service, it would be very desirable if each Council were to draw up and publish an annual report on its activities. It goes without saying that it should be possible for the Advisory Councils' findings in certain areas to remain confidential.

The CPT recommends that the German authorities review the Advisory Council system in the light of the above points.

167. In Saxony, the Advisory Council for Waldheim prison had not been fully established at the time of the delegation's visit. **The CPT trusts that the establishment of Advisory Councils for all prisons in the new Lander will be completed as soon as possible.**

c. contact with the outside world

168. It is very important for prisoners to be able to maintain reasonably good contact with the outside world. Above all, they must be given the opportunity to preserve their relationships with their families and/or friends, and in particular with their spouse or partner and children. The maintenance of such relationships can be of critical significance for all concerned, particularly in the context of the prisoners' social rehabilitation.

The guiding principle should be to promote contact with the outside world; any restrictions on such contacts should be based exclusively on security concerns of an appreciable nature or considerations linked to available resources. This is in the spirit of several recommendations of the European Prison Rules, in particular those set out in paragraph 43, sub-paragraph 1, and paragraph 65, point c.

169. Section 23 of the Act establishes the general principle of the prisoner's right to communicate with persons outside the institution and states that such contacts should be encouraged. Section 24 entitles prisoners to regular visits and stipulates that these should total at least one hour per month. Otherwise, the Act refers to the institution's own internal regulations. Section 24 of the Order Regarding Detention on Remand authorises those so detained to receive visits, with the agreement of the competent judicial authority; provision is made for at least one 30-minute visit every two weeks (sections 24 and 25).

170. In practice, insofar as this was possible, the arrangements regarding the length of visits were more generous. The internal regulations of each of the prisons made express provision for prisoners to apply for more visits; at the Psychotherapeutic Unit in Tegel, for example, up to four hours of visits per month were authorised.

In brief, the frequency of visits appeared to be adequate. However, **the CPT wishes to stress the need for a certain flexibility in applying the rules on visits to prisoners whose families live a long way from the prison (thus making regular visits impossible). Such prisoners might, for example, be authorised to add together several visiting periods.** Arrangements of this type were in fact provided for at Straubing.

171. As far as the physical conditions in which visits took place are concerned, with just two exceptions, no particular comments are required.

In Tegel, the area set aside for visits was relatively narrow and austere. However, the delegation was informed that this was purely a temporary expedient while the normal visiting area was renovated and improved.

In Moabit, the visiting area for convicted offenders was not very welcoming and was quite noisy. **The CPT invites the German authorities to review the physical conditions in these premises.**

172. In addition, staff in the latter establishment drew attention to the complexity of the visiting system for prisoners detained on remand, as a result of the number of checks which the prison officers were required to make for this category of prisoner (restrictions imposed by the courts regarding visitors, the length of visits, the authorised language, supervision of visits, etc). It was not unusual for visitors to have to wait an hour or even more before seeing prisoners. Staff indicated that the situation could worsen if the trend towards overcrowding continued.

The CPT would welcome the German authorities' comments on this situation.

173. At Waldheim Prison, inmates were entitled to one half hour visit per fortnight and could receive more on request. In this connection, the CPT wishes to underline the establishment's geographical isolation which, in the light of its possible return to full capacity, will require close attention to be given to the question of visits. It will be necessary to avoid adding a supplementary burden to the family and friends of a prisoner coming to visit him, or to the prisoner, who could suffer a greater sense of isolation and alienation when far from his normal environment and family circle. It would be desirable to establish special rules on the length of, and arrangements for, visits and forms of assistance to families.

The CPT recommends that the German authorities give particular attention to these considerations.

174. With regard to access to a telephone, the CPT has noted that the Act states that a prisoner may be given permission to telephone (section 32). This is also provided for in section 38 of the Order regarding detention on remand.

The CPT would like to stress the importance of giving prisoners who do not receive regular visits from members of their families, because they live far from the prison, extra opportunities to make telephone calls.

175. In Moabit, the prison director said that for reasons linked to the absence of technical equipment and organisational problems, it was not possible to arrange for prisoners to have access to the telephone, although exceptions could be made in serious cases.

The CPT invites the authorities to review the question of telephone access in Moabit Prison, to ensure that the above-mentioned legal provisions and regulations do not remain in practice a dead letter.

176. Finally, the CPT considers that granting prisoners the right to receive extended visits in order to maintain family and personal (including sexual) relations is a commendable step, provided such visits take place in conditions which respect human dignity.

The delegation noted that Tegel Prison was undertaking an initial experiment with extended visits of up to six hours to enable spouses, partners and families to meet in private. These visits were taking place in pleasantly furnished accommodation which guaranteed individuals' privacy.

The CPT would like to be informed of German prison policy in this area.

d. execution of sentences in the prisoner's own social environment

177. Humanitarian considerations, not to mention the objective of social rehabilitation, are arguments for offenders serving their sentences in the country or region with which they have family and social links.

178. During the visit, the CPT delegation heard a number of complaints from foreign prisoners (particularly Turkish nationals) that it was not possible to serve their sentences, as they so wished, in their country of origin or close to the border with the country where their family lived. These prisoners complained that they had no information on the procedures to be followed in such cases.

179. The CPT is pleased to note that Germany ratified the European Convention on the Transfer of Sentenced Persons on 31 October 1991. Of course, bilateral agreements in this area already existed between Germany and various other States (Austria, Switzerland, Denmark, Sweden and Turkey). As regards these latter agreements, the delegation has received copies of correspondence sent by the relevant authorities to prisoners notifying them of a refusal to transfer; the reasons given for the refusal tended to be extremely terse. The CPT believes that in the case of a refusal of a request from a prisoner to be transferred, he should be given the full reasons for the authorities' negative decision.

180. The CPT would like to receive the German authorities' comments on the above remarks.

As regards more specifically the Convention on the Transfer of Sentenced Persons, the CPT would appreciate receiving in due course from the German authorities the following information:

- how are prisoners informed of the substance of the Convention? is the information provided in a language which they understand? which authority is responsible for providing this information?**
- which authority is competent to make decisions on requests for transfer and on the interpretation of the Convention? does a judicial review system exist?**
- what is the procedure for informing a prisoner of the steps and decisions taken by virtue of the Convention?**
- what is the average length of the procedure at national and international level when the Convention is implemented? in this respect the CPT would appreciate statistical information on the number of cases in which the procedure under the Convention has been implemented and the length of time required.**

D. Psychiatric institutions

181. The delegation of the CPT undertook brief visits to two psychiatric institutions in Saxony: Waldheim Psychiatric Institution and Hochweitzschen Psychiatric Hospital.

It should be stated at the outset that the delegation did not hear any allegations of torture or other forms of physical ill-treatment in either of the two establishments relating to the period since unification. Nor was any other evidence of such treatment since unification received.

1. Waldheim Psychiatric Institution

182. Waldheim Psychiatric Institution is situated close to Waldheim Prison. The buildings date from the eighteenth century. The establishment has been, in turn, a forced labour prison; a centre for orphans; an institution for those not criminally responsible for their actions and a women's prison. Between 1933 and 1939 it served as a transit point for mentally ill people who were executed under plan T4. In the 1950s, the institution became a forensic psychiatric establishment of the German Democratic Republic and also subsequently received patients detained under that country's legislation, adopted in the late 1960s, on the admission of mentally ill people.

183. Before unification, the institution received patients from all over the German Democratic Republic, but since then they have only come from the Land of Saxony. Its initial capacity was for approximately 200 patients, which was reduced in 1980 to about 150.

At the time of the visit, there were 56 detained patients, all long-term with an average stay of 15 years. One of the patients had been resident for 48 years. Some 30 of the patients had been admitted under section 11 of the German Democratic Republic's legislation on detention (the equivalent of section 63 of the Federal Criminal Code, which permits the detention in psychiatric institutions of offenders who are recognised to be guilty but not responsible for their actions, if they are thought likely to commit particularly dangerous acts in the future) and just over 20 declared incapable of managing their affairs. The circumstances of patients detained under section 11 were currently the subject of judicial review, while the cases of the other patients were also being re-examined.

184. The patients were accommodated in physical conditions which were barely acceptable, despite the efforts of the recently appointed official in charge and of the staff. Practically no material improvements had been made since the end of the nineteenth century.

185. As far as treatment was concerned, no real therapeutic activities were available to patients, other than certain forms of occupational therapy for a number of them. However, the delegation had the impression that drugs were administered in an appropriate fashion.

