



CPT/Inf (97) 9 [Part 1]

**Report to the German Government  
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 14 to 26 April 1996**

The German authorities have agreed to the publication of the CPT's report on its visit to Germany, together with the interim report of the German Government in response.

Strasbourg, 17 July 1997



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Copy of the letter transmitting the CPT's report

Strasbourg, 8 October 1996

Dear Sir,

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 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 14 to 26 April 1996. The report was adopted by the CPT at its 30th meeting held from 9 to 13 September 1996.

I would draw your attention in particular to paragraph 196 of the report, in which the Committee requests the German authorities to provide an interim and a follow-up report on action taken upon its report. The CPT would ask, in the event of the latter reports being forwarded in German, that they be accompanied by an English or French translation.

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,

Claude NICOLAY  
President of the European Committee for  
the prevention of torture and inhuman  
or degrading treatment or punishment

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## 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 carried out a visit to Germany from 14 to 26 April 1996.

The visit formed part of the CPT's programme of periodic visits for 1996, and was the second periodic visit to Germany to be carried out by the Committee (the first periodic visit having taken place in December 1991).

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

- Mr Bent SØRENSEN (Head of Delegation);
- Mrs Christina DOCTARE;
- Mr Adam ŁAPTAŚ;
- Mr Arnold OEHRYS;
- Mrs Jagoda POLONCOVÁ.

The delegation was assisted by:

- Ms Sonja SNACKEN, Professor of Criminology and Sociology of Law at the Free University of Brussels, Belgium (expert);
- Mr David TONG, Acting Consultant Psychiatrist, Forth Valley Health Board, United Kingdom (expert);
- Mr Thomas BINDER (interpreter);
- Mrs Christiane GIESEN (interpreter);
- Mrs Sybille von MÜLMANN (interpreter);
- Mrs Silvia SCHREIBER (interpreter).

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

- Ms Geneviève MAYER, Deputy Secretary of the CPT;
- Mr Mark KELLY.

**B. Establishments visited**

3. The delegation visited the following places of detention:

Berlin

- Moabit Prison (follow-up visit)
- Tegel Prison (follow-up visit)
- Köpenick Detention Centre for Foreigners, Grünauerstraße 140
- Schöneberg Police Detention Centre, Gothaerstraße 19
- Police Detention Centre, Directorate 2, Charlottenburger Chaussee 75
- Police Detention Centre, Directorate 5, Friesenstraße 16 (follow-up visit)
- Police Station 53, Friederichstraße 219
- Federal Border Police Station at the Berlin-Tegel Airport, Kurt-Schumacher Damm

Hamburg

- Hamburg Remand Prison and Central Prison Hospital
- Police Station 11, St. Georg, Kirchenallee 47
- Police Station 15, St. Pauli, Spielbudenplatz 31

Mecklenburg-Western Pomerania

- Bützow Prison
- Police Detention Centre, Ulmenstraße 54, Rostock
- Police Station at August Bebel Straße 6/7, Rostock

Schleswig-Holstein

- Pinneberg Police Station

**C. Consultations held by the delegation**

4. In addition to meeting with the local officials in charge at the places visited, the delegation held consultations with national authorities (at Federal and Länder level) and with representatives of non-governmental organisations and other persons active in areas of concern to the CPT.

A list of the authorities, organisations and other persons with whom the delegation held consultations is set out in Appendix II to this report.

**D. Co-operation encountered during the visit**

5. As had been the case during the Committee's 1991 visit to Germany, the delegation's meetings with the Federal and Länder authorities at both the start and the end of the visit took place in a spirit of close co-operation. The detailed discussions held on matters of substance served to develop the ongoing dialogue which began with the CPT's first periodic visit.

6. The delegation also received a very satisfactory reception from management and staff in all of the places of detention visited, including those which had not been notified in advance that a visit would take place. It found that the majority of them were aware of the possibility of a CPT visit and had at least some knowledge of the CPT's terms of reference.

7. In conclusion, the CPT welcomes the excellent spirit of co-operation encountered before, during and after the delegation's visit to Germany, which was fully in accordance with Article 3 of the Convention.



## **II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED**

### **A. Police establishments**

#### **1. Introduction**

8. In the course of the second periodic visit, the CPT's delegation visited a total of ten police establishments in four different Federal Länder - three detention centres, a police station and a Federal Border Police station in Berlin; two police stations in Hamburg; a detention centre and a police station in Rostock, Mecklenburg-Western Pomerania; and Pinneberg police station, Schleswig-Holstein.

9. The legislation and subsidiary rules concerning the detention, treatment and questioning of persons detained by the police were summarised in the report drawn up after the CPT's first periodic visit (cf. CPT/Inf (93) 13, paragraphs 30 to 45 and Appendix III).

#### **2. Torture and other forms of physical ill-treatment**

10. As had been the case in 1991, the delegation heard no allegations of torture or other forms of ill-treatment having been inflicted by police officers on persons held in police establishments in Germany. However, a certain number of allegations were heard of the use of excessive force by police officers at the time of apprehension (Festnahme).

11. The most common forms of ill-treatment alleged by detained persons were blows and kicks received after they had been restrained and placed on the ground at the time of their apprehension. In two such cases in Berlin, the allegations concerned were supported by medical evidence.

12. In the first case, a prisoner claimed that, in June 1995, he had been assaulted after his apprehension by police officers from a special intervention force (the "SEK"). He alleged that, while lying on the ground after having been restrained, an SEK officer or officers dealt him a number of blows on the head. He alleged that he subsequently received a kick in the abdomen whilst being transferred to a police vehicle. He claimed that he was then placed on his stomach on the floor of the vehicle and that, whilst he was in that position, a police officer cut the index finger of his right hand with a knife.

The medical certificate completed at a nearby hospital some thirty minutes after his apprehension recorded the following injuries: a monocular haematoma and further haematoma on the os zygomaticum, on the right earlobe and on the right eyelid; two deep wounds on the web between the first and second fingers of the right hand. These injuries are consistent with the prisoner's allegations.

13. The second case involved a detainee who alleged that, when arrested the previous evening, he had been thrown to the ground, handcuffed behind his back and struck on the left leg with a truncheon. On examination by one of the delegation's doctors, he displayed a 2cm x 1cm bruise on his left cheekbone and sensitivity on palpation of the left leg, accompanied by pain on extension of the left knee. Again, these injuries are consistent with the detainee's allegations.

14. It should be added that, in the course of discussions with senior police officers from the Berlin police complaints department, it emerged that allegations of the use of excessive force at the time of arrest formed the bulk of the complaints which they received. Indeed, one such officer characterised the continued use of force after a suspect had been handcuffed or otherwise immobilised as a "typical breach" committed by police officers.

15. The CPT fully recognises that the arrest of a criminal suspect is often a hazardous task, in particular if the person concerned resists arrest and/or is someone whom the police have good reason to believe represents an immediate danger. The circumstances of an arrest may be such that injuries are sustained by the person concerned (and by police officers) without this being the result of an intention to inflict ill-treatment. However, no more force than is reasonably necessary should be used when effecting an arrest. Furthermore, once arrested persons have been brought under control, there can be no justification for them being struck by police officers.

In the light of the information gathered by its delegation, **the CPT recommends that police officers be reminded of these precepts.**

16. More generally, **in order to assist it to form a nationwide view of the situation, the CPT would like to receive the following information in respect of 1995 and the first half of 1996:**

- **the number of complaints of ill-treatment lodged against police officers and the number of criminal/disciplinary proceedings initiated as a result of such complaints;**
- **an account of criminal/disciplinary sanctions imposed following complaints of ill-treatment by police officers.**

**The Committee would be grateful if, in addition to breaking down that information by Federal Land, the German authorities could indicate the Federal Länder concerned<sup>1</sup>.**

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<sup>1</sup> Shortly after the adoption of this visit report, the German authorities forwarded to the Committee such information in respect of 1994 and 1995.

### 3. Conditions of detention

#### a. introduction

17. The Committee wishes to recall that all police cells should be of a reasonable size for the number of persons they are used to accommodate, and have adequate lighting (i.e. sufficient to read by, sleeping periods excluded) and ventilation; preferably, cells should enjoy natural light. Further, cells should be equipped with a means of rest (e.g. a fixed chair or bench), and persons obliged to stay overnight in custody should be provided with a clean mattress and (if appropriate) blankets.

Persons in police custody should be allowed to comply with the needs of nature when necessary in clean and decent conditions, and be offered adequate washing facilities. They should have ready access to drinking water and be given food at appropriate times, including at least one full meal (i.e. something more substantial than a sandwich) every day. Persons held for extended periods (24 hours or more) should, as far as possible, be offered outdoor exercise every day.

#### b. situation in the establishments visited

18. With few exceptions, conditions of detention in the police establishments visited were found to be broadly in conformity with the criteria outlined in paragraph 17, above. Cells were of a reasonable size and appropriately lit and ventilated. In establishments where the cells were not themselves equipped with lavatories, detainees were granted access to adequate sanitary facilities.

However, conditions of detention at the **Schöneberg Police Detention Centre** (Gothaerstraße) and the **Directorate 2 Police Detention Centre** (Charlottenburger Chaussee) in Berlin, and at the **Police Detention Centre** at Ulmenstraße in Rostock, were of a markedly lower standard.

19. The **Schöneberg Police Detention Centre** accommodated detainees on three levels, each of which contained between nine and twelve single cells and two to three communal rooms.

The single cells were very small, measuring only some 3.5m<sup>2</sup>. They were equipped with a folding bunk bed, a fixed table and a small stool. During the day, the bunk bed was locked against the wall; when it was lowered, the gap between the edge of the bed and the wall was little more than 40cm. In the view of the Committee, cells of such a size are only fit to be used for temporary holding purposes (i.e. detention of a few hours); they should not be used to accommodate persons held in custody overnight.

The communal holding rooms operated on a "day and night cell" basis. During the day, detainees would be held in a "day" room measuring some 18m<sup>2</sup>, equipped with benches and tables. Up to twenty persons could be held in rooms of this size, at which level of occupancy they would be very cramped indeed. Detainees held overnight (and not allocated to one of the above-mentioned single cells) could be placed in a "night" cell, measuring around 18m<sup>2</sup> and containing six beds.

The establishment as a whole was in a dirty and dilapidated condition. Indeed, the conditions in which police officers were expected to work (one 10m<sup>2</sup> office for up to five officers) were little better than those in which detainees were held.

20. The delegation also found rather cramped conditions of detention at the **Directorate 2 Police Detention Centre** in Berlin. Although the ten single cells were of an adequate size (i.e. some 6m<sup>2</sup>), four communal cells measuring around 13m<sup>2</sup> were each being used to hold up to eight persons for periods of several hours. The negative effects on detainees of being held in such conditions were exacerbated by the fact that ventilation was poor throughout the cell area.

21. The cells at the **Police Detention Centre at Ulmenstraße in Rostock** were of a good size (some 8m<sup>2</sup> for single occupancy and 13m<sup>2</sup> for two detainees); however, they were poorly lit and ventilated.

22. More generally, the delegation observed that it was still the case that not all police establishments provided mattresses and blankets to detainees required to spend the night in custody. There appeared to be no consistent approach to this matter - some establishments provided blankets but not mattresses; in others mattresses were available, but blankets were lacking.

23. Arrangements for the distribution of food also remained problematic. A number of establishments only distributed food to detainees who specifically asked to be fed. As an example, during a follow-up visit to the Directorate 5 Police Detention Centre (Friesenstrasse) in Berlin, the delegation spoke to one detainee who had been held at the establishment since before noon; by 5pm that day he had still not been offered food because, according to the police officers present, he had not indicated that he was hungry.

24. **The CPT recommends that the German authorities:**

- **review conditions of detention in the above-mentioned police establishments, in the light of the remarks set out in paragraphs 19 to 23;**
- **take appropriate steps to ensure that conditions of detention in all police establishments meet the criteria indicated in paragraph 17.**

As regards, more particularly, Schöneberg Police Detention Centre, the delegation was told that there are plans to open a new police detention facility, which will replace that establishment and several other similar centres in Berlin. The CPT trusts those plans will be implemented in the very near future and **recommends that the closure of Schöneberg Police Detention Centre be accorded a very high priority.**

25. Finally, reference should be made to the so-called "tranquillising cell", located in the basement of **Schöneberg Police Detention Centre**. The cell concerned measured some 4.5m<sup>2</sup> and was completely empty; the only equipment being a call bell. The cell window had been covered by sheets of metal, an arrangement which, according to police officers present, helped to prevent other detainees being woken by the screams of agitated persons who were placed in the cell. They added that, should a detainee remain agitated after having been placed in the tranquillising cell, handcuffs could be applied to his/her wrists and ankles. According to the records seen by the delegation, detained persons had been restrained in this way for up to an hour at a time.

The CPT considers that the above-mentioned procedures are highly questionable. **It recommends that in cases where a person in police custody is, or becomes, highly agitated, the police should immediately contact a competent doctor and act in accordance with his opinion.** In this respect, the Committee wishes to stress the importance of its recommendation regarding the provision of medical services to persons at the Schöneberg Police Detention Centre (cf. paragraph 34, below).

#### **4. Safeguards against ill-treatment**

26. In the report drawn up after its first visit (document CPT/Inf (93) 13, paragraphs 30 to 45), the CPT made a certain number of recommendations concerning the safeguards against ill-treatment which should be offered to persons detained by the police in Germany. The relevant federal legislation which governs these matters (cf. document CPT/Inf (93) 13, paragraphs 31 to 34 and Annex III, paragraphs 5 to 11) has remained unchanged. As regards, more particularly, the three fundamental rights systematically advocated by the CPT (the right for detained persons to inform a close relative or a third party of their choice of their detention; access to a lawyer, access to a doctor), the German authorities' response (document CPT/Inf (93) 14) expressed the view that the current system includes sufficient safeguards and does not need to be further developed.

In the context of the ongoing dialogue subsequently established between the Committee and the German authorities, the CPT has developed its views on these matters, and has stressed the importance of detained persons being immediately informed of all of their rights (cf. the President of the CPT's letter, dated 29 March 1996).

The observations made during the CPT's second periodic visit demonstrated that the Committee's recommendations on these subjects remain pertinent.

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

27. The CPT wishes to stress that it is during the period immediately following deprivation of liberty that the risk of intimidation and ill-treatment is at its greatest. It follows that it is most important for persons apprehended by the police - regardless of the legal category or form of detention under which they are placed ("Kriminalhaft", "Justizhaft", "Verdächtiger", "Beschuldigter" etc.) - to have the right to inform a family member or a third party of their choice of their situation and the right to have access to a lawyer, from the very outset of their custody.

28. It should be recalled that persons deprived of their liberty by the police on suspicion of having committed a criminal offence have the right to personally inform a family member or a third party of their detention, or to have this information transmitted by a police officer, except if this could hinder the investigation or prejudice the detention itself. This principle is set out in the regulations in force in the different Länder visited.

In practice, in the police establishments visited a person suspected of having committed a criminal offence was not authorised to inform anyone of his/her detention unless and until the agreement of the relevant criminal investigation department had been secured - when confronted with a request of this kind, police officers in places of detention were instructed to systematically refer them to the criminal investigation department concerned. In fact, the delegation gained the clear impression that, under the current system, exceptions to the principle of the right to inform a detainee's family member or a third party have become the rule.

29. As regards access to a lawyer for persons suspected of having committed a criminal offence, under the existing legislation this right only applies from the moment when the person concerned is first interrogated by the police (see paragraph 33 of the report on the CPT's first visit, and paragraph 7 of Appendix III thereto). The facts found during the CPT's second periodic visit confirmed that persons suspected of having committed a criminal offence do not have a formal right of access to a lawyer from the very outset of police custody (i.e. from the moment when they are obliged to remain with the police).