186. At the time of the CPT delegation's visit, the decision had been taken to close Waldheim Psychiatric Institution. Remaining patients and staff were therefore to be transferred in 1992 to other establishments.

In a fax dated 1 September 1992, the CPT was informed by the authorities that the establishment had been closed on 8 May 1992. Patients who were resident and who required treatment in accordance with section 63 of the Criminal Code had been transferred to a suitable psychiatric institution. Those needing hospital psychiatric treatment had been transferred to hospitals close to their homes. A building in the grounds of the institution but beyond the perimeter wall was being converted for the use of about twenty patients capable of benefiting from a sheltered residence outside a hospital environment.

187. The CPT welcomes the closure of Waldheim Psychiatric Institution. In view of the situation, it is not necessary to make any further comments on the delegation's observations.

188. More generally, the CPT would like to be informed of measures adopted in the Land of Saxony with regard to the implementation of the provisions of section 63 of the Federal Criminal Code.

2. Hochweitzschen Psychiatric Hospital

a. introduction

189. This hospital is situated not far from Waldheim in the locality of Hochweitzschen (municipality of Westewitz), deep in the countryside between Döbeln and Chemnitz. The hospital was built in 1875 and is known for being the longest architectural structure of its type in Europe (more than 240 meters). It forms part of a complex of eight large psychiatric hospitals in Saxony, representing approximately 6 000 beds - 86% of all the psychiatric beds available in the Land. The hospital's official capacity is about 645 beds: approximately 500 for adults (of which some 450 are for long-stay patients) and 100 or so for child neuropsychiatry "Kinderneuropsychiatrie". At the time of the visit, 620 beds⁴ were in service. It was planned to reduce the capacity in 1992.

190. Approximately 250 patients had been hospitalised as a result of a compulsory admission and psychiatric assistance order. In late 1991, their placements were to be subject to judicial review.

Three patients had been legally detained because they required urgent psychiatric treatment. One patient, who was detained on remand, had been admitted under section 126a of the Code of Criminal Procedure (temporary admission to hospital if there are strong grounds for supposing that an offence has been committed by someone not responsible for his actions or in a state of diminished responsibility).

The others had, in principle, been admitted voluntarily.

⁴ Statistics provided by the hospital Director

191. At the time of the visit, the medical team comprised 7 psychiatrists (i.e. just under one per 100 beds), 7 doctors, 2 assistant doctors and 2 medical assistants (an intermediate professional category between a qualified nurse and a doctor). In addition, there was a team of 6 psychologists. Approximately 200 qualified care staff together with some 30 in training, about 40 care assistants and some 10 occupational or physiotherapists were also employed.

b. living conditions

192. Following a rapid general tour of the hospital, the delegation concentrated on certain specific units: the child neuropsychiatric Unit (mainly comprising mentally handicapped patients), a male secure unit and a female secure unit.

193. The physical conditions in these units varied from adequate to mediocre. From what the delegation saw of the buildings as a whole, the hospital was in an advanced state of dilapidation which, from the material point of view (equipment and hygiene standards of the units, the general structure etc), meant that living conditions were barely acceptable.

That said, the delegation noted that significant improvements had been carried out, particularly in the child neuropsychiatric Unit, whose premises were pleasantly laid out and very clean. This unit had also recently acquired therapeutic activity and educational workshops. In addition, the sanitary units (showers, bathrooms and toilets) were very clean. **The CPT can only encourage developments of this sort.**

194. Dormitory accommodation was the rule. Patients in the child neuropsychiatric Unit were accommodated 15 to a dormitory, in the male secure unit in several four or five bedded rooms and one of ten beds and in the female unit in dormitories of 6, 12 or 18 beds.

However, one section was visited where patients (of both sexes) were authorised to live in individual rooms. **The CPT considers this to be a very positive step.** Accommodation in large dormitories is not compatible with modern patient treatment standards.

195. The dormitories were equipped with beds, bedside tables and sometimes tables and chairs. Each of the units visited had a shared dining room and sitting/television room. All the dormitories visited enjoyed natural light. Sanitary units were located in separate annexes, but their state of repair and cleanliness were often less than satisfactory. In certain dormitories, the delegation noted that the patients did not have pillows.

The delegation had serious reservations about the female unit, which was dirty and badly maintained. The male secure unit was relatively clean, although dilapidated. In both units, however (as in certain other parts of the hospital), there were extremely unpleasant and pervasive smells.

It should also be noted that, with the exception of the child neuropsychiatric Unit, the living areas were devoid of privacy, austere and anonymous. Patients possessed almost no personal objects and appropriate cupboard space was not available. Patients wore either their own clothes or pyjamas but rarely had a well-cared-for appearance.

The CPT recommends that the German authorities take steps to improve material conditions and more specifically to establish a varied therapeutic environment from the standpoint of those conditions, taking the above comments into account.

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196. In the context of the present remarks, attention must also be drawn to the fact that during the delegation's visit, the covered-up body of a deceased patient was situated on a veranda adjoining a dormitory. The patient had clearly been dead for several hours, since rigor mortis had set in. **The CPT does not consider this to be an appropriate procedure to follow in cases of death.**

c. patient treatment

197. It was very clear that patient treatment was still largely governed by a philosophy based on the "custody" of patients. There was a dearth of genuinely therapeutic activities - even if there were signs of progress (see paragraph 193) - and of individualised treatment programmes. Moreover, no clear distinction was made between mentally handicapped and mentally ill patients. The two groups frequently lived together in the same units.

Nevertheless, the delegation heard no allegations, or received any other evidence, of the inappropriate administration of drugs to patients.

198. In this context, it must be borne in mind that the hospital's medical and care staff had recently become expected to operate on the basis of an ethical approach - focusing on patient rehabilitation - which differed totally from that obtaining before unification. The delegation was conscious of the efforts being made by staff to adapt to their new professional environment. Nevertheless, it is clear that any significant progress is dependent on appropriate training, both initial and in-service. At the same time, the establishment of therapeutic activities drawing on all aspects of modern psychiatry presupposes a significant increase in resources, particularly human resources.

The CPT recommends that therapeutic programmes in Hochweitzschen Hospital should be considerably expanded, taking account of the above remarks. Such a development will require a sustained training policy and the availability of appropriate resources.

d. patients' rights

199. The CPT attaches particular importance to the rights of patients admitted by order of the authorities. Firstly, it considers it crucial that every aspect of their treatment (for example, the administration of drugs with an indication of whether or not this was with the patient's consent; special measures taken such as placement in solitary confinement, the use of instruments of physical restraint, etc) should be scrupulously recorded. Secondly, it is most important that formal machinery be established to enable patients to lodge complaints with a clearly identified responsible body.

Another significant way of preventing ill-treatment is to organise regular visits to the institution concerned by an independent outside body responsible for examining the treatment of patients, with authority to meet the latter in private and to formulate appropriate recommendations.

Finally, the CPT considers that such patients should benefit from a regular and automatic review procedure to ensure that their continued detention is still necessary.

200. During its visit, the delegation formed the impression that there was much room for improvement in relation to such safeguards for patients' rights. **The CPT recommends that the German authorities take the necessary steps to protect patients' rights, taking the points made in paragraph 199 into consideration.**

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201. During the visit, the CPT received information from the authorities about draft legislation in Saxony on aid to the mentally ill and forms of protection, covering a number of the aspects dealt with in sections c. and d. above. **It would welcome any relevant information from the authorities on progress on these proposals.**

3. Final comments

202. It is now widely accepted that large psychiatric establishments in isolated locations pose a significant risk of institutionalisation for both patients and staff, which can have a detrimental effect on patients' treatment. Care programmes drawing on the full range of psychiatric treatment are much easier to implement in small local units situated close to urban centres.

The CPT wishes to know whether plans for the development of psychiatric care in Germany are based on such an approach.

III. RECAPITULATION AND CONCLUSIONS

203. The CPT's delegation heard no allegations of torture in the establishments visited; nor was any other evidence of torture found.

A. Police establishments

204. The delegation did not hear any allegations during its visit of physical ill-treatment inflicted by the police, either from persons met in police custody or from inmates seen in prison establishments, with the exception of an incident which apparently occurred at Straubing Prison in August 1990, when 400 police officers reportedly intervened to bring an end to a disturbance in the establishment (see also paragraph 213).

205. The information which the delegation received during its visit suggests that there is currently little risk of people deprived of their liberty by the police being physically ill-treated. The delegation noted with satisfaction the professional and courteous manner in which police officers conducted their relations with individuals deprived of their liberty.

206. Nevertheless, the CPT has requested information on complaints of ill-treatment by police officers made in Germany over the last two years. Further, it has requested the comments of the German authorities on allegations received that persons apprehended by the police during a demonstration in Munich in July 1992 were ill-treated.

207. The conditions of detention observed in the police establishments visited were, on the whole, satisfactory, with the exception of the Polizeipräsidium in Munich, in respect of which the CPT has formulated recommendations. Further, observations made in several establishments have led it to recommend that every detainee required to spend the night in a police cell should be provided with a mattress and clean blankets, and that the practical operation of the system of food distribution be reviewed.

208. The CPT has examined closely the existing safeguards for persons deprived of their liberty by the police as well as the quality of the information on their rights which is given to them. It has recommended that the right for persons deprived of their liberty by the police to inform a relative or a third party of their choice of the fact of their detention be guaranteed as from the very outset of their custody (i.e. from the moment when those concerned are obliged to stay with the police), and that any possibility to delay the exercise of that right be clearly circumscribed and made subject to appropriate safeguards. Concerning the right of access to a lawyer, the CPT has recommended that - as with the right to inform a relative or a third party - this right should apply from the outset of custody. As regards information on rights, the CPT has recommended that a form (to be available in different languages) setting out the rights of detained persons be given systematically to such persons at the outset of their custody.

209. The CPT has also made recommendations on various other aspects of police custody, such as the possibility for a detained person to have access to a doctor of his own choice, the conduct of interrogations and individual custody records.

B. Detention Centres for aliens

210. No allegations were heard of ill-treatment directed against people staying in the Detention Centre for aliens visited by the delegation in Berlin. Moreover, the delegation was impressed by the attitude of the police officers in charge of the Centre and by their efforts to look after the foreign nationals detained there.

However, the CPT has underlined that officers assigned to such centres should be carefully selected and should benefit from specific training for the carrying out of their tasks, which are very different from those normally expected of a police officer. Moreover, in view of the significance of the problem of self-harm amongst detainees in the Berlin Centre, the CPT has suggested that the support of a person with psychiatric or psychological qualifications be guaranteed.

211. The material conditions of detention in the Berlin Centre were acceptable and did not give rise to any particular comments.

By contrast, recommendations are made about certain other aspects of the conditions of detention. Above all, the CPT has recommended that efforts be made to offer a more extensive range of activities to the detainees, particularly those who are obliged to remain in the Centre for long periods.

C. Prisons

212. With two exceptions, the delegation heard no allegations - either from prisoners or from other sources - of physical ill-treatment inflicted in the prisons visited.

213. The first exception has already been referred to above (cf. paragraph 204). It should be added that the said allegations also related to ill-treatment by prison officers at Straubing Prison. The CPT has requested the German authorities to provide a detailed report on what took place at the establishment in August 1990, together with the results of the enquiry which was held.

More generally, the CPT has stressed that the intervention of outside security forces can often engender a high risk of ill-treatment of prisoners and therefore calls for special safeguards.

214. The second exception concerns Tegel Prison, where allegations were heard that prisoners had, in the recent past, been placed in a specially designed cell situated in a basement of the establishment and sprayed with cold water. The CPT has recommended that the German authorities establish whether prison officers at Tegel Prison on occasion commit abuses of this nature and, if necessary, take appropriate remedial action.

In addition, it has recommended that the above-mentioned cell and three others in the same area be taken out of service as places of detention. Indeed, taking account of their location and design, they are not suitable for such use.

215. On a day-to-day basis, prison officers and prisoners at Straubing, Moabit and Tegel Prisons appeared to maintain good relations. The CPT's delegation noted the professional and humane manner in which most prison officers conducted their dealings with the prisoners. Nonetheless, some allegations were heard of provocative behaviour by staff, particularly at Straubing.

An extremely tense atmosphere was noted in Waldheim Prison. The CPT has recommended that particular attention should be given to this situation. More generally, it has emphasised the importance of proper training for prison staff in the new Lander.

216. The situation of prisoners placed in solitary confinement or under a segregation regime in the establishments visited (in particular Straubing and Tegel Prisons) is of concern to the CPT. Its delegation found that the regime applied to prisoners undergoing prolonged periods of non-voluntary isolation did not provide the stimulation required to avert damaging changes in their social and mental faculties. In this respect, the CPT has recommended immediate changes to the solitary confinement arrangements in order to provide the prisoners concerned with purposeful activity and guarantee them appropriate human contact.

Similarly, the CPT has recommended that the regime applied to those detained in Block Ø1 of TAI at Tegel (the "Dealer Unit") be improved without delay, through the introduction of a programme of work and educational activities capable of providing them with intellectual and social stimulation.

In addition, various measures have been recommended designed to reinforce the legal safeguards for prisoners subjected to non-voluntary solitary confinement/segregation regimes (informing the prisoner in writing of the reasons for the measure; opportunity for the prisoner to present his views on the matter to the relevant authority before any final decision is taken; full review of the measure at least every three months).

217. Material conditions of detention in the prisons visited varied from very good (Straubing Prison) to reasonable. In respect of the Berlin prisons of Moabit and Tegel, the CPT has invited the German authorities, as regards the former, to initiate a modernisation programme for the cell units and, as regards the latter, to continue the interrupted modernisation works.

In relation more particularly to Moabit, where there was a general tendency towards overcrowding, the CPT has stressed that the size of the cells (not to mention the absence of partitioning for the sanitary facilities) renders them hardly suitable for occupancy by two detainees. Moreover, it has made recommendations/comments with regard to two particular areas of detention in the establishment, namely the set of nine cells in the basement of building TAIII and the former high security unit. These premises were not in use as detention areas at the time of the delegation's visit and the CPT considers that in their present state they should remain out of service.

Concerning Waldheim Prison - undergoing complete reconstruction at the time of the visit - the CPT has expressed the hope that, in carrying out that work, the authorities will take full account of the relevant provisions of the European Prison Rules.

218. The programmes of activities for prisoners were of a very good standard at Tegel (with the exception of the Dealer Unit) and of an excellent standard at Straubing. As regards Moabit Prison, the CPT has recommended that ways of improving the existing activities programmes be explored.

In view of the fact that Waldheim Prison was undergoing extensive reconstruction at the time of the visit, the provision of suitable programmes of activities was scarcely possible. The CPT has asked to be informed about the future role of the establishment and the regime activities envisaged.

219. The general medical services in the prisons of Straubing, Moabit and Tegel were of an entirely satisfactory standard. Regarding Waldheim Prison, the CPT has stressed the importance of taking account, in plans to develop the establishment's medical service, of the prison's geographical isolation and its distance from the nearest prison hospital.

220. Conversely, the Forensic Psychiatric Department at Straubing Prison is a source of concern for the CPT. In fact, several aspects of the treatment of patients there elicit very serious reservations.

The first of these relates to the paucity of therapeutic activities offered, apart from the prescription of drugs. The CPT has recommended that steps be taken immediately to develop a programme of therapeutic activities in the Department, bringing into play the full range of psychiatric treatments. The second reservation concerns the minimisation of the importance of depression in prison, a stance which the CPT cannot support. Thirdly, procedures for the recording of treatments administered to patients - particularly those administered without their consent - are a source of disquiet. In this respect the CPT has stressed the need for all treatment administered to patients to be immediately recorded in their medical records, accompanied by an indication of whether or not the treatment is voluntary and any relevant declarations by the patients. In cases where treatment is administered without patients' consent, the reasons for so doing must be stated.

The CPT has also recommended that steps be taken to ensure greater participation by outside individuals and bodies in the life of the Forensic Psychiatry Department. At present it appears to exist in a vacuum, a situation which involves considerable risks.

221. Steps to improve therapeutic activities in the Psycho-Neurological Unit at Tegel Prison have been recommended. Further, existing arrangements concerning the location of patients within the unit might usefully be reviewed; the CPT's delegation observed that some highly disruptive patients were seriously compromising the quality of life of other patients.

222. The CPT has also made recommendations/comments on various other medical matters, for example: arrangements for prisoners with suicidal tendencies at Moabit Prison, HIV-related issues, treatment programmes for drug addicts in the Berlin prisons, etc.

223. Other questions related to the mandate of the CPT addressed in the report include disciplinary matters, complaints and inspection procedures, contact with the outside world, etc. Amongst the various recommendations and comments made on these subjects, particular attention should be drawn to the recommendation that the legal provisions authorising the forfeiture of outdoor exercise as a disciplinary sanction be repealed. The requirement of daily outdoor exercise is widely recognised as a fundamental safeguard for all prisoners.