Indeed it appears that if such persons ask to contact a lawyer, the decision as to whether access should be granted lies within the discretion of the criminal investigation department in charge of the case. During its visit, the delegation met only one detainee who had been visited by his lawyer at a police station.

30. The CPT's report on its first visit contained inter alia recommendations concerning the precise content of the right of access to a lawyer during police custody and about the conditions under which access is granted. In particular, the Committee specified that the right to contact and to be visited by the lawyer should, in both cases, be granted under conditions guaranteeing the confidentiality of discussions between the detainee and the lawyer. Moreover, it stressed that the right of access to a lawyer should, in principle, include the right to have a lawyer present during questioning by the police.

According to the response of the German authorities, it was not necessary to extend the Code of Criminal Procedure rules on the confidentiality of contacts between lawyers and remand prisoners to persons detained by the police, because such persons were not yet at the stage of preparing their defence. Consequently, persons detained by the police could not reasonably object to the presence of a police officer<sup>2</sup>.

As regards the presence of a lawyer during interrogation, this is only formally guaranteed during interrogation by a judge or a public prosecutor, and not during police questioning of persons suspected of having committed a criminal offence. During meetings held with criminal investigation department police officers it became apparent that if a person being interrogated by the police asks to have a lawyer present, the decision whether to grant that request also lies within the discretion of the police. All in all, the presence of a lawyer during police interrogations seems to be little more than a theoretical possibility.

31. As the CPT has already mentioned (see paragraph 27 above), the possibility for persons taken into police custody to have access to a lawyer from the very outset of their custody is a fundamental safeguard against ill-treatment. The existence of that possibility will have a dissuasive effect on those minded to ill-treat detained persons; moreover, a lawyer is well placed to take appropriate action if ill-treatment actually occurs.

The CPT recognises that, in order to protect the interests of justice, it may exceptionally be necessary to delay for a certain period a detained person's access to a particular lawyer chosen by him. However, this should not result in the right of access to a lawyer being totally denied during the period in question. In such cases, access to another, independent, lawyer who can be trusted not to jeopardise the legitimate interests of the police investigation should be arranged.

The right of access to a lawyer must include the right to talk to him in private. The person concerned should also be entitled to have a lawyer present during any interrogation conducted by the police (whether this be during or after the initial period of police custody). Naturally, the fact that a detained person has stated that he wishes to have access to a lawyer should not prevent the police from beginning to question him on urgent matters before the lawyer arrives. Provision might also be made for the replacement of a lawyer who impedes the proper conduct of an interrogation, though any such possibility should be closely circumscribed and made subject to appropriate safeguards.

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<sup>2</sup> However, it should be noted that according to regulations in force in Hamburg, the police have no right to be present during meetings between a person suspected of having committed a criminal offence and his/her lawyer. The regulations in Mecklenburg-Western Pomerania and in Schleswig-Holstein specify that persons detained by the police must be allowed to contact freely a lawyer of their choice.

32. In the light of the above remarks, **the CPT recommends that the German authorities:**

- **reconsider the recommendations made in paragraph 35 of the report on the CPT's first visit, in order to ensure that persons detained by the police have, from the very outset of their custody, the right to inform members of their family or a third person of their detention. In order for this right to be effective, a precise definition of situations in which the exercise of this right could exceptionally be delayed will be required;**
- **ensure that all persons deprived of their liberty by the police have a right of access to a lawyer from the very outset of their detention.**

33. The CPT has also noted with interest the decision of the Federal Supreme Court of 12 January 1996, in which the Court recognised the right of a person interrogated by the police to have access to a lawyer (i.e. to have contact with him), and specified that it is the duty of the police to do everything necessary to help such a person establish effective contact with a lawyer. **The CPT would like to be informed of any measures taken by the German authorities in the light of this decision.**

b. access to a doctor

34. With one exception, the delegation heard no complaints about access to a doctor during police custody. Moreover, at the Directorate 2 Police Detention Centre in Berlin, the delegation was able to observe an urgent medical intervention and was impressed by the way in which it was carried out and by the professionalism of the staff involved. The above-mentioned exception concerns the Schöneberg Police Detention Centre, where the delegation received complaints, both from the detainees and staff, about difficulties regarding access to a doctor. **The CPT recommends that the German authorities review the practical arrangements at this centre concerning access to a doctor for detained persons.**

35. The CPT also wishes to return to the question of access to a doctor of a detained person's choice. According to the response of the German authorities, certain Federal Länder allow persons detained by the police to call a doctor of their choice, at their own cost, which demonstrates that implementation of the CPT's recommendation is feasible. The Committee wishes to make clear that this right could operate on a purely subsidiary basis, if the person concerned considers it necessary for the officially-appointed doctor's examination to be supplemented by a second examination.

With regard to the security considerations raised by the German authorities in this respect, the Committee can only reiterate the comments set out in paragraph 8 of the President of the CPT's letter of 29 March 1996. **It invites the German authorities to reconsider their position on this subject.**

c. information on rights

36. In the various police establishments visited, the CPT's delegation met numerous detainees who apparently had not been informed of their rights, and in particular of the rights to inform someone of their detention/to contact a lawyer, or of the basic rules applicable in the place of detention in which they were being held. Language barriers rendered this situation particularly difficult for foreign detainees.

The delegation found that police officers in charge of places of detention adopted a rather passive attitude - waiting for a detainee to make a request and limiting themselves to granting it or not, without further explanation.

37. The situation described above demonstrates the fundamental importance of persons detained by the police being immediately informed of all their rights, by way of a form setting out those rights in a simple way. In this respect, the Committee has already responded to the arguments advanced by the German authorities in their response (see paragraphs 9 and 10 of the President of the CPT's letter of 29 March 1996).

**The CPT reiterates its recommendation that such a form be systematically given to persons detained by the police, at the very outset of their custody. The form should be available in the languages most frequently spoken by detained persons.**

d. conduct of interrogations

38. As during the CPT's first periodic visit, the relevant rules concerning the conduct of police interrogations were contained in the Code of Criminal Procedure, in particular in section 136a and, in the case of certain Länder visited (for instance, Berlin and Hamburg), in more or less explicit instructions.

The CPT remains of the opinion that a code of conduct for police interrogations, setting out in detail the procedure to be followed, would enhance the impact of the relevant provisions of the Code of Criminal Procedure. In addition to spelling out the practical implications of relevant legal provisions, the existence of such a code would serve to underpin the lessons learnt during police training. **The CPT recommends that the German authorities reconsider their position on this matter.**

e. custody registers

39. During its second periodic visit, the CPT's delegation was pleased to find that certain police establishments were using simplified and individualised custody registers - representing a step towards the fulfilment of the recommendation formulated by the CPT in paragraph 45 of its first visit report. Such registers were, in particular, used by the Federal Border Guard, as well as by the police in Hamburg and Schleswig-Holstein. Moreover, the delegation took note of the scheduled entry into force (in the following month) of a new, simplified and individualised custody register in the Directorate 5 Police Detention Centre in Berlin. This new register, of which the delegation received a copy, was to replace the complex custody register system found at that establishment during the first visit.

The CPT welcomes these developments.

f. foreign detainees

40. The CPT wishes to stress that the recommendations in this chapter concerning safeguards against ill-treatment apply to all detained persons, including those deprived of their liberty under aliens' legislation (concerning the conditions of detention of such persons, see paragraphs 51 to 55 below).

41. The legislation in force in Germany extends the above-mentioned safeguards to persons held under the aliens' legislation. Nevertheless, the delegation was told that, contrary to the situation as regards persons detained on suspicion of having committed a criminal offence (see page 13 of the response of the German authorities), there were no provisions designed to ensure access to a lawyer for persons without resources held under the aliens' legislation. The CPT considers that, in order to ensure that the right of access to a lawyer is fully effective, appropriate provision should be made for those who are not in a position to pay for legal services. **It invites the German authorities to address this question.**

42. As described in paragraph 25 of Appendix III of the CPT's report on its first visit to Germany, the Aliens Act establishes the principle that a foreign national may not be sent to a country where he runs the risk of being subjected to torture or inhuman or degrading treatment. During its second visit, the CPT's delegation raised this question with the German authorities, who (by letter dated 25 April 1996) provided an account of the relevant international obligations binding upon Germany, as well as of national legal provisions which prohibit a foreign national being sent to a country where he runs the risk of being subjected to ill-treatment.

Over and above the legal safeguards which already exist in Germany, **the CPT would like to receive a detailed account of the precise steps taken by the German authorities in practice to ensure that such a situation does not arise.**

**B. Detention of foreigners**

**1. Köpenick Detention Centre for Foreigners**

a. general comments

43. The Köpenick Detention Centre for Foreigners, which has a capacity of 371 places, was opened on 27 November 1995, and since the closure of the Tiergarten Centre visited by the CPT in 1991 (cf. document CPT/Inf (93) 13, paras 46 to 58), it has accommodated all foreign nationals detained in the Land of Berlin pending deportation.

The Centre is situated in a suburb of Berlin, in buildings which, before reunification, served as a womens prison. Before being reclassified as a detention centre for foreigners, the buildings were comprehensively renovated.

44. The maximum length of time for which foreign nationals may be detained remains 18 months (cf. Appendix III, paragraph 24 of document CPT/Inf (93) 14). Specific legislation on the detention of aliens in the Land of Berlin was passed on 12 October 1995. In particular, that law provides for the adoption of rules for the Detention Centre which, at the time of the visit, were still being drafted. As a result, the Centre was, in many respects, in a transitional phase (for example, the information sheets distributed to detained foreign nationals were still those which had been used at the Tiergarten Centre).

45. At the time of the visit, the Centre was holding 198 foreign nationals, 23 of whom were women, representing more than 40 nationalities. The average length of stay for the majority was about ten days. Nevertheless, at the time of the visit, it appeared that four persons had been detained for periods ranging from eight to fourteen months, and some sixty persons from one to seven months.

b. ill-treatment

46. The CPT delegation heard no allegations of torture of foreign nationals detained at the Köpenick Centre, nor did it find any other evidence of such practices. However, the delegation did receive a few allegations of the disproportionate use of force against detained persons on occasions when staff had resort to control and restraint techniques.

47. In one case, a detainee exhibited medical signs (rupture of the long flexor tendon of the little finger of the left hand, a slight haematoma on the left cheek and a sensitive area on the left thigh) consistent with his claims that during a check made in a dormitory a few days before, he had been dragged outside, peremptorily handcuffed behind his back, thrown face down onto the floor, punched in the face and kicked. The detainee's medical record referred to the injury to his little finger, without indicating any possible cause.

In another case, from December 1995, a detainee alleged that, after he had repeatedly called the staff, he was restrained by several custodial staff who threw him face first onto his cell bed, after which one member of staff held him in this position by pressing his foot against the nape of his neck in order that he could be handcuffed behind his back. He alleged that once he had been handcuffed, he was punched on the neck. The detainee lodged a complaint about the way he had been treated. The delegation was informed that the complaint was being investigated by the relevant department of the Berlin police (LKA3136).

It should be noted in this context that, after the visit, the CPT learnt from other sources of an allegation of a similar staff reaction to a person detained at the centre in January 1996, as a result of which the person concerned sustained several injuries including a torn right eyelid, bruising of the left shoulder blade and the arms, and swelling on the back of the head. Again, a complaint had apparently been lodged with the LKA3136 department.

**The CPT would like to be informed of the results of investigations carried out by the LKA3136 police department in the light of the aforementioned complaints.**

48. There can be no doubt that custodial staff may occasionally have to use force to restrain violent or disturbed detained persons. However, as has already been made clear (cf. paragraph 15), no more force than is reasonably necessary should be used. Furthermore, once a person has been brought under control, there can never be any justification for him being struck by members of staff. **The CPT recommends that custodial staff at Köpenick Detention Centre be reminded of these precepts.**

49. The use of force clearly creates high-risk situations as regards the possible ill-treatment of detainees and, as such, calls for specific safeguards:

- a detainee in respect of whom any means of force has been used should have the right to be examined and, if necessary, treated by a doctor without delay;
- that medical examination should be performed out of the hearing and, unless the doctor requests otherwise, out of sight of non-medical personnel;
- the results of the medical examination as well as any relevant statements by the detainee and the doctor's conclusions should be duly recorded in writing and made available to the detainee.

**The CPT recommends that the German authorities take steps to ensure that these safeguards exist in practice.**

50. The CPT also wishes to emphasise the importance of appropriate training in techniques for controlling and restraining agitated and/or violent detainees, including verbal communication skills, behavioural management techniques etc.

**It would like to be informed of the extent to which training in such techniques is included in the training of custodial staff at the Köpenick Detention Centre for Foreigners and, more generally, at similar centres elsewhere in Germany.**

c. conditions of detention

51. The material conditions of detention at Köpenick undoubtedly represented an improvement as compared to those observed in 1991 at the Tiergarten Detention Centre. Detainees were accommodated in unlocked rooms of a reasonable size: about 12 m<sup>2</sup> for a two-person room; 21 to 33 m<sup>2</sup> for four-person dormitories and 33 to 36 m<sup>2</sup> for six-person dormitories. They were clean, well equipped and appropriately lit and ventilated.

As far as sanitary facilities were concerned, **the only problem was the limited privacy afforded by the shower facilities.**

52. Other material improvements which should be emphasised included a greater awareness of detainees' dietary practices (see paragraph 57 of the CPT's first report) and the installation of a kitchen on each floor. However, detainees complained to the delegation that they did not always receive a hot meal every day, a situation which was not in accordance with their usual dietary practices. **The CPT invites the German authorities to verify whether this is the case.**

53. The delegation observed that detainees were allowed to wear their own clothes and that, where necessary, they were supplied with suitable clothing. The CPT has noted with interest the instructions on this subject issued by the relevant departments in April 1996 (LSA 12-00653 and LSA 122-00653). Nevertheless, there were still widespread complaints about the confiscation of items such as shoelaces, belts and watches, and the refusal to allow personal effects in the dormitories (they were kept upstairs and access to them was granted on request). Staff explained that these measures were dictated by security considerations. It was also stated that some of these items could be returned to detainees during their stay; however, few detainees had been informed of this possibility.

The CPT readily acknowledges that some such measures may be necessary during a period of observation on arrival in a place of detention, or when a detained person exhibits disturbed or violent behaviour. However, it seems difficult to justify the maintenance, over extended periods, of precautions which are more restrictive than those to be found in ordinary remand prisons. In the light of the above remarks, **the CPT invites the German authorities to review the question of access to personal effects at the Köpenick Centre.**

54. Reference should be made to several other improvements as compared to the Tiergarten Centre, including extending the open door policy for dormitories on each floor, guaranteeing detainees at least one hour of outdoor exercise every day (although cf. paragraph 59) and improving the possibilities for contact with the outside world through the installation of payphones on each floor. Nevertheless, a number of issues remain a source of concern.

Firstly, despite the provisions of sections 5 and 6 of the new Law on detention of foreigners in the Land of Berlin<sup>3</sup>, the situation regarding activities has remained more or less identical to that described in paragraph 53 of the CPT's report on its first visit to Germany (although a television has now been installed in each room). The range of activities is still too limited for those detained at the centre for long periods, which is the position of a significant number of persons (cf. paragraph 45).

Admittedly, it is not easy to organise activities in a centre like Köpenick, which has a rapid turnover of detained persons. Nevertheless, there is room for improvement. One way to facilitate the introduction of a varied programme of activities might be to reorganise the centre to take account of the length of detention (for example, by allocating specific floors or a special building for prolonged detention).

In the light of the above remarks, **the CPT recommends that the German authorities further develop the range of activities offered to persons detained at the Köpenick Centre for extended periods of time.**

55. As regards contact with the outside world and, in particular, visits, the situation was satisfactory. However, the delegation was surprised to observe that visits other than from lawyers, consular officials and ministers of religion generally took place under closed conditions, in a room with cubicles fitted with a glass partition, thus considerably restricting communication between visitors and detainees.