D. Psychiatric institutions

224. The delegation did not hear any allegations of ill-treatment which related to the period since unification in either of the two psychiatric establishments visited in Saxony.

225. At Waldheim Psychiatric Institution, both the living conditions of patients and the treatment provided to them left a great deal to be desired. In consequence the CPT cannot but welcome the official closure of that institution on 8 May 1992.

226. The CPT has made a number of recommendations regarding the situation found in the Hochweitzschen Psychiatric Clinic, in relation to the patients' living conditions, their treatment and their rights. More particularly, it was clear that treatment was still largely governed by a philosophy based on the "custody" of patients, despite the efforts of staff to adjust to a new professional environment focused on patient rehabilitation. It is evident that any significant progress in this area will depend upon appropriate training, both initial and in-service, and the provision of adequate resources.

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227. In conclusion, the CPT wishes once again to underline the general spirit of co-operation which obtained before, during and after the visit to Germany, at both national and local level.

E. Action on the CPT's recommendations, comments and requests for information

228. The various recommendations, comments and requests for information formulated by the CPT are summarised in Appendix I.

229. As regards more particularly the CPT's recommendations, having regard to Article 10, paragraph 2, of the Convention, the CPT requests the authorities of the Federal Republic of Germany:

- i) to provide within six months an interim report giving details of how it is intended to implement the CPT's recommendations and, as the case may be, providing an account of action already taken (N.B. the CPT has indicated the urgency of certain of its recommendations);
- ii) to provide within twelve months a follow-up report providing a full account of action taken to implement the CPT's recommendations.

The CPT trusts that it will also be possible for the authorities of the Federal Republic of Germany to provide in the above-mentioned interim report reactions to the comments formulated in this report which are summarised in Appendix I as well as replies to the requests for information made.

APPENDIX I

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

I. GENERAL

A. Police establishments

1. Torture and other forms of physical ill-treatment

a. comments

- importance of the scrupulous implementation of training programmes for police officers in all Lander (paragraph 19).

b. requests for information

- number of complaints in 1991/92 of ill-treatment by police officers and number of disciplinary/criminal proceedings initiated, with an indication of sanctions imposed (paragraph 20).

2. Conditions of detention

a. recommendations

- steps to be taken to ensure that any prisoner required to pass the night in police custody is supplied with a mattress and clean blankets (paragraph 27);

- the practical application of the system for distributing food to persons detained by the police to be reviewed (paragraph 29).

b. comments

- desirability of recording the times at which meals are distributed (paragraph 29).

3. Fundamental safeguards against ill-treatment for persons detained by the police

a. recommendations

- persons apprehended by the police to have the right as from the outset of their custody:

- to inform a family member or a third party of their choice of their detention by the police,

* the recommendations, comments and requests for information of a more general nature are set out first, followed by those which are institution specific (presented on a Land by Land basis).

- to have access to a lawyer: this right should include the right to contact and the right to be visited by the lawyer (in both cases under conditions guaranteeing the confidentiality of the discussions) and, in principle, the right to his presence during questioning (paragraph 35);
- any possibility exceptionally to delay the exercise of the right to inform a family member or a third party to be clearly circumscribed and made subject to appropriate safeguards (paragraph 35);
- the police authorities to inform immediately anyone whom they detain of his rights to inform a family member or a third party of his situation and to have access to a lawyer (paragraph 35);
- a person detained by the police to be able, if he so wishes, to be examined by a doctor of his choice (in addition to any examination carried out by a doctor called by the police authorities) (paragraph 37);
- any medical examination to be undertaken out of the hearing and, preferably, out of the sight of police officers (paragraph 37);
- the results of the medical examination as well as relevant statements by the detainee and the doctor's conclusions to be formally recorded by the medical doctor and made available to the detainee and his lawyer (paragraph 37);
- a form setting out the rights of persons detained by the police to be given systematically to such persons at the outset of their custody; this form to be available in different languages; the person concerned to certify that he has been informed of his rights (paragraph 39);
- a code of conduct for police interrogations to be drawn up (paragraph 42);
- the possibility of making the electronic recording of police interrogations a standard practice to be examined, the system to be introduced to offer all appropriate guarantees (paragraph 43);
- the possibility of establishing an individualised custody record for each person detained to be examined (paragraph 45).

b. comments

- the training for police officers in Straubing to familiarise them with different types of behaviour of those in need of medical assistance and the Health Department brochure issued in Berlin for officials dealing with people with mental illnesses or other problems, offer examples which could be more widely followed (paragraph 38).

c. requests for information

- details of any legal aid system for persons in police custody which might exist in Germany (paragraph 35).

B. Detention Centres for aliens

Ill-treatment

recommendations

- police officers assigned to supervisory duties in detention centres for aliens to be carefully selected and to possess well-developed qualities in the field of interpersonal communication; in addition, the supervisory staff to be familiarised with the different cultures of the detainees and at least some of the officers concerned to have appropriate language skills (paragraph 51).

C. Prisons

1. Torture and other forms of physical ill-treatment

a. recommendations

- an aptitude for interpersonal communication to be a major factor in the recruitment of prison staff in the new Lander and special emphasis to be placed during training on developing skills in this area (paragraph 70).

b. requests for information

- the comments of the German authorities on the subject of special safeguards during the intervention of outside security forces in a prison establishment (paragraph 65);

- number of complaints in 1991/1992 of ill-treatment by prison officers and number of disciplinary and/or criminal proceedings initiated, with an indication of sanctions imposed (paragraph 71).

2. Solitary confinement/segregation of prisoners

a. recommendations

- solitary confinement arrangements to be immediately adapted at Straubing and Tegel Prisons (and if necessary at other establishments) in order to provide the prisoners concerned with purposeful activities and guarantee them appropriate human contact (paragraph 78);

- all necessary steps to be taken to ensure that the regulations and practice are in accordance with the following requirements: whenever a prisoner, whatever the reason for his solitary confinement, asks for a medical doctor - or a prison officer asks for one on his behalf - the doctor should be called immediately to examine the prisoner; the results of the medical examination, including an assessment of the prisoner's mental and physical state and, if necessary, the likely consequences of continuing solitary confinement, should be set out in a written report, to be sent to the relevant authorities (paragraphs 80 and 158);

- any prisoner placed in solitary confinement or whose solitary confinement has been renewed, to be informed in writing of the reasons for the decision, unless compelling security reasons dictate otherwise; the prisoner concerned to be given an opportunity to present his views on the matter to the relevant authority before any final decision on placement in, or renewal of, solitary confinement is taken; the placement in solitary confinement for an extended period to be subject to a full review at least every three months, if necessary based on a medical-social report (paragraph 83);

- any prisoner detained separately under section 17, paragraph 3(1) and (3), of the Act Concerning the Execution of Prison Sentences ("the Act") to be informed in writing of the reasons for the decision, unless compelling security requirements dictate otherwise; the prisoner concerned to be given an opportunity to present his views on the matter to the relevant authorities before any final decision on separate detention is taken; the application of separate detention to be subject to a full review at least every three months (paragraph 106).

b. requests for information

- the relationship in practice between sections 88 (2)3 and 89 of the Act (paragraph 81);

- clarification of the notion of "Gründen die in der Person des Gefangenen liegen", laid down as a criterion for solitary confinement in section 89 (1) of the Act (paragraph 81);

- a full explanation of the manner in which the provisions of section 89 (2) of the Act are applied in practice (paragraph 83);

- up-to-date statistics on solitary confinement placements exceeding one year, together with the legal basis for each decision (section 89, the needs of a criminal investigation, etc.) (paragraph 83).

3. Conditions of detention

requests for information

- copies of any regulations issued by the Federal Minister of Justice on the material aspects of conditions of detention, in accordance with section 144 (2) of the Act, (paragraph 113).