The CPT recognises that in certain circumstances it may be necessary for visits to be accompanied by reinforced security. However, it considers that for the great majority of persons detained at the centre, it should be possible for visits to take place under much more open conditions.

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

d. security measures

56. Under section 10 of the above-mentioned Berlin legislation on the detention of foreigners, various security measures can be ordered if detainees are considered to pose a threat to order and security in the centre. This section provides expressly for the application, *mutatis mutandis*, of the order and security provisions of the Prison Law, in particular sections 88 (special security measures) and 89 (separate detention).

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<sup>3</sup> These articles lay down that, as far as possible, detainees should be offered work (section 5) and that leisure activities should be introduced (section 6).

57. At Köpenick, a detainee could be held separately either in one of the individual cells located on the various detention floors or in one of the dormitories in the unit reserved for special cases. It was noted that, in practice, placement in the latter unit could be preceded by a stay in an individual cell; this has been the case for two detainees whom the delegation met in that unit. Before being transferred to the unit on 13 April 1996, the first had been held successively in an individual cell and in a room reserved for admissions; the second had been placed in an individual cell for several hours on 14 April 1996 before being transferred.

Material conditions in the individual cells and the rooms in the unit reserved for special cases call for no particular comment, being similar to those described earlier. It should be added that the individual cells were also of a reasonable size (8 m<sup>2</sup>).

As regards physical restraints (*Fesselung*) as provided for in section 88 (paragraph 6) of the Prison Law, the most commonly used form in Köpenick was the application of handcuffs, normally for brief periods (i.e. some fifteen minutes).

58. The application of security measures vis-à-vis detainees was noted in a report which was entered in the centre's incident register. **Nevertheless, the CPT recommends that every instance of resort to such measures be entered in a register specifically established for that purpose.**

59. It should also be noted that one of the security measures provided for in the establishment's draft rules (item 2.4 (1))<sup>4</sup> is the withdrawal of, or restrictions on, outdoor exercise (see also section 88, sub-paragraph 2 (4) of the Prison Law). One detainee at the centre was found to have been in solitary confinement since 13 April 1996 and only to have benefitted from one hour of outdoor exercise on 16 April 1996.

The CPT has made clear its views on the subject of the withdrawal of outdoor exercise as a disciplinary measure (paragraph 159 of its report on the first visit and paragraphs 158 and 159 below); these views apply equally in this area. **The CPT recommends that the practice and regulations be amended accordingly.**

e. medical care

60. The Köpenick Centre had a well equipped health-care service. The medical consulting room, treatment room, four-bedded infirmary and dental surgery were fitted with modern equipment and very clean.

Unfortunately, for want of medical staff, most of these facilities remained unused.

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<sup>4</sup> The other security measures provided for in the draft rules are: transfer to another detention unit, placement in an individual cell, permanent lighting of the cells, withdrawal of personal property, segregation from other detainees, restrictions on visits, and prohibition of telephone contact other than with a lawyer.

61. The Centre's health-care staff consisted of only three persons with some six months' training as nursing assistants (Sanitätshelfer).

No doctor - or dentist - attended the Centre on a regular basis. Detained persons who requested a medical appointment were taken to one of the two police medical centres, generally once a week. If necessary, patients were treated by the Berlin emergency medical services.

Moreover, the Centre did not have any staff qualified to provide psychiatric or psychological care. Except in emergencies - for which the health-care staff had to make the initial diagnosis - detainees had to wait at least until the next scheduled weekly session. One of the delegation's psychiatrists observed the damaging consequences of this situation for a detained person with psychiatric disorders at the hallucinatory stage, who had not received the full range of care required by his condition. It also appeared from the patient's medical record that the health-care staff had encountered difficulties in securing an urgent appointment following a previous hallucinatory episode accompanied by agitation. More generally, the overall characteristics of the Centre's population would justify the introduction of psychological and psychiatric services. This would also help to reduce staff fears concerning the risk of suicide and self-mutilation among detainees (see also paragraph 58 of the report on the first visit).

62. Although the delegation had a very positive impression of the health-care team's activities, it cannot be expected that such a team will be in a position to respond in a satisfactory manner to the health needs of a detention centre population which could be in excess of 300 detainees. The Köpenick Detention Centre should be able to count on the regular presence of a doctor. Moreover, in addition to nursing assistants, it should have qualified nursing staff whose main duty would be to supervise the health-care team and pass on to them, as well as periodically update, the necessary professional experience.

63. It was not the practice at Köpenick to offer foreign nationals medical screening on arrival. Such screening was only carried out when the individual concerned spontaneously raised a matter of medical relevance.

The CPT considers that attention should be given without delay to the physical and psychological state of persons entering a detention establishment for foreigners. Such a measure would be particularly advisable in terms of preventive medicine.

64. It should be added that all medical consultations held at the Centre were systematically attended by a member of the custodial staff. It appeared from conversations with detainees and staff that this was also generally the case for outside medical consultations. The delegation was informed that, even if a doctor asked for a consultation to be conducted in private, custodial staff refused on security grounds to accede to such requests. Such a situation is not in conformity with medical ethics.

65. **In the light of the above remarks, the CPT recommends that the German authorities:**
- **take immediate steps to appoint at least one half-time doctor at the Köpenick Centre; it would be highly desirable to appoint a doctor on a full-time basis;**
  - **establish a psychiatric and psychological service adapted to the needs of detainees;**
  - **appoint at least one full-time qualified nurse to the Centre's health-care team;**
  - **ensure that someone qualified to provide first-aid, preferably with a recognised nursing qualification, is always present at the Centre;**
  - **ensure that all detainees are medically screened on arrival at the Centre; such screening could be carried out by a doctor or by a qualified nurse reporting to the doctor;**
  - **ensure that all medical examinations on admission, and any subsequent examinations, are conducted out of the hearing and - unless the health-care staff request otherwise - out of the sight of custodial staff;**
  - **make efforts to improve communication between health-care staff and foreign nationals (if necessary, consideration should be given to providing interpretation).**
- f. relations between staff and detainees

66. The CPT wishes to stress that its delegation gained a favourable impression of the attitudes of the great majority of staff and of the efforts they made in their day-to-day relations with detainees. This impression was confirmed by numerous conversations with detained persons. Nevertheless, a small core of custodial staff were the subject of a few allegations of insulting or provocative behaviour, in particular when they worked together on the same shift.

67. In general, the delegation observed that there was a lot of tension at the Centre. This was largely the consequence of major day-to-day communication problems, even though certain members of staff did speak foreign languages, including English, Russian and Turkish. Tension also arose from the fact that most of the staff were still insufficiently familiar with, and often failed to appreciate, the special problems which arise when this category of person is detained. Many of them acknowledged that the custodial staff's general three-month training, involving a series of courses on various subjects (law, social issues, psychology, behavioural sciences, stress management), provided insufficient preparation for the supervision of such detainees. It was also stated that follow-up support in this field was limited, especially as regards the provision of counselling and training in stress management techniques.

68. The CPT had already highlighted these issues in the report on its first visit (paragraphs 50 and 51) and had made certain recommendations on the criteria to be taken into account in the selection and training of staff (for the German authorities' reply, see CPT/Inf (93) 14, pages 14 and 15). **In consequence, it can only recommend that efforts be made to increase the initial and in-service training of staff assigned to detention centres for foreign nationals<sup>5</sup>.**

Finally, the CPT has noted with interest that several members of staff were of varied origins or cultures. **The inclusion of such persons on the staff is an extremely positive development which should be encouraged.**

69. The high degree of security at the Centre - justified by concerns about escapes, suicides and self-mutilation - also had a bearing upon the tense atmosphere observed. Security measures had an oppressive effect on daily life: detainees only had items which were strictly necessary in their dormitories (cf. paragraph 53, above) and were obliged to ask members of staff to deal with even the simplest requests (e.g. gaining access to their personal effects, boiling a kettle, opening a window, lighting a cigarette). Inevitably, this situation caused friction: detainees were annoyed and frustrated and the staff were irked by incessant requests, feeling that they had been relegated to the role of "dogsbody".

Such difficulties were foreseen by Professor Rasch in his June 1995 study of the future Köpenick Centre. In particular, he warned against the dangers of conflating the security measures inherent in all places of detention with those required for prisoners considered to be dangerous. Further, he pondered upon the fact that the degree of security thought necessary in a detention centre for foreigners in Berlin was higher than that to be found in such centres in other Federal Länder.

**The CPT would like to receive the comments of the German authorities on the above-mentioned issues.**

70. Finally, the absence of a social worker (the two available posts were vacant at the time of the visit) also had negative effects upon the Centre's atmosphere: detainees could not rely on a trained interlocutor to help them with their social problems, and discussed them with the custodial staff. Staff assumed this additional task within the limit of their means and often felt helpless when confronted with the multiple aspects of this activity. The delegation was informed that a recruitment procedure to fill these posts was in process. **The CPT would like to know whether the two posts concerned have now been filled.**

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<sup>5</sup> In this respect, reference is made to the suggestions made in paragraph 12 of the President of the CPT's letter of 29 March 1996, regarding practical steps to improve the staff's foreign language skills.

g. administrative detention committee

71. The CPT has noted with interest that section 13 of the Law on detention of foreigners in the Land of Berlin provides for the establishment of an external committee (Beirat) for the detention centre. The regional Minister of the Interior will be responsible for the committee's composition, competence and powers.

**In this respect, the CPT wishes to draw the attention of the German authorities to the general comments in paragraph 166 of the report on its first visit which apply, *mutatis mutandis*, to external committees for detention centres.**

## 2. Bützow Prison

72. At the time of the visit, some forty male foreign nationals were detained at Bützow Prison pending deportation. The prison had received this category of detainee since 1994. As already mentioned, the legal maximum period of detention pending deportation is eighteen months. About two months before the visit, the prison governor had decided that these detainees should be accommodated in a special unit in Building II (they had previously been held in a wing set aside for remand prisoners).

73. The detainees concerned were accommodated in shared cells, the material conditions in which are described below (see paragraphs 105 to 112). It should be noted that the premises in this as yet unrenovated part of the establishment were dilapidated and, in some of the shared cells, the living space left much to be desired.

74. As regards the regime offered to detainees, it could only be described as inadequate. Detainees spent twenty-three hours a day locked in their cells and out-of-cell activities were limited to one hour of outdoor exercise every day and some form of sport once a week. The detainees had access to reading material in the cells but for many of them this was a purely theoretical option, since such material existed only in German.

75. There were major problems of day-to-day communication between detainees and staff. Moreover, the delegation heard repeated complaints from detainees about the lack of information concerning their legal situation, their situation inside the prison (there was nothing resembling the information sheets seen at the Köpenick Centre) and their access to lawyers, competent aliens authorities (who, in contrast to Köpenick, were not represented on the spot), interpreters or consular officials. Discussions with the prison governor and other persons demonstrated that these complaints were justified. The delegation was informed that there was a local initiative to establish an advice and assistance service for detained foreign nationals.

76. The CPT wishes to stress that a prison is, by definition, not an appropriate place in which to detain someone who is neither suspected nor convicted of a criminal offence. In those cases where it is considered necessary to deprive persons of their liberty under the aliens' legislation, they should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal situation. The Köpenick Centre is an example of such an establishment, although the activities offered there need to be developed. **The CPT recommends that the German authorities put an end to the practice of placing persons detained under the aliens' legislation in Bützow Prison and in prison establishments in general, and accommodate them in centres specifically created for that purpose.**

**In the meantime, it requests that steps be taken at Bützow Prison to ensure that:**

- **foreign nationals detained pending deportation are offered a wider range of activities;**
- **such detainees are properly informed, in a language they understand, of their situation and rights (contact with a lawyer, consular representatives etc.).**

## C. Prisons

### 1. Introduction

77. In the course of the second periodic visit to Germany, the CPT's delegation visited four prisons in three different Federal Länder - Tegel and Moabit Prisons in Berlin, Bützow Prison in Mecklenburg-Western Pomerania and Hamburg Remand Prison.

Moabit and Tegel Prisons (visited at some length during the first periodic visit in 1991) received relatively short follow-up visits; Bützow Prison and Hamburg Remand Prison were visited for the first time.

78. This report offers an assessment of the progress which has been made in implementing recommendations made in the report on the CPT's 1991 visit, together with some proposals for further action. It also sets out the Committee's view of the situation found at Bützow Prison and at Hamburg Remand Prison and makes reference to a number of other issues of relevance to the CPT's mandate.

### 2. Torture and other forms of physical ill-treatment

79. As had been the case in 1991, the delegation heard no allegations of torture of prisoners by prison staff in the establishments visited and gathered no other evidence of the existence of such treatment. Further, with the exception of Bützow Prison, the delegation heard very few allegations of other forms of physical ill-treatment.

80. The allegations of physical ill-treatment heard at Bützow Prison related to a recent past; the period before October 1995. According to these allegations, prisoners had been struck by prison officers, including with truncheons, while they were handcuffed to a bed. However, the delegation did not receive any allegations of physical ill-treatment concerning the six month period preceding its visit.

According to information received, a number of investigations are underway following complaints of ill-treatment at Bützow Prison. **The CPT would like to be informed of the results of these inquiries and of any decisions made as a consequence.**

81. More generally, the Governor of Bützow Prison admitted that staff recruited a long time ago had not yet entirely assimilated the changes which have taken place in the prison system since reunification. More efforts still had to be made in the area of vocational training and education. Now it was necessary to create a good climate in the establishment and to motivate staff to establish positive relations with prisoners.

The delegation's on-site observations confirmed the accuracy of this analysis.

**The CPT recommends that the German authorities pay sustained attention to the training of staff at Bützow Prison and, more generally, make every possible effort to improve relations between prisoners and staff at the establishment.**

82. In the course of discussions with inmates, the delegation's attention was drawn to the climate of **tension between prisoners** in Bützow Prison's Wing A, which sometimes culminated in physical violence. It was alleged that acts of physical violence were sometimes orchestrated by prison ringleaders to put pressure on weaker inmates or to punish those who did not behave in the desired fashion; such acts were also apparently committed under the influence of alcohol. Prisoners complained that such situations did not always receive appropriate attention from staff, who apparently rarely entered cells in Wing A.

The CPT's delegation gained a very unfavourable impression of the situation in Wing A; from the moment of entering the wing, a high degree of tension was palpable. Staff members admitted that it was the most "difficult" wing in the prison and that the majority of acts of inter-prisoner violence took place there. The establishment's registers showed that incidents in the wing were fairly frequent, particularly as regards aggression by prisoners under the influence of alcohol. Further, the delegation was struck by the low level of staffing in certain of the prison's wings. In Wing A, for example, which housed 130 prisoners on several floors, three officers were responsible for surveillance, including periods when the cell doors were open.

**The CPT wishes to emphasise that the duty of care which is owed by the prison authorities to prisoners in their charge includes the responsibility to protect them from other prisoners who might wish to cause them harm. In particular, prison staff must be alert to signs of trouble and both resolved and properly trained to intervene. Such a capacity to intervene will of course also depend in large measure on an adequate staff/prisoner ratio.**

83. **In order to assist it to form a nationwide view, the CPT would like to receive the following information in respect of 1995 and the first half of 1996:**

- **the number of complaints of ill-treatment lodged against prison officers and the number of criminal/disciplinary proceedings initiated as a result of such complaints;**
- **an account of criminal/disciplinary sanctions imposed following complaints of ill-treatment by prison officers.**

**The Committee would be grateful if, in addition to breaking down that information by Federal Land, the German authorities could indicate the Federal Länder concerned<sup>6</sup>.**

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<sup>6</sup> Shortly after the adoption of this visit report, the German authorities forwarded to the Committee such information in respect of 1994 and 1995.

### 3. Follow-up visits

#### a. Moabit Prison

84. On the first day of the delegation's 1996 visit, Moabit Prison was holding 1,166 prisoners (as compared to 1,110 in 1991), of whom 872 were remanded in custody; 174 were serving sentences and 120 were detained for other reasons.

85. In view of the inherent dilapidation of the prison complex at the time of the first periodic visit, the CPT's 1992 report recommended that a modernisation programme be initiated for the cell units, including, inter alia, the partitioning off of the sanitary facilities in the cells (cf. paragraph 91 of document CPT/Inf(93)13).

The delegation was provided with updated written information about the progress of that modernisation work at the beginning of the second periodic visit (in the form of a letter dated 10 April 1996 from the Berlin Prison authorities to the Federal Ministry of Justice). This information was supplemented by discussions with the establishment's Governor and by the delegation's own on-site observations. The following developments should be highlighted:

- 399 cells (257 in Building I and 142 in Building II) had been thoroughly cleaned, repainted and fitted with reading lamps, electric sockets and intercoms;
- the in-cell lavatories had been provided with new "privacy screens" (however, cf. paragraph 90);
- additional showers had been installed (in two wings of Building I and on all floors in Building II);
- twenty-five new "double cells" had been created (fourteen in Building I and nine in Building II), allowing remand prisoners to associate with each other to a greater extent;
- the visiting facilities had been renovated (cf. further, paragraph 169).

86. The CPT's report on its first periodic visit also made reference to the suite of nine cells seen by its delegation in the basement of Building II. It commented that the cells "did not appear to the delegation to be suitable for detaining anyone". The CPT recommended that, in the absence of substantial physical improvements, the cells should remain out of service. Any improvements were to "set out to provide the cells with adequate lighting and ventilation and physical facilities adapted to their intended use" and to ensure that prisoners had ready access to a lavatory at all times (cf. paragraph 94 of document CPT/Inf(93)13).

The Government's response indicated that "there are not nine, but only four special cells without dangerous objects" which were used "extremely infrequently, and mostly for a few hours only". The German authorities did not intend to renovate the cells because "many even more important and costly modernisation measures" were required elsewhere (cf. page 64 of document CPT/Inf(93)14).

87. In the course of the second visit, it became clear that there are indeed nine cells in the basement of Building II, but that, in 1991, only four of them (numbers 4, 5, 7 and 8) had been formally designated as cellular accommodation. The cells in question had remained in service until November 1995, when they had been replaced by two new security cells of a design appropriate for their function.

Nonetheless, the delegation observed that, although formally disaffected, all of the remaining cells could quickly have been brought back into service. It requested that the necessary measures be taken (e.g. removal of the cell locks and/or doors) to render them unusable as places of detention. At the final talks held with the German authorities at the end of the visit, the Berlin prison authorities confirmed that this had been done.

The CPT welcomes the fact that this situation has now been resolved in a satisfactory manner.

88. Notwithstanding these positive findings, the CPT remains concerned about a number of aspects which were the subject of criticism in the report on the CPT's first periodic visit.

89. The delegation learnt that funds had been allocated to continue the modernisation works, beginning in B Wing of Building I. However, a recent budgetary "freeze" had halted work in an area which prison staff considered offered some of the poorest conditions of detention in the establishment. At the time of the visit, it was unclear whether resources would be made available to allow the necessary modernisation work to be completed.

90. The screening arrangements for lavatories in the cells visited also left something to be desired. The new "privacy screens" ("Schamwänden") were certainly an improvement over those in use in the unrenovated cells (where the in-cell lavatory was screened only by a single piece of chipboard hinged to a wall). Nevertheless, the new screens (which consisted of two pieces of plyboard hinged together on a free-standing wooden frame) merely served to partially shield the lavatory from view. They offered little privacy for prisoners occupying double cells and virtually none for prisoners located two to a single cell.

91. Further, it appeared that there had been only modest improvements in the regime activities offered to prisoners.

Of the 872 prisoners being held on remand at the time of the visit, only some 400 had permission to work, the others being subject to judicial restrictions which included a prohibition on working (cf. further, paragraphs 153 to 156). The total of 456 work places represented an increase of 51 places as compared with the situation in 1991, due in part to the 1993 opening of a new (and well-equipped) workshop complex. Nevertheless, as already mentioned, more than 50 additional inmates were being held at the establishment.

Moreover, educational and sporting facilities remained very limited. Some 119 prisoners (i.e. less than 14% of the population) were taking part in educational courses, and the establishment still had neither a gymnasium nor a sports field.

As a result, a considerable proportion of prisoners on remand remained locked in their cells for up to 23 hours per day, with little or nothing to occupy their time.

92. It should be added that the delegation heard a number of complaints from inmates about conditions in certain cells (not seen during the first periodic visit), located in F Wing in Building II.

The cells concerned were used to hold prisoners on remand in the period immediately following their reception in the establishment; prisoners could be held there for weeks or even months at a time. The cells were quite small (6m<sup>2</sup>) and were in a very dilapidated condition. Moreover, numerous inmates claimed that these cells became very cold in winter. The negative effects of such conditions were exacerbated by the fact that prisoners spent up to 23 hours per day in their cells.

The establishment's Director recognised that conditions in these cells were not satisfactory. Indeed, he had instructed that they (and other cells of a similar size in G Wing in Building II) be strictly reserved for single occupancy. However, he regretted that it had not yet been possible for the prison authorities to meet his request that the cells in question be renovated or taken out of service.

b. Tegel Prison

93. On the day of the delegation's visit, Tegel Prison was holding a total of 1578 inmates (as compared to 1074 in 1991), of whom the overwhelming majority were sentenced prisoners.

94. Whilst recognising that the material conditions of detention in Tegel Prison were good and "even very good in the modern and renovated parts of the prison", the CPT's 1992 report invited the German authorities to "continue the interrupted modernisation works" at the establishment (cf. paragraph 97 of document CPT/Inf (93) 13). By the time of the second periodic visit the following work had been completed:

- of 304<sup>7</sup> cells in Building III, 288 had been fitted with new sanitary facilities, reading lamps and electric sockets. The relevant authorities had given an undertaking that renovation work would be completed in the remaining cells;
- improvements had been made to the visiting areas (cf. further, paragraph 168);
- a new centre for drug addicted inmates had been constructed in Building II.

95. The CPT had also recommended that four basement cells at the corner of Wings 2 and 3 of Building III be formally taken out of service as places of detention (cf. paragraphs 66 and 98 of document CPT/Inf (93) 13). The delegation was able to confirm that the German authorities had followed this recommendation. The doors of the cells in question had been removed and construction work was underway to turn the area into a laundry.

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<sup>7</sup> Figures based on the letter of 10 April 1996 from the Berlin Prison authorities to the Federal Ministry of Justice.

96. Whilst the Committee is pleased to note the progress which has been made in the above-mentioned areas, it remains concerned about the situation found by its delegation in the "isolation block for narcotics dealers" in Building I. It should be recalled that, in the report on its first periodic visit, the CPT characterised the regime in that unit as "very poor", compared with the rest of the prison (cf. paragraph 104 of document CPT/Inf (93) 13).

Although it is positive that daily out-of-cell time offered to prisoners in the unit had doubled (from five to a maximum of ten hours, including one and half hours outdoor exercise), few purposeful activities were offered to them during that time. A small weight-training room had been created in what had previously been a group / television room. As a result, the one remaining group / television room had to accommodate up to twenty-six prisoners, in a space designed for sixteen. Lifting weights, watching television and playing board games were the only activities offered to inmates held in the unit.

It should be recalled that, in addition to the problem of very limited regime activities, the cells accommodating these prisoners measure only 5.5m<sup>2</sup>. All in all, their quality of life remains distinctly inferior to that of inmates held elsewhere in Tegel Prison.

- c. Assessment of progress since the CPT's first periodic visit and proposals for further action

97. Extensive renovation work has been carried out at Moabit and Tegel Prisons since a delegation of the CPT first visited those establishments in 1991. Nevertheless, the process of modernisation has not been completed in either establishment. Of the two establishments, conditions at Moabit are of particular concern to the Committee. Indeed, material conditions in certain parts of that establishment - most notably in B Wing in Building I and in F Wing in Building II - continued to fall below acceptable standards.

98. The CPT's delegation discussed this matter at some length, both with the Governors of the establishments concerned and with senior officials from the Berlin Department of Public Works (Senatsverwaltung für Bauen, Wohnen und Verkehr). After the visit, the Department of Public Works provided supplementary written information in a letter dated 5 June 1996. It emerged that there are two principal impediments to the swift completion of the modernisation work which the German authorities acknowledge is required.

Firstly, there have recently been significant reductions in the overall budget for public works in Berlin. The prisons element of that budget has apparently been reduced to such an extent that it is only possible to carry out the most urgent repair work. Secondly, even if additional funds were to become available, shortfalls in the overall capacity of the Berlin prison system would render it difficult to find alternative facilities in which to accommodate inmates whilst their cellular accommodation was being renovated.

Plans are in hand to provide additional prisoner accommodation in Berlin; however, the entry into service of the establishments concerned has already been postponed from 1996 until the end of 1997. Officials confirmed that, given the current system of "stop and go" financing of the prisons budget, there is no guarantee that the inmate population and the available capacity of the prison estate will come into balance within that timescale.

99. An assessment of the progress which has been made in renovating Moabit and Tegel Prisons must certainly take account of the very heavy burden which has been borne by the Berlin public works budget in the period since re-unification. Due consideration should also be given to the great difficulties involved in accommodating inmates from the whole of Berlin in prisons which were designed to serve only the Western section of the city (cf. paragraph 61 of document CPT/Inf (93) 13). Given the magnitude of the operational problems involved, the Committee considers that it is laudable that such significant structural improvements have been made since the CPT's first periodic visit to Germany.

Nevertheless, the information at the Committee's disposal suggests that there is a need to develop an appropriately-funded strategy for the progressive modernisation of the Berlin prison estate. Such a strategy should, inter alia, set firm deadlines for the entry into service of the additional accommodation which will be required to enable outstanding renovation work to be completed. It would also be desirable to fix a target date for establishing a balance between the predicted future prison population and the overall capacity of the prison estate.

**The Committee recommends that such a strategy be developed and that the necessary funds be made available to ensure that it can be implemented. The CPT would like to receive details of the plans of the German authorities in this respect.**

100. As regards, more particularly, the renovation of Moabit Prison, **the CPT recommends that more effective arrangements be made to screen the in-cell lavatories. The CPT would add that, ideally, toilet facilities should be located in a sanitary annex which is quite distinct from the space in which prisoners live.**

101. In the report on its first periodic visit, the CPT highlighted the need to improve the activities programmes offered to inmates at Moabit Prison. In so doing, it stressed that 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) out of their cells, engaged in purposeful activities of a varied nature (group association activities, education, sport, work with vocational value).

Regrettably, although a number of positive measures have been introduced, it remained the case that the regime offered to a significant number of prisoners fell far short of meeting the above-mentioned objective.

**The CPT recommends that renewed efforts be made to enhance the quality of the regime offered to inmates held at Moabit Prison.**

102. The CPT's delegation formed the impression that, despite the increase in the population of Tegel Prison, the activities offered to inmates subject to the ordinary regime in that establishment remained of a high standard. However, there is still a clear need to develop the activities made available in the establishment's "isolation block for narcotics dealers". At the time of the visit, persons held in that unit were subject to an unjustifiably impoverished regime. **The CPT recommends that additional steps be taken to improve the regime offered to prisoners held in the "isolation block for narcotics dealers" at Tegel Prison. The improvements to be introduced should inter alia provide inmates with access to educational activities and to work of vocational value.**

#### 4. Establishments visited for the first time

##### a. Bützow Prison

- *introductory remarks*

103. Bützow Prison is situated in the countryside some thirty kilometres from Rostock. The prison's first buildings were constructed between 1835 and 1839. Various extensions have been added in the twentieth century, particularly in the 1930s.

The establishment had undergone practically no renovation or modernisation work and, at the time of re-unification, was in a very dilapidated state. As a consequence, major works had to be put in hand. At the time of the visit, some work had been completed, such as the construction of a prefabricated 164-place detention building (E Building), the renovation of the part of Wing C which held female prisoners and of the hospital building, and the partial reconstruction of the perimeter wall. Other work was underway, such as the construction of another, 100-place, prefabricated building, the installation of showers in Wings A and B of the main prison building, sewage works etc.

Finally, a whole series of other developments were at the planning stage, such as the conversion of shared cells to individual occupancy.

104. Since re-unification, Bützow Prison has served as an establishment for both remand and sentenced prisoners, including prisoners serving long sentences and life imprisonment. It can also hold juveniles on remand and serving sentences.

The prison has an official capacity of 573 and at the time of the visit was holding 589 prisoners, including 21 women. Of these, 172 were on remand and 363 were sentenced. Of the latter, almost half were serving long sentences ranging from three to ten years, fourteen very long sentences (of over ten years) and eight life imprisonment.

It should also be noted that, since 1994, the establishment has accommodated foreign nationals detained pending deportation (Abschiebehaft). There were some 40 such prisoners at the time of the visit (cf. paragraphs 72 to 76).

- *material conditions*

105. The detention areas were located in three buildings: the main building, comprising Wings A (sentenced prisoners), B (male prisoners on remand) and C (sentenced and remand female prisoners, as well as men serving long sentences or life); Building II, comprising the establishment's admission unit, the security and punishment unit (unit D II) and the detention facilities for foreign nationals awaiting deportation; and the prefabricated E Building for sentenced prisoners. With the exception of the last building and Wing C2 for female prisoners, the premises were dilapidated, on occasion even very dilapidated.

106. Only a small number of prisoners were accommodated in individual cells; most of the cells were shared, with capacities ranging from two to six persons, and occasionally rising to eight.

107. Many of the shared cells accorded their occupants a reasonable amount of living space. By contrast, others offered only cramped accommodation; for example, cells measuring some 12m<sup>2</sup> in wing C2 which accommodated up to four prisoners; cells of 16-18m<sup>2</sup> in Wing C2 which held or could hold up to six prisoners.

108. The individual cells were for the most part of an adequate size (7 to 9 m<sup>2</sup>). However, some individual cells located in Building II measured less than 6m<sup>2</sup>. The technical department at Bützow Prison has also commented on the limited dimensions of these cells, in a survey of the premises dated 21 March 1996, which stated that they were not suitable for holding prisoners. The CPT shares this point of view.

109. In general, the cells benefitted from good natural light, with the exception of those in the basements of Wings A and B and on the ground floor of D II Building, which had more limited, and sometimes even poor, access to daylight. Overall, the artificial lighting and ventilation were satisfactory. However, not all the cells had yet been fitted with a call system and where it had been installed, it did not always work.

All cells were fitted with sanitary facilities (wash basin and lavatory), although in the individual cells these were not properly partitioned, and sometimes not partitioned at all. In the shared cells, these facilities were generally located in a separate annexe.

110. The state of maintenance of the cells and sanitary facilities, and the standard of their respective fittings, depended on the progress made in renovating and modernising the prison. They varied from quite reasonable to mediocre, or even downright poor.

**111. The CPT recommends that the German authorities accord a high priority to completing the planned renovation work at Bützow Prison, having regard to the comments made above. It would like to be kept informed of progress made in this respect.**

112. Finally, it should be mentioned that, in view of their deplorable condition, the CPT's delegation requested that the competent authorities ensure that cells 8, 9 and 10 in the basement of Wing B no longer be used in their present state.

**The CPT would like to receive confirmation that this request has indeed been met.**

- *activities*

113. The range of activities offered to inmates at Bützow Prison left much to be desired, particularly bearing in mind that it is an establishment accommodating sentenced prisoners, including those serving very long sentences. Less than half the total prison population benefitted from some form of work, education or vocational training.