4. Medical services

a. recommendations

- all treatment administered to patients to be immediately recorded in their medical records, accompanied by an indication of whether or not the treatment is voluntary and any relevant declarations by the patients. In cases where treatment is administered without patients' consent, the reasons for so doing to be stated (paragraph 131);

- appropriate steps to be taken to ensure that any placement in a solitary confinement cell and any use of instruments of physical restraint, whether or not this is in a medical context, is duly recorded, with a reference to the grounds and the length of time involved (paragraph 143).

b. comments

- desirability, in the case of the treatment of a patient without his consent, of appropriate guarantees being provided; for example, an on-site, independent second medical opinion, or the transfer of the patient to a closed section of a psychiatric hospital outside the prison system (paragraph 133);

- a severely mentally disturbed and violent patient should be treated through close supervision and support, combined, if necessary, with sedation. Resort to instruments of physical restraint shall only very rarely be justified (paragraph 142);

- there is no medical justification for the isolation or segregation of an HIV positive prisoner who is not ill (paragraph 145);

- importance of a continuing programme of information for prisoners in general and prison staff on the subject of AIDS (risks of transmission and means of protection) (paragraph 146).

c. requests for information

- comments of the German authorities on the allegations that for a prisoner, the fact of being HIV positive could lead to different types of isolation and discrimination (paragraph 145);

- any directives or guidelines drawn up by federal or Lander authorities on the approach to be adopted towards HIV positive prisoners and those who have developed AIDS (paragraph 145);

- the policies in the different Lander on the provision of condoms to prisoners (paragraph 146);

- details of the existing guarantees ensuring the total clinical independence of prison health-care staff (paragraph 151);

- whether the quality and effectiveness of medical work are assessed and the available resources controlled by a qualified medical authority rather than by the bodies responsible for finance or security (paragraph 152);

- the approximate ratio of persons possessing a licence under the Nursing Act to prison staff who have been given some training in health care (paragraph 154);

- the precise content of the training required of such prison staff (paragraph 154).

5. Other issues related to the CPT's mandate

a. recommendations

- the legal provisions authorising the forfeiture of outdoor exercise as a disciplinary sanction to be repealed (paragraph 159);
- the Advisory Council system to be reviewed in light of the CPT's remarks (paragraph 166).

b. comments

- invitation to the German authorities to add the President of the CPT to the list of authorities with which prisoners can communicate by confidential letter (paragraph 163);
- the CPT trusts that the establishment of Advisory Councils for all the prisons in the new Lander will be completed as soon as possible (paragraph 167);
- need for a certain flexibility in applying the rules on visits to prisoners whose families live a long way from the prison (thus making regular visits impossible). Such prisoners might, for example, be authorised to add together several visiting periods (paragraph 170);
- importance of giving prisoners who do not receive regular visits from members of their families, because they live far from the prison, extra opportunities to make telephone calls (paragraph 174).

c. requests for information

- details on the situations to which sections 88, paragraph 2 (4) ("der Entzug oder die Beschränkung des Aufenthalts im Freien") of the Act, and section 63, paragraph 1 (6) ("Beschränkung oder zeitweiliger Entzug des täglichen Aufenthalts im Freien") of the Order Regarding Detention on Remand, might apply (paragraph 159);
- information on the current practice concerning forms of activity for prisoners in disciplinary detention (paragraph 160);
- comments of the German authorities on the possible excessively dissuasive effect of section 121, paragraph 2, of the Act vis-à-vis prisoners wishing to challenge disciplinary measures (paragraph 161);
- information on the relationship between the judicial and administrative remedies open to prisoners wishing to challenge a disciplinary sanction (paragraph 161);
- German prison policy on extended visits in order to maintain family and personal (including sexual) relations (paragraph 176);

- comments of the German authorities on the complaints heard from some foreign prisoners that it was not possible for them to serve their sentences in their country of origin or close to the border with the country where their family lived (paragraph 180);
- comments of the German authorities on the fact that the reasons given for the refusal of a prisoner's request for transfer tend to be extremely terse (paragraph 180);
- replies to the following questions concerning the Convention on the Transfer of Sentenced Persons: how are prisoners informed of the substance of the Convention? is the information provided in a language which they understand? which authority is responsible for providing this information? which authority is competent to make decisions on requests for transfer and on the interpretation of the Convention? does a judicial review system exist? what is the procedure for informing a prisoner of the steps and decisions taken by virtue of the Convention? what is the average length of the procedure at national and international level when the Convention is implemented? (paragraph 180);
- statistical information on the number of cases in which the procedure under the Convention has been implemented and the length of time required (paragraph 180).

D. Psychiatric institutions

requests for information

- whether plans for the development of psychiatric care in Germany are based on the approach of small local units situated close to urban centres? (paragraph 202).

II. BAVARIA

A. Police establishments

1. Torture and other forms of physical ill-treatment

requests for information

- comments of the German authorities on allegations of ill-treatment of persons apprehended by the police during a demonstration which took place in Munich in July 1992 (paragraph 21).

2. Conditions of detention

recommendations

- the necessary steps to be taken: to remedy material shortcomings observed in the Polizeipräsidium München with regard to the lighting and heating of cells; to generally upgrade the cells; to review the system for allocating prisoners to cells (paragraph 27).

B. Straubing Prison

1. Torture and other forms of physical ill-treatment

requests for information

- a detailed report on the incident which occurred at the establishment in August 1990 and the results of the enquiry which was held (paragraph 64).

2. Solitary confinement/segregation of prisoners

recommendations

- solitary confinement arrangements to be immediately adapted at Straubing Prison in order to provide the prisoners concerned with purposeful activities and guarantee them appropriate human contact (paragraph 78).

3. Conditions of detention

a. comments

- several complaints were made by inmates about the preparation and presentation of their food and about provocative behaviour by certain prison officers when serving it (paragraph 90);

- the ventilation system in the disciplinary cells in wing A/0 of Haus II should be checked (paragraph 157).

b. requests for information

- comments of the German authorities on allegations that prisoners who refuse to work for private firms are considered to be deprived of work "through their own fault" (paragraph 89);

- comments of the German authorities on allegations that letters of reply from parliamentarians to prisoners were received opened by the latter (paragraph 163).

4. Forensic Psychiatry Department (Haus III)

a. recommendations

- steps to be taken immediately to develop a programme of therapeutic activities in the Department, bringing into play the full range of psychiatric treatments (paragraph 128);

- the amount of daily outdoor exercise offered to patients to be substantially increased (paragraph 128);

- appropriate steps to be taken to ensure that more attention is given to depressive illnesses (paragraph 129);

- all treatment administered to patients to be immediately recorded in their medical records, accompanied by an indication of whether or not the treatment is voluntary and any relevant declarations by the patients. In cases where treatment is administered without patients' consent, the reasons for so doing to be stated (paragraph 131);

- steps to be taken to ensure greater participation by outside individuals and bodies in the life of the Department (paragraph 136).

b. comments

- absence of cupboards in some of the Department's rooms with several occupants (paragraph 126);

- desirability, in the case of the treatment of a patient without his consent, of appropriate guarantees being provided; for example, an on-site independent second medical opinion, or the transfer of the patient to a closed section of a psychiatric hospital outside the prison system (paragraph 133);

- consent to treatment can only be considered to be free and informed if it is given in the absence of threats or unreasonable pressure (paragraph 134);

- it is most inappropriate for a medical unit to arouse feelings of fear and quite unacceptable that they should be fostered. Such a situation is likely to discourage many persons who need care from calling on the unit's services (paragraph 135);

- desirability of a close and ongoing co-operation between the staff of the Department and the Standing Advisory Council (paragraph 136).

c. requests for information

- any comments the German authorities consider appropriate on the implementation of the recommendations made by the psychiatric expert of the Parliamentary Committee of Enquiry relating to the recording of information (paragraph 132).

III. **BERLIN**

A. **Detention Centre for aliens (Polizeigewahrsam, Tiergarten)**

1. **Conditions of detention**

recommendations

- the regulations of the Centre to be amended with a view to guaranteeing at least one hour of outdoor exercise per day to persons deprived of their liberty (paragraph 54);

- ways of making a more extensive range of activities available to the detainees, particularly those who remain in detention for long periods, to be explored (paragraph 56);

- steps to be taken to ensure that the Centre's regulations on religious dietary practices and special diets are applied in practice (paragraph 57).

2. **Medical issues**

comments

- desirability of ensuring the support of a person qualified in psychiatry or psychology at the Centre (paragraph 58).

B. **Moabit and Tegel Prisons**

1. **Torture and other forms of physical ill-treatment**

recommendations

- the German authorities to establish whether prison officers at **Tegel** Prison commit on occasion abuses such as spraying prisoners with water and, if necessary, to take appropriate remedial action (paragraph 66).

2. Solitary confinement/segregation of prisoners

recommendations

- solitary confinement arrangements to be immediately adapted at **Tegel** Prison in order to provide the prisoners concerned with purposeful activities and guarantee them appropriate human contact (paragraph 78).