114. Less than a third of the inmates had **jobs**; moreover, the work offered to them often had limited vocational value. Some one hundred persons were assigned to cleaning, maintenance and various other domestic activities; the remainder were employed on simple jobs in the small workshops run by the prison or private firms. These workshops were generally in a pitiful state. However, it appears that, within the framework of short-term projects, the construction of a new workshop complex should start in early July 1996.

**Education and training** activities were still at an embryonic stage. Some twenty prisoners were following a secondary school curriculum leading to a diploma, which had been introduced two years ago. German and English courses were also available for two hours per week, with about thirty participants. In the vocational training field, 48 prisoners could learn the trades of masonry, painting or landscape gardening. Here again, it was planned to improve the training options by introducing two additional programmes in early 1997.

Finally, a few activities, such as silk painting, pottery, cooking or baking were organised on a more sporadic basis for inmates who were not working or simply for leisure purposes.

At the time of the visit, the education and training activities described above were exclusively for male prisoners. The delegation was therefore interested to learn that it was planned to run a series of activities for sentenced female prisoners. Such activities should also be offered to women prisoners on remand.

115. As regards **sporting activities**, male and female prisoners had the use of a variety of fitness rooms and a sports field.

116. One hour of outdoor exercise was guaranteed every day (however, cf. paragraph 158 below). The exercise yards were quite spacious, with the exception of the yard of D II Building, the dimensions of which were more modest (15m long by 8m wide). Moreover, that yard had a rather oppressive aspect, being hemmed in between the building and high walls. This state of affairs is not satisfactory, particularly given that for many of the prisoners in this building, outdoor exercise was one of the few (if not the only) forms of activity.

117. The CPT is well aware of the difficulties that Bützow Prison has faced since 1990 and of the need to establish priorities when renovating the establishment. Nevertheless, it is a cause for concern that the majority of prisoners were still spending long periods idle in their cells.

**The CPT recommends that the German authorities give a higher priority to developing activities in Bützow Prison, in the light of the above remarks. It recalls once again that the programmes to be introduced should aim to ensure that prisoners on remand have the opportunity to spend a reasonable part of the day (i.e. eight hours or more) outside their cells engaged in purposeful activities (work, preferably with a vocational value; education and training; sport and recreation/association activities, etc.). Obviously, sentenced prisoners should be offered a programme of activities which corresponds to the objectives set out in the Prison Law.**

**The CPT would also like to receive information on the steps taken to ensure that any juveniles detained at Bützow for extended periods are provided with activities suited to their circumstances.**

b. Hamburg Remand Prison and Central Prison Hospital

118. Hamburg Remand Prison and Central Prison Hospital, which dates from 1878, is centred upon a cruciform main building (or "Haupthaus") consisting of an administrative wing and three prisoner accommodation wings (A, B and D). A fourth prisoner accommodation wing (C) lies at a right angle to B Wing, and an L-shaped extension to D Wing contains accommodation for women inmates (in the "womens building") and for newly-arrived prisoners (in "Unit A"). New admissions also spend time in a warren of waiting cells located beneath the adjoining court buildings. That area - which forms part of the establishment's reception unit - is connected to the prison by tunnels to A Wing in the main building and to Unit A.

A description of the Central Prison Hospital is to be found in the "medical services" section of this report (cf. paragraph 130).

With a nominal capacity of 715 places, on the first day of the delegation's visit, the establishment was holding some 793 prisoners, of whom 515 were remanded in custody, 213 were serving sentences and 35 were detained for other reasons.

119. Conditions of detention in the reception unit's waiting cells left a great deal to be desired.

At some 50m<sup>2</sup>, cell no. 28 - the so-called "tiled kitchen" - was the largest of those cells. Many of the tiles which had once lined its walls were missing and those which remained were often chipped or broken. The cell was covered in graffiti, was very dirty and malodorous. Further, the windows were fitted with closed venetian blinds which limited access to natural light, although artificial light and ventilation were of a reasonable standard.

The tiled walls of cell no. 29 (17m<sup>2</sup>) were also dirty and disfigured by graffiti, and the cell smelt strongly of urine. Cell no. 30 (some 7m<sup>2</sup>), which featured traces of excrement just inside its door, was in an equally unpleasant condition.

120. In addition to the three cells described above, the reception unit contained a set of twenty-five cells each measuring some 7m<sup>2</sup>, ten of which were used to segregate different categories of prisoners on arrival in the establishment or whilst awaiting court appearances. With the exception of the cell used for sick prisoners and that for women, these cells were grubby and neglected.

The fifteen remaining cells had been converted into lavatories, visiting rooms and makeshift offices for prison officers, the foreigners police and the criminal investigation department.

The reception facility as a whole gave the impression of being a relic of a bygone age, ill-fitted to the task of processing large numbers of inmates through a busy remand prison. In this respect, it should be noted that the establishment has an annual throughput of some 15,000 inmates.

121. **The CPT recommends that:**

- **conditions of detention in the existing reception unit be improved as a matter of urgency, in the light of the above remarks;**
- **steps be taken to provide Hamburg Remand Prison with a modern and purpose-built reception facility.**

122. Should prisoners held in the reception area be obliged to spend the night in the establishment, they would normally be accommodated three to a cell, in one of seven 8m<sup>2</sup> cells in Wing A (1) of the main building. In this respect, prison staff told the delegation that they "filled" each cell with three prisoners before opening the next, thus preventing cells being "dirtied" unnecessarily.

Despite this approach, the delegation observed that all of the cells were dirty and malodorous. It should be added that an 8m<sup>2</sup> cell represents very cramped accommodation for three inmates.

123. Once the above-mentioned cells in Wing A(1) were filled to capacity, prisoners would be accommodated two to an 8m<sup>2</sup> cell in "overflow" accommodation in A Unit. Those cells could also be used to hold persons in police custody (Polizeihaft) or foreigners in detention pending deportation (Abschiebehaft). According to prison staff, persons in the latter category could spend up to two weeks in the cells concerned.

The cells in Unit A were similar to those in Wing A(1), and most were in a thoroughly decrepit condition. Moreover, they were hot and stuffy, a fact which had led persons held in some such cells to break the windows to improve the airflow.

124. In short, persons admitted to Hamburg Remand Prison are obliged to spend their first days in the establishment in dilapidated cells which offer cramped or even very cramped living space. This situation - objectionable for any detained person - becomes wholly unacceptable when it applies to persons awaiting deportation, who may be held in such conditions for up to two weeks.

**The CPT recommends that:**

- **prison staff be instructed to pursue a more flexible allocation policy in Wing A (1) of the main building, in order to maximise the amount of cell space made available to prisoners held there overnight; under no circumstances should persons held at Hamburg Remand Prison have to spend the night three to an 8m<sup>2</sup> cell;**
- **renovation of the cells used to hold newly-arrived prisoners in Wing A (1) and in Unit A be accorded a very high priority.**

125. Conditions of detention were markedly better in the cells used to accommodate prisoners staying at the establishment for longer periods of time. Their cells were generally cleaner and in a better state of repair. However, a significant number of 8 to 9m<sup>2</sup> cells designed for single occupancy were being shared by two prisoners, again offering only cramped living space for the persons concerned.

By far the best conditions of detention seen were in the single cells on the top floor of C Wing, each of which was occupied by a working sentenced prisoner. The cells - which were clean, bright and airy - provided a striking example of what could be achieved within a cell unit of the same basic design as that to be found throughout the establishment.

That said, it was plain to the CPT's delegation that a substantial proportion of the cellular accommodation at Hamburg Remand Prison would benefit from renovation. It was also clear that greater efforts were required to ensure that remand prisoners are not systematically "doubled-up" in cells designed for single occupancy. **The Committee invites the German authorities to initiate an appropriate modernisation programme and to develop a strategy designed to reduce the number of prisoners being held two to a single cell at Hamburg Remand Prison.**

126. The regime offered to the great majority of prisoners on remand was very limited - although some in-cell work was available, for many inmates out-of-cell time amounted to little more than one hour per day for outdoor exercise. All in all, the regime was a far cry from meeting the CPT's objective of remand prisoners spending at least 8 hours per day out of their cells, engaged in purposeful activities of a varied nature.

**The CPT recommends that steps be taken to develop the regime activities offered to inmates at Hamburg Remand Prison. As well as ensuring a significant increase in out-of-cell time, the regime to be introduced should include work (preferably with vocational value), education, sport and other associative activities.**

## 5. Health-care services

### a. medical care

127. The level of general medical care in **Moabit** and **Tegel Prisons** remained of a high standard. As had been the case in 1991, the delegation was able to confirm that the medical/paramedical teams in each establishment were adequately staffed and properly equipped. Arrangements for access to specialist medical care were also entirely satisfactory. Nevertheless, the Committee is concerned that no real progress has been made in implementing its recommendations regarding the solitary confinement cells at Moabit Prison Hospital and the Psycho-Neurological Unit at Tegel Prison.

128. The CPT's 1992 report described the location and design of the basement cells at Moabit Prison Hospital as "hardly conducive to improving the psychological state of a desperate person" and recommended that German authorities review the arrangements under which prisoners with suicidal tendencies were placed in those cells (cf. paragraph 141 of document CPT/Inf (93) 13). The delegation found that, some five years after the first periodic visit, those cells were still being used to segregate prisoners who were believed to be suicidal. The Committee considers that, in their present condition, the cells concerned are wholly unsuited to that purpose; **it recommends that they no longer be used to hold inmates with suicidal tendencies.**

129. Little had changed at the Psycho-Neurological Unit at Tegel Prison since the CPT first visited that facility. Therapeutic activities remained underdeveloped and there was still virtually no differentiation of patients within the wards. The newly-appointed Head of the Unit (a Professor of Forensic Psychiatry) told the delegation that he intends to address these issues as a matter of urgency. Moreover, the German authorities plan to construct an entirely new prison hospital in Berlin, which will replace the existing Psycho-Neurological Unit. The Committee welcomes these developments and **would like to receive detailed information about the measures being taken to improve the current situation in the Unit. It would also like to be informed of the date on which it is expected that the new prison hospital will enter into service.**

130. As already mentioned, **Hamburg Remand Prison** includes the **Central Prison Hospital**, which serves all Hamburg prisons and prisons from the neighbouring Federal Land of Schleswig-Holstein. More minor somatic problems are treated in the prison's own outpatients department, which also medically screens newly-admitted inmates.

At the time of the delegation's visit, the old hospital building was about to be replaced by an entirely new 60 bed facility. Patients are to be accommodated in spacious (25m<sup>2</sup>) double-bedded rooms, which are equipped with fully-screened lavatories and are appropriately lit and ventilated. The new hospital is equipped to a high standard and includes a state-of-the-art high dependency unit. **The Committee would like to receive confirmation that the new Central Prison Hospital building has now entered into service.**

The Central Prison Hospital and the prison's outpatients department were staffed by an appropriate number of doctors (including specialists) and fully-trained nurses. However, given that prisoners apparently have to wait between three and four weeks for dental treatment, **the CPT considers that it would be desirable to review the question of the availability of dental services at the establishment.**

131. As regards **Bützow Prison**, the number of full-time medical and nursing staff was sufficient to provide somatic care. The delegation was also favourably impressed by the quality of the medical and hospital equipment and facilities, which had been completely renewed in 1994. **Nevertheless, the CPT wishes to draw attention to two physical shortcomings in the hospital unit: leaking of the bathroom in section 2 and inadequate partitioning of the sanitary facilities in the patients' rooms.**

Notwithstanding this generally positive assessment, a number of issues of concern to the delegation need to be mentioned.

132. Psychiatric care at Bützow Prison had been seriously neglected. There was no psychiatrist attached to the prison, and the delegation was informed that the services of a consultant psychiatrist had been dispensed with one year ago. Moreover, access to outside psychiatric care seemed to present major problems. The CPT wishes to point out in this connection that all prisons accommodate a certain number of prisoners who, while not requiring admission to a psychiatric facility, should have access to ambulatory psychiatric care. At present, it is inevitable that such inmates at Bützow Prison will not receive appropriate care.

This situation is all the more of concern in view of the fact that the prison hospital unit frequently admitted patients suffering from delirium tremens. The absence of qualified psychiatric support had a serious effect on the standard of care received by such patients (see paragraph 136 below).

Particular mention should be made of the case of one mentally-disturbed prisoner in unit DII. Since his arrival in the establishment in 1993 he had been held in solitary confinement in that unit, except for a few periods when the prison administration had sought in vain to accommodate him in an ordinary wing. At the time of the visit, he was the subject of a detailed psychiatric examination by a specialist from Rostock university hospital; however, inside the prison he did not benefit from the attention or the therapeutic environment necessitated by his condition.

133. There were also significant deficiencies in the prison's psychological service. This service was provided by two qualified psychologists, seconded by an outside practice for certain specific activities (work with sex offenders and drug addicts). The delegation noted that the psychologists' main duty was to carry out assessments of, and write reports on, prisoners for the prison administration and the courts. This considerably restricted their scope for therapeutic activities. The delegation also met a not inconsiderable number of prisoners with personality disorders who were segregated at their own request (e.g. alcoholics and inmates rejected by other prisoners on account of their behaviour). These prisoners should clearly have benefitted from sustained therapeutic programmes, but the prison's psychological service was unable to provide them with such programmes.

It had apparently been hoped to recruit two additional psychologists in 1996; however, it was feared that this proposal would fall by the wayside for financial reasons.

134. **The CPT recommends that the German authorities:**

- **take immediate steps to ensure that a psychiatrist is in regular attendance at Bützow Prison;**
- **undertake an urgent review of prisoners' access to psychological services and introduce properly-staffed psychotherapeutic programmes adapted to prisoners' needs. In this context, the CPT wishes to emphasise that the necessary task of assessing prisoners must not be carried out at the expense of therapeutic and rehabilitative activities. It is also important to draw a clear distinction between assessment and treatment, in order to preserve the therapeutic relationship which underlies any philosophy of care.**

135. The CPT delegation received many complaints from prisoners at Bützow about access to a doctor or dentist. There appeared to be a gap of several days between requests for appointments and consultations. Moreover, allegations were made that prisoners with urgent medical problems sometimes had to wait a considerable time before receiving assistance.

**The CPT recommends that the German authorities verify the scale of this problem and, if appropriate, take the necessary action.**

136. As already indicated in paragraph 132, Bützow Prison's hospital unit frequently admitted patients suffering from delirium tremens. These patients were placed in the intensive care unit and, if necessary, were immobilised in their beds by means of cloth straps attached to their hands and feet and an abdominal belt. The delegation's psychiatrist noted that the treatment of patients with delirium tremens did not include the administration of appropriate medicines to control their acute state of confusion. This inevitably affected the duration of the application of physical restraints.

The CPT wishes to point out that it is now widely recognised that to limit the treatment of delirium tremens to physical restraints is clearly insufficient and potentially dangerous. The prompt administering of tranquilisers is an integral part of the therapy commonly employed in this type of treatment; this keeps resort to physical restraints to a strict minimum. **The CPT recommends that the treatment of patients with delirium tremens at Bützow Prison be reviewed accordingly.**

137. The delegation also noted that health-care staff at Bützow Prison had not been issued with any specific directives on the use of physical restraints. **Consequently, the CPT recommends that a detailed medical policy be drawn up on the use of physical restraints for therapeutic purposes. In particular, the following aspects should be addressed: types of cases in which resort can be made to such a measure; objectives sought by the measure; its duration and the frequency of reviews; the existence of appropriate human contacts; the requirement for increased staff supervision.**

- b. the role of prison health care services in the prevention of ill-treatment

138. Prison health care services can make a significant contribution to the prevention of ill-treatment of detained persons, through the systematic recording of injuries and, when appropriate, the provision of general information to the relevant authorities. Information could also be forwarded on specific cases, though as a rule such action should only be undertaken with the consent of the prisoner concerned.

This preventive role was not being fulfilled by the health care services at Bützow Prison and Hamburg Remand Prison. At **Bützow Prison**, although detailed records were kept of any injuries borne by prisoners, doctors did not record inmates' accounts of the origin of those injuries. At **Hamburg Remand Prison**, injuries borne by newly-arrived prisoners were not necessarily recorded at all - one of the delegation's doctors observed that one such inmate displayed a large haematoma on arrival, without any record being made of that fact.

139. The CPT considers that the record drawn up following a medical examination of a newly admitted prisoner (or a prisoner returning to an establishment) should contain (i) an account of statements made by the person concerned which are relevant to the medical examination (including his description of his state of health and any allegations of ill-treatment), (ii) an account of objective medical findings based on a thorough examination, and (iii) the doctor's conclusions in the light of (i) and (ii).

**The CPT recommends that steps be taken to ensure that practice in Germany is brought into line with the above considerations. Further, the result of the medical examination referred to above should be made available to the prisoner concerned. It is axiomatic that the same approach should be followed whenever a prisoner is medically examined following a violent episode in prison.**

## 6. Other issues related to the CPT's mandate

### a. prison staff-inmate relations

140. The quality of relations between prison staff and inmates has a key role to play in the prevention of ill-treatment. The risk of ill-treatment will always be lower - and staff security higher - in an establishment where there are positive relations between prison staff and those under their supervision.

141. The situation at Bützow Prison has already been described above (cf. paragraph 81). At Moabit and Tegel Prisons and at Hamburg Remand Prison, prison staff-inmate relations were found to be reasonably relaxed, if somewhat distant. Indeed, the delegation formed the impression that prison staff regarded verbal communication with inmates as being a somewhat marginal aspect of their work. **The CPT wishes to stress that, in the context of both initial and in-service training, considerable emphasis should be placed on the acquisition and development of inter-personal communication skills. Building positive relations with prisoners should be recognised as a key feature of a prison officer's vocation.**

142. As regards, more particularly, foreign prisoners, the CPT's delegation observed that language barriers created significant communication difficulties in all of the establishments visited. The German authorities have already taken a number of positive steps to address these problems (e.g. at Moabit Prison, provision of an audio tape introduction to the establishment in a number of languages; at Hamburg Remand Prison, issuing foreign prisoners with a translation of the establishment's internal rules). The Committee welcomes these initiatives and **recommends that the internal rules of every prison establishment in Germany be made available to inmates in an appropriate variety of languages, together with other basic information about prisoners' rights.**

### b. solitary confinement

143. The CPT's report on its first periodic visit gave particular consideration to the situation of prisoners held - for whatever reason - under conditions resembling solitary confinement. The Committee wishes to recall that the principle of proportionality calls for a balance to be struck between the requirements of the situation and the imposition of a solitary confinement regime - a measure 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.

In the course of the second periodic visit, the delegation paid special attention to two units -DII at Bützow Prison and B2 at Hamburg Remand Prison - in which persons could be held in non-voluntary solitary confinement for extended periods of time.

The delegation also received numerous complaints from both inmates and prison staff about the effects upon the lives of remand prisoners of the system of judicial restrictions applied in Germany; this report contains a number of observations on that subject.

144. Unit DII at Bützow prison (located in Building II) is the establishment's security unit and is meant to accommodate all prisoners undergoing solitary confinement for security or disciplinary purposes. At the time of the visit, three prisoners had been in the unit since 4 March 1996, initially as a disciplinary measure and subsequently in solitary confinement (Einzelhaft) under section 89 of the Prison Law. A fourth prisoner had been held in the unit for other reasons since 1993 (cf. paragraph 132, above). The delegation subsequently met another prisoner in cell 105 of Building II, who had been in solitary confinement since 29 November 1995 under section 88 of the aforementioned legislation (Absonderung von anderen Gefangenen), apparently following a measure imposed under section 89.

Finally, in another part of the establishment (an ordinary cell in the basement of A Building) the delegation met a prisoner who had also recently been placed in solitary confinement under section 89, for a period which the head of detention section A1 proposed should last until 13 May 1996.

145. Apart from additional security bars, the state and fittings of the cells in unit DII scarcely differed from those of the establishment's other individual cells (see paragraphs 105 to 112).

Prisoners spent 23 hours a day in their cells with few activities to occupy them, the main forms of distraction being reading and listening to the radio. Apart from any visits they might receive and opportunities for telephoning or correspondence, their only human contact was with prison officers whilst being collected from their cells for their daily outdoor exercise or their weekly shower. They were not offered purposeful activities or appropriate human contact. The delegation also received complaints from certain prisoners in solitary confinement - or who had recently emerged from it - that they had received no special attention from members of the prison medical or psychological services during their isolation, despite having requested such attention.

146. In practice, the delegation had the impression that in Bützow, solitary confinement - particularly under section 89 - was viewed more as a disciplinary than as a security measure (in four cases, this measure had been preceded by three weeks disciplinary confinement with one week withdrawal of outdoor exercise). This impression was strengthened by the confused wording of the entries in the files consulted, which moreover did not always contain all the required documentation. Thus, in one prisoner's file containing an order (dated 29 March 1996) for solitary confinement under section 89 of the Prison Law, it was stated that "the prisoner has been placed under disciplinary confinement". This impression also emerged from conversations with certain prison officials, particularly the section official authorised to propose such a measure.

147. Unit B2 at Hamburg Remand Prison accommodated detainees in police custody (Polizeihaft) who were thought to be alcoholics/drug addicts; inmates identified as representing a risk of suicide/self-injury; prisoners who had been involved in violent incidents or who had engaged in threatening behaviour; and certain prisoners subject to judicial restrictions.

At the time of the visit, the unit was holding eight police detainees considered to be alcoholics/drug addicts; six inmates thought to present a risk of suicide or self-injury and two prisoners who had been violent and/or threatening. There were also a small number of prisoners who were subject to judicial restrictions.

148. The cells in unit B2 measured some 10m<sup>2</sup> and contained two beds, a wash basin and a lavatory. Each was fitted with a call bell/radio. They benefitted from good access to natural light and appropriate artificial lighting. Ventilation was also of a reasonable standard.

Albeit rather cramped for double occupancy, the material conditions in the cells in unit B2 could be described as satisfactory; however, the same cannot be said for the regime observed by the CPT's delegation. The unit did not provide purposeful activities to inmates or guarantee them appropriate human contact. With the exception of the small number of inmates subject to judicial restrictions, those held in the unit spent 24 hours per day in their cells with little or nothing to occupy them; they were not even offered outdoor exercise.

149. The provision of appropriate activities was undoubtedly hampered by the heterogenous nature of the persons held in the unit. Thus, the delegation found suspected alcoholics/drug addicts being held in secure conditions which were not proportionate to the risk presented by the withdrawal symptoms from which they were suffering. This tendency manifested itself, inter alia, in the denial of outdoor exercise to such persons.

Similarly, prisoners involved in violent incidents or threatening behaviour could find themselves placed under a special observation regime rather than subjected to formal disciplinary procedures (with their attendant safeguards). Staff indicated that it was comparatively rare for placement of aggressive inmates to be followed by disciplinary procedures, because a stay in unit B2 was regarded as being in itself a punishment. It might be added, in this respect, that resort to the disciplinary sanction of solitary confinement was a comparatively rare event, thus reinforcing the delegation's impression that, as at Bützow, there may have been a tendency to use security placements for quasi-disciplinary reasons.

150. In short, the treatment of persons detained in unit B2 seemed to be premised upon a combination of medical and security imperatives. It appeared to the delegation that the poverty of the regime offered to inmates was largely the result of an unsatisfactory compromise between those competing claims.

151. The Committee's concerns about this situation in unit DII at Bützow Prison and unit B2 at Hamburg Prison were heightened by shortcomings in the procedural safeguards offered to persons placed in those units. Neither unit provided persons held there with written reasons for their placement. Equally, there was no possibility for prisoners to appeal against their placement to a higher authority, although the formal assent of the relevant court was required to keep a remand prisoner in solitary confinement (cf. section 60 of the Regulations on Remand Imprisonment, UVollzO). According to prison staff, the necessary assent was rarely, if ever, withheld.

It should be recalled, in this context, that the German authorities' response to the CPT's first periodic visit report qualified the Committee's recommendation that every prisoner placed in solitary confinement (or whose placement is renewed) be informed in writing of the reasons therefor as "worth considering" (cf. page 25 of document CPT/Inf (93) 14).

152. In the light of the remarks made in paragraphs 144 to 151, **the CPT recommends that the regimes offered in unit DII at Bützow Prison and in unit B2 at Hamburg Remand Prison be reviewed, in order to ensure that all prisoners held there are offered at least one hour of outdoor exercise every day and provided with purposeful activities and appropriate human contact.**

Further, **the Committee invites the German authorities to review the operation in practice of the system of placement in those units for security purposes, in order to ensure that such placements are not being effected for quasi-disciplinary reasons.**

As regards formal procedural safeguards, **the CPT trusts that the German authorities will now act upon its recommendation that every person placed in solitary confinement be informed in writing of the reasons for their placement. The CPT also recommends that such persons be given an effective opportunity to appeal to a relevant authority against their placement (or the renewal of their placement) in solitary confinement.**

153. Reference has already been made to the fact that the delegation received numerous complaints about the effects upon the lives of remand prisoners of the system of judicial restrictions applied in Germany. It was alleged, in particular, that in many cases the cumulative effect upon inmates of the application of such restrictions was to place them in a situation akin to solitary confinement for prolonged periods of time. Such allegations were borne out by the observations of the CPT's delegation.

As an example, at Moabit Prison the delegation found that a number of inmates had been held under "strict segregation" on the orders of a court for periods of longer than two years: seventeen since 1994; nine since 1993 and two since 1992. Cases in which inmates had been held in strict segregation for more than a year were also identified at Hamburg Remand Prison.

154. In each case, the "strict segregation" regime under which the above-mentioned prisoners were being held resulted from a set of restrictions upon the inmates' activities within the establishment and upon their contact with the outside world.

Restrictions within the establishment were the result of court-ordered prohibitions on contact with other prisoners and of court-sanctioned orders by the director of the establishment. In most cases, the result was that inmates' only human contact was with a small number of other prisoners subject to the same regime, during the daily one hour exercise period. A number of prisoners interviewed were obliged to exercise alone, human contact being restricted to remarks exchanged with prison officers.

In addition, restrictions upon contact with the outside world were imposed by the court in terms of the relevant provisions of the Criminal Procedure Act (s.119, StPO) and the Regulations on Remand Imprisonment (ss.24 et. seq. UVollzO). Although visits and letters were usually permitted (subject to supervision), it was very rare for prisoners to be given judicial permission to make telephone calls (cf. also paragraph 173). This last restriction was most keenly felt by a number of foreign prisoners interviewed by the delegation, whose families were not in a position to visit them on a regular basis.

155. For its part, the CPT considers that the imposition of restrictions on a remand prisoner's contacts with other persons and the prolongation of such a measure should be resorted to only in exceptional circumstances and strictly limited to the actual requirements of the case.

When - exceptionally - a court considers that it is necessary in the interests of justice for a person held on remand to be subjected to restrictions, the following safeguards should apply:

- the question of the necessity to continue the application of particular judicially-ordered or judicially-sanctioned restrictions to be the subject of a full review at regular intervals;
- on every occasion when the question of whether to impose, continue or vary restrictions is raised in court, the reasoned grounds for the decision which results to be recorded in writing and, unless the requirements of the investigation dictate otherwise, the prisoner to be informed of those reasons;
- in considering whether restrictions ought to be applied, courts to take due account of whether the particular restrictions involved are proportional to the needs of the criminal investigation concerned;
- prisoners to have an effective right of appeal against judicial restrictions.

**The CPT would like to be informed of whether all of these safeguards are available to remand prisoners subject to judicial restrictions.**

156. Finally, the Committee has already made reference to the fact that, at the time of the visit to Moabit Prison, more than half of the prisoners being held on remand were subject to judicial restrictions, including a prohibition on working. In order to assist it to form a more complete picture of the pattern of restrictions applied in the remand prisons visited, **the CPT would like to receive the following information about Moabit, Bützow and Hamburg Remand Prisons in respect of 1995 and the first half of 1996:**

- **the total number of prisoners who were subject to judicial restrictions, expressed as a percentage of the total number of inmates held on remand;**
- **a breakdown of the nature of the restrictions applied to remand prisoners, together with an indication of the average length of time for which they were applied.**

c. discipline

157. As regards disciplinary procedures, the delegation found that, at the time of the visit, there was no guarantee that every inmate subject to disciplinary proceedings at **Tegel Prison** would receive a hearing in accordance with section 106 (paragraph 1) of the Prison Law.

The existence of this problem was frankly acknowledged by the Berlin prison authorities during the talks held between the German authorities and the CPT's delegation at the end of the visit. The delegation was assured that the necessary steps had been taken to ensure that all future disciplinary proceedings at the establishment would be conducted in accordance with law. **The Committee would like to receive details of the measures involved.**

158. The CPT also wishes to return to the subject of the forfeiture of outdoor exercise for up to a week as a form of disciplinary sanction (under section 103 (paragraph 1, sub-paragraph 6) of the Prison Law and section 68(7) of the Regulations on Remand Imprisonment - cf. paragraph 159 of document CPT/Inf(93)13).

The CPT's 1992 report recommended that these provisions be repealed and the German authorities subsequently indicated that they considered this recommendation "worthy of consideration" (cf. page 36 of document CPT/Inf (93) 14). At the beginning of the second periodic visit, the German authorities stated that the decision to repeal these provisions had been taken and undertook to keep the Committee informed of the progress of the legislation required.

Nonetheless, it must be pointed out that deprivation of outdoor exercise was a sanction still commonly applied in the establishments visited in 1996. As an example, at **Tegel Prison**, outdoor exercise was being routinely denied to prisoners subject to the disciplinary sanction of cellular confinement, for the whole period spent in cellular confinement. In cases where the sanction imposed was longer than seven days, the disciplinary decision would commonly provide for "ten days cellular confinement, seven without outdoor exercise". Deprivation of outdoor exercise for either the whole of the sanction or for the seven-day legal maximum appeared to be the norm.

**159. The CPT recommends that legislation abolishing the disciplinary sanction of deprivation of outdoor exercise be adopted as soon as possible.**

**The Committee also recommends that, pending the entry into force of the above-mentioned legislation, instructions be issued to prison governors making clear that, as a matter of principle, inmates undergoing the disciplinary sanction of solitary confinement should no longer be deprived of outdoor exercise.** In this connection, it should be noted that nothing in the present law obliges prison Governors to deprive prisoners of outdoor exercise.

160. Lastly, the Committee wishes to record that it received a number of complaints from prisoners held in disciplinary cellular confinement, to the effect that the only reading material offered to them was the Bible (in German).

**The CPT invites the German authorities to make a wider range of reading material available to prisoners subject to the disciplinary sanction of cellular confinement.**

d. instruments of restraint

161. The Committee has already made a recommendation in the context of the Kopenick Detention Centre regarding the safeguards to be applied when force is used against a detained person (cf. paragraph 49). **That recommendation applies equally to the penal sphere.**

As regards more particularly the use of instruments of restraint, in the view of the Committee, the use of such means - whether for medical or non-medical reasons - should always be an exceptional procedure, applied for the shortest possible time and subject to appropriate supervision.

The CPT has commented upon the use made of instruments of restraint in the hospital unit at Bützow Prison (cf. paragraph 136). More generally, the CPT is concerned about the overall length of time for which instruments of restraint might be applied, as well as about the quality of the records kept of such situations and the nature of the instruments of restraint used in certain of the establishments visited.

162. The information gathered by the delegation suggests that, in most cases, instruments of restraint were only applied to prisoners for short periods of time (i.e. for a maximum of a few hours). However, according to the relevant register, shortly before the delegation's visit to Bützow Prison, instruments of restraint had been applied to one prisoner for a continuous period of 46 hours.