3. Conditions of detention

a. recommendations

- the nine cells situated in the basement of unit TA II in **Moabit** Prison to remain out of service, in the absence of substantial physical upgrading. Any improvements should set out to provide the cells with adequate lighting and ventilation and physical facilities adapted to their intended use, and should ensure that prisoners would have access to toilets whenever they require (paragraph 94);

- the cells situated in the basement of B wing of building TA III in **Tegel** Prison to be formally taken out of service as places of detention (paragraph 98);

- ways of improving the activities programmes in **Moabit** Prison to be explored. The programmes to be implemented should aim at ensuring that prisoners have the opportunity to spend a reasonable part of the day (eight hours or more) outside their cells, engaged in purposeful activities of a varied nature (group association activities, education, sport, work with vocational value). Prisoners serving sentences should benefit from programmes adapted to the objectives of penal treatment (paragraph 100);

- immediate steps to be taken to improve the prison regime for prisoners detained in Block 01 of TA I in **Tegel** Prison, by introducing a programme of work and educational activities capable of providing them with intellectual and social stimulation (paragraph 105).

b. comments

- invitation to the German authorities to initiate a modernisation programme for the cell units in **Moabit** Prison, including, inter alia, the partitioning off of the sanitary facilities in the cells (paragraph 91);

- the size of the cells in **Moabit** Prison (not to mention the absence of partitioning for the sanitary facilities) renders them hardly suitable for an occupancy level of two prisoners per cell (paragraph 92);

- the bringing back into service of the former high security unit facilities in **Moabit** Prison, for whatever purpose, should be subject to the removal of certain undesirable physical features associated with the unit's former high security function and the establishment of a positive and stimulating prison regime (paragraph 95);

- invitation to the German authorities to continue the interrupted modernisation works at **Tegel** Prison (paragraph 97);

- it would be highly desirable for the prisoners detained in Block 01 of TA I in **Tegel** Prison to be kept in cells of the standard size for the establishment (paragraph 105).

c. requests for information

- information on any decision to bring the former high security facilities in **Moabit** Prison back into service (paragraph 95).

4. **Medical services**

a. recommendations

- steps to be taken to develop therapeutic activities in the Psycho-Neurological Unit in **Tegel** Prison (paragraph 138);

- existing arrangements for prisoners at **Moabit** Prison with suicidal tendencies to be reviewed. They should be placed in a salutary environment, benefit from counselling, support and appropriate association, and should, for as long as is necessary, be kept under a special observation scheme (paragraph 141);

- existing treatment programmes in the Berlin prisons for drug-addicted prisoners, whatever their status (detained on remand, serving a sentence etc.), to be substantially reinforced (paragraph 149).

b. comments

- allegations were heard in **Tegel** Prison that it could take a considerable time for a doctor to arrive in cases of emergency (paragraph 117);

- existing arrangements at the Psycho-Neurological Unit in **Tegel** Prison concerning the location of patients might usefully be reviewed (paragraph 139);

- existing advisory arrangements at **Tegel** Prison for prisoners taking an HIV test did not appear to be effective; it is essential that the persons concerned should receive appropriate counselling both before and, if necessary, after an HIV screening test (paragraph 144);

- the attention of the German authorities is drawn to the numerous allegations received suggesting that prison officers are involved in the drug trafficking which apparently takes place in **Tegel** Prison (paragraph 147);

5. Contact with the outside world

a. comments

- invitation to the German authorities to review the physical conditions in the visiting area for convicted prisoners in **Moabit** Prison (paragraph 171);

- invitation to the German authorities to review the question of telephone access in **Moabit** Prison (paragraph 175).

b. requests for information

- comments of the German authorities on the complexity of the visiting system for prisoners detained on remand in **Moabit** Prison (paragraph 172).

IV. SAXONY

A. Waldheim Prison

1. Torture and other forms of ill-treatment

recommendations

- particular attention to be given to the relations between staff and prisoners in the establishment and in similar establishments in the new Lander. Above all, it is most important to strive to create an atmosphere of trust and mutual understanding (paragraph 69).

2. Conditions of detention

a. recommendations

- ways of improving the range of activities offered to prisoners currently detained in the establishment to be explored (paragraph 111).

b. comments

- full account should be taken of the relevant provisions of the European Prison Rules, in particular those in paragraphs 14 to 18, when carrying out the work of renovating the prison (paragraph 109).

c. requests for information

- information on current plans relating to the future role of the prison, including on the capacity and the prison programmes envisaged (paragraph 112).

3. Medical services

a. recommendations

- someone qualified to provide first aid to be always present on the premises, preferably someone with a recognised nursing qualification (paragraph 123).

b. comments

- all medical supplies and medicines should be within their expiry date (paragraph 121);

- in developing the medical services, full account should be taken of the prison's geographical isolation and its distance from the nearest prison hospital (paragraph 122).

4. Contact with the outside world

recommendations

- particular attention to be given to the question of visits, taking into account the establishment's geographical isolation (paragraph 173).

B. Psychiatric Institutions

1. General

requests for information

- measures adopted in Saxony with regard to the implementation of the provisions of section 63 of the Federal Criminal Code (paragraph 188);

- progress of the draft legislation on aid to the mentally ill and forms of protection (paragraph 201).

2. Hochweitzschen Psychiatric Hospital

a. recommendations

- steps to be taken to improve material conditions and more specifically to establish a varied therapeutic environment from the standpoint of those conditions (paragraph 195);

- therapeutic programmes to be considerably expanded (paragraph 198);

- the necessary steps to be taken to protect patients' rights (paragraph 200).

b. comments

- developments such as those seen at the child neuropsychiatry Unit are to be encouraged (paragraph 193);
- the accommodation of patients in individual rooms is a very positive step (paragraph 194);
- to leave the body of a deceased patient on a veranda adjoining a dormitory is not an appropriate procedure to follow in cases of death (paragraph 196).

APPENDIX II

LIST OF PERSONS WITH WHOM THE CPT'S DELEGATION HELD CONSULTATIONS

A. Authorities

1. Federal authorities

Ministry of Justice

- Mr FUNKE, Parlamentarischer Staatssekretär
- Mr MEYER-LADEWIG, Ministerialdirigent
- Mr LEHMANN, Ministerialrat
- Mr KÜCK, Staatsanwalt
- Mr SCHREIBER, Ministerialrat
- Mr STÖCKER, Ministerialrat
- Mrs CHWOLIK-LANFERMANN, Richterin am Oberlandesgerichtshof
- Mr UHINK, Oberamtsrat

Ministry of Foreign Affairs

- Mr TEMPEL, Vortragender Legationsrat

Ministry of Interior

- Mr KERSTEN, Ministerialdirigent
- Mr HELLENTHAL, Regierungsdirektor

Ministry of Health

- Mrs REDEZ, Regierungsdirektorin

2. Regional authorities

BAVARIA

- Mr GERHART, Leitender Ministerialdirigent, Ministry of Justice
- Mr ENDRES, Polizeidirektor, Ministry of Interior

BERLIN

- Mr FLÜGGE, Leitender Senatsrat, Ministry of Justice

SAXONY

- Mr SCHMUCK, Leitender Regierungsdirektor, Ministry of Justice
- Mr WELZEL, Regierungsdirektor, Ministry of Justice
- Professor WEBER-FALKENSAMMER, Ministry of Social Affairs, Health and the Family.

B. Other bodies met at regional level

BAVARIA

- Advisory Council (Anstaltsbeirat) of Straubing Prison
- Standing Advisory Council (Gutachtergremium) for Straubing Prison Forensic Psychiatry Department

BERLIN

- Advisory Councils of the Berlin prisons

C. Other persons met by the delegation

- Mr FEEST, Professor of Criminology, University of Bremen
- Professor RASCH, Director of the Forensic Psychiatry Department of the Free University of Berlin

D. Non-governmental organisations

- Federal Professional Association of Police Officers (Bundesarbeitsgemeinschaft Kritischer Polizistinnen und Polizisten)
- Bureau of the Lawyers' Defence Unions (Organisationsbüro der Strafverteidiger Vereinigungen)
- German AIDS-HELP Association (Deutsche AIDS-Hilfe)

APPENDIX III

LEGAL FRAMEWORK

A. Fundamental human rights safeguards

1. Under the terms of Article 1, paragraph 1, of the Basic Law: "The dignity of man shall be inviolable. To respect and protect it shall be the duty of all state authority.". Article 2, paragraph 2, states: "Everyone shall have the right to life and to inviolability of his person". The Federal Constitutional Court has ruled that the latter provision also applies to any harm caused by psychological or mental torture and by equivalent methods of questioning.