In this respect, it is interesting to note that, according to the Federal Instruction issued under section 88 of the Prison Law, the application of instruments of restraint for longer than 3 days must be notified to a superior authority. This would appear to suggest that instruments of restraint could legally be applied for a period of days at a time.

The CPT must emphasise that, in its view, the application of instruments of restraint for a period of days can never be justified. **The CPT recommends that the German authorities take steps to ensure that such a situation cannot occur.**

163. It also emerged that accurate records were not always kept of the use of instruments of restraint.

At Bützow Prison, the available records did not always disclose the total length of time for which instruments of restraint had been applied.

A similar situation obtained at Hamburg Prison, where, for example, a record had been kept of the fact that an inmate had been held in one of the two soundproofed "immobilisation" cells (BZ.I and BZ.II) in Wing C1. However, the record did not disclose whether or not means of restraint had been applied to him and, if so, for how long. Staff present could not remember the details of the case and the inmate himself was not available for comment, having been transferred to another prison.

164. **The CPT recommends that every instance of the resort to instruments of restraint - or to any other means of force - be recorded in a specific register established for that purpose. The entry should include the times at which the measure began and ended, the circumstances of the case, the reasons for resorting to the measure and an account of any injuries sustained by inmates or staff.**

165. At Bützow Prison and at Hamburg Remand Prison, inmates' hands and feet could be secured to restraint beds by a system of heavy metal shackles which held their bodies, under strain, in an unnatural and potentially harmful position.

In Building III at Tegel Prison, the delegation was shown a prototype of a new set of metal shackles with which staff wished to replace the leather straps which had hitherto been used to fasten inmates to restraint beds. The new shackles - which had been designed "in-house" by prison officers - consisted of a pair of handcuffs and footcuffs. The cuffs were to be attached to the loops on the side of a restraint bed by short chains, each of which ended in a yachting-style, quick-release clasp.

166. The Committee accepts that, in those rare cases where the use of instruments of restraint is justified, this will invariably impinge upon the dignity of the detained person to whom such devices are applied. Nevertheless, it is important to ensure that this effect is not aggravated by the nature of the restraints applied.

In the view of the CPT, there are means of mechanically restraining a prisoner which are less humiliating than those described in paragraph 165. **The Committee recommends that such methods no longer be used to restrain inmates in German prisons.**

e. contact with the outside world

167. The CPT's delegation found that the German authorities continue to attach importance to ensuring that prisoners are able to maintain reasonably good contact with the outside world. This was reflected inter alia in improvements in the physical conditions in the visiting areas in both of the establishments visited on a follow-up basis.

168. The "narrow and austere" temporary visiting area seen at **Tegel Prison** during the first periodic visit had been replaced by pleasant open-plan visiting rooms. Conditions for visitors were also of a reasonable standard - an adequate waiting room was provided, as were vending machines from which prisoners or their visitors could purchase tobacco, sweets, chocolate, soft drinks etc.

169. As regards the unwelcoming visiting rooms seen at **Moabit Prison** in 1991, the response of the German authorities records that the Committee's report "was taken as an opportunity to renovate the visiting area" at that establishment (cf. page 70 of document CPT/Inf(93)14). The CPT's 1996 delegation was able to confirm that the rooms concerned were indeed considerably brighter and cleaner than before.

170. Regrettably, there had been no concomitant improvement in the visiting system at Moabit. Discussions held by the delegation, including with members of the establishment's Advisory Council, confirmed that visitors often had to wait for extended periods in somewhat cramped conditions. Although the German authorities' response to the CPT's first report acknowledged that this situation is "unsatisfactory", it argued that this problem is caused by factors beyond the control of the prison authorities, namely: the growing prison occupancy rate; the pattern of judicial authorisations for remand prisoners' visits and the lack of space within the establishment.

The CPT accepts that the above-mentioned factors have an important bearing upon the capacity of Moabit Prison to organise visits in the manner which the establishment's management and staff might wish. Nevertheless, the positive effects of visits could be enhanced by limiting the strains which the present visiting system places upon prisoners' visitors. The provision of a reception centre for visitors outside the prison walls would be one way in which this could be achieved.

**The CPT invites the German authorities to consider taking concrete measures to improve the current visiting system at Moabit Prison, in the light of the above remarks.**

171. At **Bützow Prison**, the material conditions in which visits took place call for no particular comment, **except for the fact that the ventilation in the visiting rooms was mediocre**. A positive point was that, since 1995, the establishment has had a room reserved for family visits, where parents and children can meet in a homely atmosphere.

172. The visiting facilities at **Hamburg Remand Prison** were also of an adequate standard and call for no particular comment from the Committee.

173. With regard to access to a telephone, it appeared that it was still rare for this facility to be granted to prisoners on remand. In this respect, the German authorities' response to the CPT's report on its first visit states that telephone calls by remand prisoners "are permissible only with judicial authorisation, and this is seldom granted" (cf. page 70 of document CPT/Inf(93)14).

The CPT remains of the view that all prisoners, including those on remand, should in principle have regular access to a telephone. This is particularly important in the case of prisoners who do not receive regular visits from their families because they live a long way from the prison.

**The Committee therefore recommends that the issue of access to a telephone for remand prisoners be reviewed. Naturally, such contacts could - where necessary - be made subject to appropriate supervision; in many cases such an arrangement should render redundant the imposition of judicial restrictions on telephone contact.**

174. Finally, as regards granting prisoners the right to receive extended visits, the delegation was pleased to note that Tegel Prison had continued to offer visits of up to six hours to enable prisoners to maintain family and personal (including sexual) relations. As had been the case in 1991, such visits took place in conditions which fully respected human dignity. The CPT has also noted that, in a number of other Federal Länder, similar visits are offered to inmates (cf. page 43 of document CPT/Inf (93) 14).

The CPT wonders whether it may not now be possible to extend throughout Germany the system of allowing appropriately-equipped visiting areas to be used for maintaining family and personal relations. **The CPT would like to receive the comments of the German authorities on this issue.**



### III. RECAPITULATION AND CONCLUSIONS

#### A. Police establishments

175. The CPT's delegation heard no allegations of torture or other forms of ill-treatment having been inflicted by police officers on persons held in police establishments in Germany. However, a certain number of allegations were heard of the use of excessive force by police officers at the time of apprehension (Festnahme).

The most common forms of ill-treatment alleged by detained persons were blows and kicks received after they had been restrained and placed on the ground at the time of their apprehension. In two such cases in Berlin, the allegations concerned were supported by medical evidence.

176. The CPT has made clear that it fully recognises that the arrest of a criminal suspect is often a hazardous task, in particular if the person concerned resists arrest and/or is someone whom the police have good reason to believe represents an immediate danger. Indeed, the circumstances of an arrest may be such that injuries are sustained by the person concerned (and by police officers) without this being the result of an intention to inflict ill-treatment. However, it is axiomatic that no more force than is reasonably necessary should be used when effecting an arrest. Furthermore, once arrested persons have been brought under control, there can be no justification for them being struck by police officers.

In the light of the information gathered by its delegation, the CPT has recommended that police officers be reminded of these precepts.

177. In the report drawn up following the first periodic visit to Germany, the CPT examined in some detail the safeguards against ill-treatment which are offered to detained persons. A number of recommendations were made on this subject (in particular, as regards notification of custody, access to a lawyer and access to a doctor). At the time of the CPT's second periodic visit, the German authorities had yet to give full effect to those recommendations.

The Committee is especially concerned that persons detained by the police do not have the right to inform someone of the fact of their custody or the right of access to a lawyer as from the very outset of their custody. In this respect, the CPT has stressed that it is in the period immediately following deprivation of liberty that the risk of intimidation and ill-treatment is at its greatest. Consequently, the possibility for persons detained by the police to inform a family member or a third party of their choice of their situation, and the opportunity for them to have access to a lawyer during that period are fundamental safeguards against ill-treatment. The CPT has recommended that the German authorities ensure that all persons deprived of their liberty by the police are granted these rights from the very outset of their custody.

As regards the right for a person detained by the police to have access to a doctor of his choice (in addition to any examination carried out by a doctor called by the police), the CPT has invited the German authorities to reconsider their proposition that there are "security arguments" against granting this right to persons in police custody. In this connection, it has noted that this right already exists in certain Federal Länder.

178. With few exceptions, conditions of detention in the police establishments visited were found to be of a reasonable standard. However, conditions at the Schöneberg Police Detention Centre (Gothaerstraße) and the Directorate 2 Police Detention Centre (Charlottenburger Chaussee) in Berlin, and at the Police Detention Centre at Ulmenstraße in Rostock were markedly poorer.

The Committee has recommended that the planned closure of the Schöneberg Police Detention Centre be accorded a high priority and that steps be taken to ensure that conditions of detention in the two other establishments (and in all police establishments in Germany) meet the general criteria set out in the visit report.

## **B. Detention of foreigners**

179. The CPT's delegation heard no allegations of torture of persons detained in the Köpenick Detention Centre for Foreigners, nor did it find any other evidence of such practices. However, the delegation did receive a few allegations of disproportionate use of force against detained persons on occasions when staff had resort to control and restraint techniques.

The Committee has recommended that staff at the Centre be reminded that no more force than is reasonably necessary should be used to restrain violent or disturbed detained persons. It has also stressed that, as in the context of apprehension by the police, there can never be any justification for detained persons who have been brought under control being struck by members of staff. The CPT has also recommended that a number of specific safeguards should accompany the use of control and restraint techniques.

180. In general, the delegation gained a favourable impression of the relations between staff and foreign nationals detained at the Köpenick Centre; however, there was a considerable degree of tension at the Centre, largely as a result of day-to-day communication problems. The Committee has recommended that efforts be made to enhance the initial and in-service training of staff assigned to detention centres for foreign nationals, in particular as regards improving their foreign language skills.

181. Material conditions of detention at the Köpenick Centre were of a good standard; however, the available activities were too limited for persons detained at the Centre for extended periods. The Committee has recommended that efforts be made to develop the range of activities offered to such persons.

182. The CPT has recommended that every instance of the use of security measures at the Köpenick Centre be entered in a specific register. The Committee has also made clear that detainees should not be deprived of outdoor exercise as a security measure and has recommended that the relevant law and practice be amended accordingly.

183. Although the Köpenick Centre had a well-equipped health-care service, the health-care team's ability to deliver an adequate level of medical care was seriously compromised by a number of staffing deficiencies. No doctor or dentist attended the Centre on a regular basis, the health-care team did not include qualified nurses and the Centre did not have an in-house psychiatric or psychological service. The CPT has made recommendations designed to remedy these shortcomings. The Committee has also highlighted the need for medical screening on reception and the importance of ensuring the confidential nature of medical consultations.

184. At the time of the visit, a certain number of foreign nationals detained under the aliens legislation were being held at Bützow Prison. The CPT has stressed that a prison is, by definition, not an appropriate place in which to detain someone who is neither suspected nor convicted of a criminal offence. Consequently, it has recommended that the practice of placing persons detained under the aliens' legislation in Bützow Prison - and in other prison establishments - be brought to an end. Where it is considered necessary to deprive persons of their liberty under the aliens' legislation, they should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal situation.

Pending the implementation of that recommendation, the CPT has asked that specific measures be taken to improve the situation of foreign nationals held at Bützow Prison under the aliens' legislation.

### C. Prisons

185. The CPT's delegation heard no allegations of torture of prisoners by prison staff in the establishments visited and gathered no other evidence of the existence of such treatment. Further, with the exception of Bützow Prison, the delegation heard very few allegations of other forms of physical ill-treatment.

The allegations of physical ill-treatment heard at Bützow Prison related to the period preceding October 1995 and are currently the subject of investigations. No more recent allegations were heard of physical ill-treatment of inmates by prison staff at that establishment.

186. However, the delegation did notice a palpable degree of tension between inmates in Wing A at Bützow Prison, which sometimes degenerated into physical violence. Prisoners complained that such situations did not always receive appropriate attention from staff, who apparently rarely entered cells in that wing. The establishment's registers showed that incidents in the wing were fairly frequent, particularly as regards aggression by prisoners under the influence of alcohol. Further, staffing levels were found to be rather low in Wing A, and elsewhere in the prison.

In the light of its delegation's findings, the CPT has emphasised that the duty of care which is owed by prison authorities to prisoners in their charge includes the responsibility to protect them from other prisoners who might wish to cause them harm. In particular, prison staff must be alert to signs of trouble and both resolved and properly trained to intervene.

187. The CPT has noted the improvements which have been made to the material conditions of detention at Moabit and Tegel Prisons since a delegation of the CPT first visited those establishments in 1991. Nevertheless, the process of modernisation has not been completed in either prison. Of the two establishments, conditions at Moabit are of particular concern to the Committee. Indeed, material conditions in certain parts of that establishment - most notably in B Wing in Building I and in F Wing in Building II - continue to fall below acceptable standards.

Having taken into account the information on this subject supplied by the German authorities, the Committee has recommended that an appropriately-funded strategy be developed for the progressive modernisation of the Berlin prison estate.

188. Modernisation work is also required in the two prisons visited for the first time - Bützow Prison and Hamburg Remand Prison. A major programme of works had begun at Bützow Prison and the Committee has recommended that a high priority be given to completing that work, having regard to the comments set out in this report.

As regards Hamburg Remand Prison, the Committee has characterised that establishment's reception unit as a relic of a bygone age, ill-fitted to the task of processing large numbers of inmates through a busy remand prison. It has recommended that steps be taken immediately to improve conditions of detention in the present reception unit and that measures be put in hand to provide Hamburg Remand Prison with a modern and purpose-built reception facility.

More generally, the CPT has stressed that a substantial proportion of the cellular accommodation at Hamburg Remand Prison would benefit from renovation and that greater efforts are required to ensure that remand prisoners are not systematically "doubled-up" in cells designed for single occupancy.

189. The regime activities offered to inmates at Moabit, Bützow and Hamburg Remand Prisons left a great deal to be desired. The Committee has recommended that a high priority be given to enhancing the regimes in those establishments. In so doing, it has reiterated that, as regards prisoners on remand, 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) out of their cells, engaged in purposeful activities of a varied nature (group association activities, education, sport, work with vocational value). The regimes offered to sentenced prisoners should correspond fully to the objectives set out in the Prison Law.

190. At Tegel Prison, the activities offered to inmates subject to the establishment's ordinary regime remained of a high standard. However, there is still a clear need to develop the activities made available in the establishment's "isolation block for narcotics dealers", where inmates were subject to an unjustifiably impoverished regime.

191. The level of general medical care at Moabit and Tegel Prisons and at Hamburg Remand Prison was found to be of a high standard. Nevertheless, some five years after the CPT's first visit to Moabit Prison Hospital, inmates with suicidal tendencies were still being segregated in basement cells which were wholly unsuited to that purpose. The Committee has recommended that the cells concerned no longer be used to hold such inmates.

Further, therapeutic activities remained underdeveloped and there was still virtually no differentiation of patients within the wards at the Psycho-Neurological Unit at Tegel Prison. The Committee has noted that the German authorities have plans to address this situation and has asked to receive detailed information about the specific measures involved.

192. Bützow Prison also had the health care staff and facilities necessary to provide adequate medical care. However, many prisoners complained about delays in gaining access to doctor or dentist. The Committee has recommended that the German authorities investigate the scale of this problem and take appropriate action.

Moreover, psychiatric care at the establishment had been seriously neglected and there were significant deficiencies in its psychological services. The Committee has recommended that immediate steps be taken at Bützow Prison to ensure that a psychiatrist is in regular attendance; that there be an urgent review of prisoners' access to psychological services and that appropriately-staffed psycho-therapeutic programmes be introduced.

The CPT has also voiced concern about the treatment offered by Bützow Prison Hospital to patients suffering from delirium tremens which, at the time of the visit, was limited to the application of means of restraint. The Committee has recommended that there be a review of the treatment of such patients and, more generally, that a detailed medical policy be drawn up on the use of physical restraints for therapeutic purposes.