In addition, Article 104, paragraph 1, of the Basic Law states: "... Detained persons may not be subjected to mental nor to physical ill-treatment."

2. Many of the Penal Code's provisions make acts of torture and other forms of ill-treatment an offence. Among the most important are sections 340 and 343.

Section 340 states:

"(1) A public official who commits, or permits to be committed, bodily harm during the exercise of his duties or in connection herewith, shall be punished by imprisonment from three months to five years. In less serious cases imprisonment of up to three years or a fine shall be imposed.

(2) If serious bodily harm (section 224) is committed, not less than two years' imprisonment shall be imposed and, in less serious cases, imprisonment from three months to five years."

Section 343 provides that:

"(1) Whoever, in his capacity as public official, whose duties involve acting in:

1. a criminal proceeding, or a proceeding to order authorised custody;
2. an administrative fine proceeding; or
3. a disciplinary proceeding or an honour court or professional court proceeding;

physically abuses another, or makes use of violence against him, or threatens him with violence, or mentally torments him, in order to coerce him to give testimony, or not to do so, in the proceeding, shall be punished by imprisonment from one to ten years.

(2) Imprisonment from six months to five years shall be imposed in less serious cases."

3. Reference should also be made to section 136a of the Code of Criminal Procedure which states:

"(1) The freedom of the accused to determine and to exercise his will shall not be impaired by ill-treatment, by fatigue, by physical interference, by dispensing medicines, by torture, by deception or by hypnosis. Force may only be applied insofar as it is permitted by the law of criminal procedure. Threatening with a measure not permitted by the provisions of such law and promising an advantage not provided by law are prohibited.

(2) Measures which impair the accused person's ability to remember or to comprehend are not permitted.

(3) The prohibitions of sub-sections 1 and 2 apply irrespective of the accused person's consent. Statements which were obtained in violation of these prohibitions may not be used even with the assent of the accused."

4. It should be added that, in the German legal system, international treaties are an integral part of domestic law from the time of ratification. Thus, for example, the European Convention on Human Rights, and in particular its Article 3, is directly applicable in domestic law on the same basis as federal legislation.

B. Detention by the police

5. Under the terms of Article 104 (2) of the Basic Law and the provisions of the Code of Criminal Procedure (sections 128, 135), an individual may not be deprived of his liberty by the police beyond the end of the day following the day of his apprehension. If a person is deprived of his liberty solely for the purpose of establishing his identity, the period of detention may not exceed twelve hours (section 163c, paragraph 3, of the Code of Criminal Procedure).

6. The right for a person apprehended by the police for the purpose of establishing his identity to have a member of his family or a third party of his choice informed of his detention is provided for in section 163c, paragraph 2, of the Code of Criminal Procedure. He must be given an opportunity to do this personally, unless he is suspected of having committed a criminal offence and it would not be in the interests of the inquiry for the information to be given by the detainee himself.

The right for a person deprived of his liberty on suspicion of having committed an offence to inform a member of his family or a third party of his choice, is guaranteed from the moment the judge issues a warrant of arrest ordering his detention. Article 104 (4) of the Basic Law establishes the principle that a relative or a person enjoying the confidence of the person detained must be notified without delay of any judicial decision ordering or continuing his deprivation of liberty. Section 114b of the Code of Criminal Procedure stipulates that the judge is responsible for informing a member of the family of a person arrested (i.e. once an arrest warrant has been issued by the judge for the individual's detention), or a third party of his choice, of his arrest. If the interests of the enquiry allow, the individual may be authorised to do this personally.

7. Access to a lawyer for individuals apprehended by the police because suspected of having committed an offence is formally guaranteed from their first interrogation. Section 163a of the Code of Criminal Procedure, read together with section 136, stipulates that a person accused of a criminal offence (Beschuldigter) must be informed at the start of his first interrogation that he may at any time consult a lawyer of his choice, even before any questions have been asked. The interrogation to which the Code of Criminal Procedure refers in this context appears to be the interrogation relating to the offence itself (Vernehmung), and not the initial questioning designed to elicit information on the individual concerned (Informatorische Befragung).

8. It should also be noted that, following initial questioning, the individual who has been deprived of his liberty may be considered not as an accused but as a witness. In the latter case, the person concerned enjoys the rights appertaining to his status as a witness, as well as the right to a lawyer. This right, which is not expressly provided for in the Code of Criminal Procedure, has been granted to witnesses by the Federal Constitutional Court, which based its decision on the general principle of the right to a fair trial.

9. There are no provisions of the Code and there is no case law relating to the right of persons apprehended for the purposes of establishing their identity to have access to a lawyer. However, the position of legal writers is that such persons should, in the same way as witnesses (cf paragraph 8), have access to a lawyer.

10. As regards the substance of the right to a lawyer, section 136 of the Code of Criminal Procedure refers to consultation with a lawyer - "... einen von ihm zu wählenden Verteidiger zu befragen". A majority of legal writers interpret this provision as encompassing interviews in private with the detained person.

Express provision for a lawyer to be actually present at interrogations only applies from the time of the accused person's questioning by the Public Prosecutor (section 163a, paragraph 3, second sentence) and during the interrogation by the judge concerned (section 168c, paragraph 1). A minority of legal writers consider that the presence of a lawyer should be permitted during police interrogations.

11. With regard to information to individuals deprived of their liberty by the police about their rights, sections 163a and 136 of the Code stipulate that before any interrogation, persons suspected of a criminal offence who are the subject of a criminal inquiry (Beschuldigter) must be informed of the offence of which they are suspected. They must be informed of their right of silence and their right to consult a lawyer. Under section 163b, persons apprehended for the purposes of establishing their identity who are suspected of committing a criminal offence must also be informed of the offence concerned. Persons who are questioned as witnesses must be informed of their right of silence (sections 55 and 136, paragraph 5) if there is a risk that they or members of their family may be subject to criminal proceedings. There is no requirement that they be informed of their right of access to a lawyer.

C. Imprisonment

12. The objectives of imprisonment, laid down in the Act Concerning the Execution of Prison Sentences of 16 March 1976 as amended by the Act of 27 February 1985 (hereafter referred to as the Act), are to enable prisoners to lead a socially responsible life without committing criminal offences and to protect the general public from further criminal offences (section 2).

Section 3 of the Act sets out the following three principles for the execution of sentences:

- life in penal institutions must approximate as far as possible to general living conditions;
- steps should be taken to counteract any detrimental effects of imprisonment;
- imprisonment should be designed to help the prisoner to reintegrate into free society.

The general status of prisoners is dealt with in section 4 of the Act, which requires them to be involved in drawing up their treatment programme and in achieving the objectives of their imprisonment. Their co-operation in this must be sought and encouraged. The only restrictions which may be placed on them are those which are provided for in the Act or which are essential to maintain security or avert serious disturbance to prison order.

13. The Act contains detailed provisions governing the different aspects of prisoners' daily lives. Particular attention will be paid here to those issues which relate to the CPT's terms of reference and which are considered in the body of the report.

14. A number of provisions of the Act are concerned with the placement in non-voluntary solitary confinement/segregation of prisoners. Such measures may be justified by reasons linked to order or security in the establishment (sections 17 (3) 3, 88 (1)), the bad influence of a prisoner on his fellow detainees (section 17 (3) 1) or a prisoner's personality or mental state (89 (1), 88 (1)).

The measures adopted may range from restrictions on joint participation in work or leisure activities (sections 17 (3), 88 (2) 4), through restriction or suspension of outdoor exercise (88 (2) 4) to segregation from other prisoners (89 (1), 88 (2) 3).

None of these provisions lays down precise time limits. It is for the Head of the establishment to determine the extent and duration of the restrictions and to lift them when they are no longer required, having regard to the legal principle of proportionality.

In the case of special security measures (section 88), paragraph (5) provides that these should only be continued for as long as is required for their purpose. According to established legal principles and case law, they should be of short duration. In the specific case of sub-paragraphs 2 (5) (placement in a special security cell containing no dangerous objects) and (6) (instruments of physical restraint), the Federal administrative instructions relating to the Act stipulate that after three days, the competent superior authority must be informed immediately of the situation.

Further, section 89 (2) of the Act stipulates that once a prisoner has been held in solitary confinement under section 89 (1) for a total of three months in the course of any one year, the approval of the relevant superior authority is required.

15. The disciplinary system is dealt with in Chapter XIII of the Act (sections 102 to 106). Section 103 lists the types of disciplinary action available. One of the sanctions included is disciplinary detention; however, it may only be imposed in cases of serious or repeated misconduct, and for a maximum period of four weeks. It is possible to combine several disciplinary measures.

16. It should also be noted that one of the authorised disciplinary sanctions is the forfeiture of the right to outdoor exercise for up to one week.

17. The imposition of disciplinary sanctions is the culmination of a specific procedure, in the course of which the prisoner is heard by the Head of the establishment. In cases involving a serious disciplinary offence, the Head of the establishment should, before making a decision, discuss the matter with all those involved in the treatment of the prisoner. The decision is communicated to the prisoner orally and in writing.

Finally, in the case of disciplinary detention, the establishment's medical officer must be consulted. During such detention, the prisoner must be kept under medical supervision (section 107).

18. One Chapter of the Act is concerned with direct coercion (unmittelbarer Zwang). Section 94 (1) allows prison staff to use force in carrying out prison duties or implementing security measures if it appears that there is no other way of achieving their purpose. The definition of direct coercion is to be found in section (95) 1, which deals with "the use on persons or objects of physical force, means of restraint (in particular, handcuffs (cf. section 95 (3)) and weapons". It is stated that direct coercion may not be used where any damage likely to be caused would be out of proportion to the objective sought (section 96 (2)).

19. Section 101 deals specifically with coercive measures and the treatment of prisoners without their consent in the medical field. Such measures may only be ordered by a doctor and are only admissible in the case of danger to life or serious risk to the health of the prisoner or of other persons. The Federal administrative instructions are more explicit than the Act on the procedures to be followed and the formalities to be completed (informing the prisoner of the need for the treatment and its consequences, the recording of this information and of any relevant declarations by the patient, the patient's signature or reasons for refusal to sign, the presence of witnesses when the prisoner is informed etc).

20. The Act also deals with complaints procedures for prisoners who consider that their rights have been infringed. On the one hand there exists the administrative route of appeal to the competent superior authority (section 108; see also Article 17 of the Basic Law), and on the other hand, the route of legal redress (sections 109 to 121). Special courts of first instance (Strafvollstreckungskammern) have jurisdiction to hear complaints. In principle, prisoners may choose between the two procedures; however, section 109 (3) allows regional legislation to stipulate that applications may only be made to the courts once administrative remedies have been exhausted.

In addition to these remedies, Article 17 of the Basic Law recognises the universal right to address complaints to parliamentary bodies. Section 29 (2) of the Act stipulates that letters to parliamentary representatives in the Federation or the Lander, or to the European Commission of Human Rights, may not be subject to censorship, provided that the letters are addressed to these bodies and properly show the sender.

21. Prisons and the treatment of prisoners are subject to various forms of supervision. Administrative supervision is the responsibility of the relevant departments of the Ministries of Justice of the different Lander, in particular through a system of regular inspections (cf sections 139 and 151 of the Act and related Federal administrative instructions).

Public supervision of prisons is exercised by Advisory Councils (Anstaltsbeiräte), provided for in sections 162 et seq. of the Act. In addition, all the parliamentary groups of the regional parliaments have a representative for prison affairs, with access to prisons. These bodies may talk to prisoners in private.

22. The situation of prisoners remanded in custody is governed by sections 119 et seq. of the Code of Criminal Procedure and the administrative provisions of the Order on Remand in Custody of 12 February 1953 (version of 1 January 1978). Section 1, paragraph 3, of the Order provides that "the personality of the detainee must be respected and he must be treated with consideration. In contacts with the detainee, it is necessary to avoid giving the impression that he is incarcerated for the purpose of serving a sentence. It is appropriate to seek to counter the negative effects of deprivation of liberty". Further, according to section 18, "the detainee must be treated in a fair, dignified and humane fashion".

In many respects the situation of such prisoners is similar to that of prisoners serving a sentence, subject to the important reservation that the judge who is charged with the investigation is responsible for all aspects of the detention on remand and for imposing any restrictions. In particular, the judge is responsible for decisions on where the prisoner will be detained, his contacts with the outside world, any special security measures and any disciplinary measures (see sections 119 et seq. of the Code of Criminal Procedure).

D. Administrative detention of foreigners

23. The Aliens Act, as in force since 1 January 1991, lists the circumstances in which a foreign national may be required to leave the country: expulsion (sections 45, 46, 47) and deportation (sections 42 and 49). According to the Asylum Procedures Act, again as in force from 1 January 1991, where an application for asylum has been rejected, the foreign national must leave the country (if the application is rejected as being manifestly ill-founded, the person concerned must leave the country within one month of the decision becoming final; if the rejection follows an examination of the merits of the case, the authorities set a time-limit for departure).

24. A foreigner who is required to leave the country may be placed in detention, either as a preparatory measure (Vorbereitungshaft) or as a preventive measure (Sicherungshaft) following a judicial decision (section 57 of the Aliens Act).

Preparatory detention is intended to prepare the way for expulsion/deportation when a decision cannot be taken immediately and failure to deprive the individual of his liberty would make the expulsion/deportation much more difficult to carry out or be likely to render it impossible. Preparatory detention may not exceed six weeks. However, if an expulsion/deportation order is issued, no further judgment is required for the detention to continue.

Preventive detention applies after an expulsion/deportation order has been issued when there is reason to believe that the individual concerned does not intend to comply with the order. However, such detention should not be ordered if it is clear that the order cannot be executed within three months following the decision. Detention may initially be ordered for a period of six months and may be extended to a maximum of twelve months. The period in which the foreign national was held in preparatory detention must be taken into account in determining the total length of the preventive detention.

25. Sections 51 to 54 of the Aliens Act establish the principle that a foreign national may not be expelled/deported to a country where he will be, or runs the risk of being, persecuted for his religion, origins, convictions etc, where there is a real danger of his being subjected to torture or incurring the death penalty, or where his life, physical integrity or liberty are at risk.

In addition, the Act (to which the Asylum Procedures Act makes reference) lists the circumstances in which the expulsion/deportation order cannot be implemented for various reasons pertaining to the law or to the facts of the case. These "grounds of tolerance" (Duldungsgründe) in no way affect the expulsion/deportation order itself.

26. The two Acts referred to lay down the procedures to be followed and the safeguards to protect foreigners (in particular, written notification of the decisions taken and of reasons for rejecting applications, together with information on appeals procedures, notification of the time limit for departure, information on legal assistance etc.).

E. Deprivation of liberty for psychiatric reasons

27. The Penal Code contains a provision for legal detention in a psychiatric institution for criminal law reasons.

Under section 63, courts may order that a person who was not responsible for his actions (under the terms of section 20 of the Code) or not in possession of all his mental faculties (section 21) at the time the offence was committed should be detained in a psychiatric institution, if there is reason to believe that other offences will be committed and that public safety is threatened.

28. The detention takes place not in institutions under the authority of the Ministry of Justice but in establishments designated for that purpose in regional legislation. The relevant principles to be followed are set out in sections 136 to 138 of the Act Concerning the Execution of Prison Sentences. Section 136 stipulates that the "treatment of detainees in a psychiatric hospital shall be governed by medical considerations. As far as possible, the detainee should be cured or his state of health improved to such an extent that he will no longer be dangerous. He should be given the necessary supervision, care and nursing".

Detention in these circumstances is governed by regional legislation, unless federal legislation provides otherwise (section 138). Federal legislation provides, in particular, for complaints procedures for detained persons.

29. The Civil Code (Bürgerliches Gesetzbuch) and related legislation (Code of Civil Procedure etc) contain a series of outline provisions on the different forms of guardianship (Vormundschaft/Pflegschaft) of individuals and on their compulsory admission, for civil law reasons, to psychiatric institutions. It is the Lander who are responsible for legislating on the details of these provisions and their application.

This area has recently been substantially altered by an Act of 12 September 1990 (Betreuungsgesetz - BtG), which entered into force on 1 January 1992. This is Federal legislation with which regional legislation must conform. In particular, the Act lays down in detail the procedures to be followed for compulsory admissions, with authority being given to the guardianship judge. It also sets out the rights of those concerned (appointment of a representative to participate in the proceedings, if this is necessary; the individual concerned to be heard by the court; opportunity for the family/guardian/person enjoying the individual's confidence to be heard; expert assessment by a psychiatrist; notification of the decision to admit to the individual concerned; judicial authorisation required for the use of force to effect the admission; remedies; length of stay; termination of the placement, etc).

In Saxony, the regional legislation on assistance for the mentally ill and protective measures (Gesetz über Hilfen für psychisch Kranke und Schutzmaßnahmen (PsychkG)) was still at the draft stage at the time of the CPT's visit.