193. In the light of its delegation's findings in certain of the establishments visited, the CPT has also highlighted the role of prison health care services in the prevention of ill-treatment.

The Committee has recommended, in this respect, that the record drawn up following a medical examination of a newly admitted prisoner (or a prisoner returning to an establishment) contain (i) an account of statements made by the person concerned which are relevant to the medical examination (including his description of his state of health and any allegations of ill-treatment), (ii) an account of objective medical findings based on a thorough examination, and (iii) the doctor's conclusions in the light of (i) and (ii). The same approach should be followed whenever a prisoner is medically examined following a violent episode in prison.

194. The Committee has made recommendations, comments and requests for information on various other matters related to the CPT's mandate (prison staff-inmate relations; solitary confinement; discipline; instruments of restraint and contact with the outside world).

The CPT has emphasised, in particular, that building positive relations with prisoners should be recognised as a key feature of a prison officer's vocation. As regards, more specifically, Bützow Prison, the Committee has recommended that the German authorities pay sustained attention to the training of prison staff and make every possible effort to improve relations between detainees and staff at that establishment.

The Committee also expressed considerable concern about the position of persons held in involuntary solitary confinement in unit DII at Bützow Prison and in unit B2 at Hamburg Remand Prison. It has recommended that the regimes in those units be reviewed, in order to ensure that all prisoners held there are offered at least one hour of outdoor exercise every day and provided with purposeful activities and appropriate human contact.

More generally, the Committee has recommended that legislation abolishing the disciplinary sanction of deprivation of outdoor exercise be adopted as soon as possible. Pending the entry into force of that legislation, steps should be taken to ensure that this particular disciplinary sanction is not applied in practice.

#### **D. Action on the CPT's recommendations, comments and requests for information**

195. The various recommendations, comments and requests for information formulated by the CPT are summarised in Appendix 1.

196. As regards more particularly the CPT's recommendations, having regard to Article 10, paragraph 2, of the Convention, the CPT requests the German authorities:

- 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 German authorities to provide in the above-mentioned interim report reactions to the comments formulated in this report that are summarised in Appendix 1 as well as replies to the requests for information made.

**APPENDIX I**

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

**A. Police establishments**

1. Torture and other forms of physical ill-treatment

**recommendations**

- police officers to be reminded that no more force than is reasonably necessary is to be used when effecting an arrest; and that once arrested persons have been brought under control, there can be no justification for striking them (paragraph 15).

**requests for information**

- for each Federal Land, in respect of 1995 and the first half of 1996:
  - . the number of complaints of ill-treatment lodged against police officers and the number of criminal/disciplinary proceedings initiated as a result of such complaints;
  - . an account of criminal/disciplinary sanctions imposed following complaints of ill-treatment by police officers (paragraph 16).

2. Conditions of detention

**recommendations**

- conditions of detention in the police establishments visited by the delegation to be reviewed, in the light of the remarks set out in paragraphs 19 to 23 (paragraph 24);
- appropriate steps to be taken to ensure that conditions of detention in all police establishments meet the criteria indicated in paragraph 17 (paragraph 24);
- the closure of Schöneberg Police Detention Centre in Berlin to be accorded a very high priority (paragraph 24);
- in cases where a person in police custody is, or becomes, highly agitated, the police to immediately contact a competent doctor and act in accordance with his opinion (paragraph 25).

3. Safeguards against ill-treatment

**recommendations**

- the recommendations made in paragraph 35 of the report on the CPT's first visit to Germany to be reconsidered, in order to ensure that persons detained by the police have, from the very outset of their custody, the right to inform members of their family or a third person of their detention (paragraph 32);
- all persons deprived of their liberty by the police to have a right of access to a lawyer from the very outset of their detention (paragraph 32);
- the practical arrangements at Schöneberg Police Detention Centre in Berlin concerning access to a doctor for detained persons to be reviewed (paragraph 34);
- a form setting out the rights of persons detained by the police to be systematically given to such persons at the very outset of their custody; that form to be available in the languages most frequently spoken by the detainees (paragraph 37);
- the German authorities to reconsider the introduction of a code of conduct for police interrogations (paragraph 38).

**comments**

- in order for the right to notify someone of one's custody to be effective, a precise definition of situations in which the exercise of this right could exceptionally be delayed will be required (paragraph 32);
- the German authorities are invited to reconsider their position regarding access by detainees to a doctor of their choice (paragraph 35);
- the German authorities are invited to address the question of access to a lawyer for persons without resources held under the aliens legislation (paragraph 41).

**requests for information**

- any measures taken by the German authorities in the light of the Federal Supreme Court decision of 12 January 1996 on access to a lawyer for persons detained by the police (paragraph 33);
- a detailed account of the precise steps taken in practice to ensure that foreign nationals are not sent to a country where they run a risk of being subjected to torture or inhuman or degrading treatment (paragraph 42).

**B. Detention of foreigners**

1. Köpenick Detention Centre for Foreigners

**recommendations**

- custodial staff at the Centre to be reminded that no more force than is reasonably necessary is to be used when restraining violent or disturbed detained persons and that, once such persons have been brought under control, there can never be any justification for striking them (paragraph 48);
- steps to be taken to ensure that whenever force is used against detainees, the following safeguards apply:
  - . right for a detainee in respect of whom any means of force has been used to be examined and, if necessary, treated by a doctor without delay;
  - . the medical examination to be performed out of the hearing and, unless the doctor requests otherwise, out of the sight of non-medical personnel;
  - . the results of the medical examination as well as any relevant statements by the detainee and the doctor's conclusions to be duly recorded in writing and made available to the detainee (paragraph 49);
- the range of activities offered to persons detained at the Centre for extended periods of time to be further developed (paragraph 54);
- every instance of resort to security measures to be entered in a register specifically established for that purpose (paragraph 58);
- the practice of withdrawal of outdoor exercise as a security measure to be brought to an end and the relevant regulations to be amended accordingly (paragraph 59);
- as regards medical care at the Centre:
  - . immediate steps to be taken to appoint at least one half-time doctor; it would be highly desirable to appoint a doctor on a full-time basis;
  - . a psychiatric and psychological service adapted to the detainees' needs to be established;
  - . at least one full-time qualified nurse to be appointed;
  - . someone qualified to provide first-aid, preferably holding a recognised nursing qualification, always to be present at the Centre;

- . all detainees to be medically screened on arrival; such screening could be carried out by a doctor or by a qualified nurse reporting to the doctor;
- . all medical examinations on admission, and any subsequent medical examinations, to be conducted out of the hearing and - unless the health-care staff request otherwise - out of the sight of custodial staff;
- . efforts to be made to improve communication between health-care staff and detainees (if necessary, consideration to be given to providing interpretation) (paragraph 65);
- efforts to be made to increase the initial and in-service training of staff assigned to detention centres for foreign nationals (paragraph 68).

#### **comments**

- the shower facilities at the centre afforded limited privacy to detainees (paragraph 51);
- the German authorities are invited to verify whether detainees receive a hot meal every day, in accordance with their usual dietary practices (paragraph 52);
- the German authorities are invited to review the question of detainees' access to personal effects (paragraph 53);
- the inclusion on the staff of persons of varied origins and cultures is an extremely positive development which should be encouraged (paragraph 68);
- the CPT wishes to draw the attention of the German authorities to the general comments regarding inspection bodies set out in paragraph 166 of the report on its first visit which apply, mutatis mutandis, to external committees for detention centres (paragraph 71).

#### **requests for information**

- the results of investigations carried out by the LKA3136 police department, in the light of the complaints mentioned in paragraph 47 (paragraph 47);
- the extent to which training in techniques for controlling and restraining agitated and/or violent detainees is included in the training of custodial staff at the centre and, more generally, at similar centres elsewhere in Germany (paragraph 50);
- the comments of the German authorities on the possibility of visits being offered under much more open conditions (paragraph 55);
- the comments of the German authorities on the need for and effects of the high degree of security which obtains in the centre (paragraph 69);
- whether the two vacant posts for social workers have now been filled (paragraph 70).

2. Bützow Prison

**recommendations**

- the practice of placing persons detained under the aliens' legislation in Bützow Prison and in prison establishments in general to be put to an end, such persons to be accommodated in centres specifically created for that purpose (paragraph 76).

**comments**

- pending implementation of the recommendation set out in paragraph 76, steps to be taken at Bützow Prison to ensure that:
  - . persons detained under the aliens legislation are offered a wider range of activities;
  - . such persons are properly informed, in a language they understand, of their situation and rights (contact with a lawyer, consular representatives etc.) (paragraph 76).

C. Prisons

1. Torture and other forms of physical ill-treatment

**recommendations**

- sustained attention to be paid to the training of staff at Bützow Prison and, more generally, every possible effort to be made to improve relations between prisoners and staff at the establishment (paragraph 81).

**comments**

- the duty of care which is owed by the prison authorities to prisoners in their charge includes the responsibility to protect them from other prisoners who might wish to cause them harm. In particular, prison staff must be alert to signs of trouble and both resolved and properly trained to intervene. Such a capacity to intervene will of course also depend in large measure on an adequate staff/prisoner ratio (paragraph 82).

**requests for information**

- the results of the investigations carried out following complaints of ill-treatment of inmates by prison staff at Bützow Prison and of any decisions made as a consequence (paragraph 80);
- for each Federal Land, in respect of 1995 and the first half of 1996:
  - the number of complaints of ill-treatment lodged against prison officers and the number of criminal/disciplinary proceedings initiated as a result of such complaints;
  - an account of criminal/disciplinary sanctions imposed following complaints of ill-treatment by prison officers; (paragraph 83).

2. Follow-up visits

**recommendations**

- a strategy for the progressive modernisation of the Berlin prison estate to be developed and the necessary funds to be made available to ensure that it can be implemented (paragraph 99);
- in the context of the renovation of Moabit Prison, more effective arrangements to be made to screen the in-cell lavatories at that establishment (paragraph 100);
- renewed efforts to be made to enhance the quality of the regime offered to inmates held at Moabit Prison (paragraph 101);
- additional steps to be taken to improve the regime offered to prisoners held in the "isolation block for narcotics dealers" at Tegel Prison. The improvements to be introduced should inter alia provide inmates with access to educational activities and to work of vocational value (paragraph 102).

**comments**

- ideally, toilet facilities should be located in a sanitary annex which is quite distinct from the space in which prisoners live (paragraph 100).

**requests for information**

- details of the plans of the German authorities for the modernisation of the Berlin prison estate (paragraph 99).

3. Establishments visited for the first time

a. Bützow Prison

**recommendations**

- a high priority to be accorded to completing the planned renovation work at Bützow Prison (paragraph 111);
- a higher priority to be given to developing regime activities at Bützow Prison. The programmes to be introduced should aim to ensure that prisoners on remand have the opportunity to spend a reasonable part of the day (i.e. eight hours or more) outside their cells engaged in purposeful activities (work, preferably with a vocational value; education and training; sport and recreation/association activities, etc.) Sentenced prisoners should be offered a programme of activities which corresponds to the objectives set out in the Prison Law (paragraph 117).

**requests for information**

- an update on the progress being made in renovating Bützow Prison (paragraph 111);
- confirmation that cells 8, 9 and 10 in the basement of B Wing at Bützow Prison are no longer being used (paragraph 112);
- the steps taken at Bützow Prison to ensure that any juveniles detained for extended periods are provided with activities suited to their circumstances (paragraph 117).

b. Hamburg Remand Prison and Central Prison Hospital

**recommendations**

- conditions of detention in the existing reception unit to be improved as a matter of urgency (paragraph 121);
- steps to be taken to provide Hamburg Remand Prison with a modern and purpose-built reception facility (paragraph 121);
- prison staff to be instructed to pursue a more flexible allocation policy in Wing A (1) of the main building, in order to maximise the amount of cell space made available to prisoners held there overnight; persons held at Hamburg Remand Prison under no circumstances to have to spend the night three to an 8m<sup>2</sup> cell (paragraph 124);
- renovation of the cells used to hold newly-arrived prisoners in Wing A (1) and in Unit A to be accorded a very high priority (paragraph 124);
- steps to be taken to develop the regime activities offered to inmates at Hamburg Remand Prison. As well as ensuring a significant increase in out-of-cell time, the regime to be introduced should include work (preferably with vocational value), education, sport and other associative activities (paragraph 126).

**comments**

- the German authorities are invited to initiate an appropriate modernisation programme and to develop a strategy designed to reduce the number of prisoners being held two to a single cell at Hamburg Remand Prison (paragraph 125).

4. Health-care services

**recommendations**

- the basement cells at Moabit Prison Hospital no longer to be used to hold inmates with suicidal tendencies (paragraph 128);
- immediate steps to be taken to ensure that a psychiatrist is in regular attendance at Bützow Prison (paragraph 134);
- an urgent review to be undertaken of prisoners' access to psychological services at Bützow Prison and properly - staffed psychotherapeutic programmes adapted to prisoners' needs to be introduced (paragraph 134);
- the German authorities to verify the scale of the problem of access to a doctor or dentist at Bützow Prison and, if appropriate, take the necessary action to address that problem (paragraph 135);
- the treatment of patients with delirium tremens in Bützow Prison's hospital unit to be reviewed, in light of the remarks made in paragraph 136 (paragraph 136);
- a detailed medical policy to be drawn up on the use of physical restraints for therapeutic purposes. In particular, the following aspects should be addressed: types of cases in which resort can be made to such a measure; objectives sought by the measure; its duration and frequency of reviews; the existence of appropriate human contacts; the requirement for increased staff supervision (paragraph 137);
- steps to be taken to ensure that the record drawn up following a medical examination of a newly admitted prisoner (or a prisoner returning to an establishment) contains (i) an account of statements made by the person concerned which are relevant to the medical examination (including his description of his state of health and any allegations of ill-treatment, (ii) an account of objective medical findings based on a thorough examination, and (iii) the doctor's conclusions in the light of (i) and (ii).

Further, the result of such medical examinations to be made available to the prisoner concerned. It is axiomatic that the same approach is to be followed whenever a prisoner is medically examined following a violent episode in prison (paragraph 139).

**comments**

- it would be desirable to review the question of the availability of dental services at the Central Prison Hospital in Hamburg (paragraph 130);
- there were leaks in the bathroom in section 2 of Bützow Prison hospital unit and the sanitary facilities in the patients' rooms were inadequately partitioned (paragraph 131);
- as regards psychological services, the necessary task of assessing prisoners must not be carried out at the expense of therapeutic and rehabilitative activities. It is also important to draw a clear distinction between assessment and treatment, in order to preserve the therapeutic relationship which underlies any philosophy of care (paragraph 134).

**requests for information**

- details of the measures being taken to improve the current situation in the Psycho-Neurological Unit at Tegel Prison and the date on which it is expected that the new Berlin prison hospital will enter into service (paragraph 129);
- confirmation that the new Central Prison Hospital building at Hamburg Remand Prison has now entered into service (paragraph 130).

5. Other issues related to the CPT's mandate

**recommendations**

- the internal rules of every prison establishment in Germany to be made available to inmates in an appropriate variety of languages, together with other basic information about prisoners' rights (paragraph 142);
- the regimes offered in unit DII at Bützow Prison and in unit B2 at Hamburg Remand Prison to be reviewed, in order to ensure that all prisoners held there are offered at least one hour of outdoor exercise every day and provided with purposeful activities and appropriate human contact (paragraph 152);
- every person placed in solitary confinement to be informed in writing of the reasons for their placement and to be given an effective opportunity to appeal to a relevant authority against their placement (or the renewal of their placement) (paragraph 152);
- legislation abolishing the disciplinary sanction of deprivation of outdoor exercise to be adopted as soon as possible and, pending the entry into force of that legislation, instructions to be issued to prison governors making clear that, as matter of principle, inmates undergoing the disciplinary sanction of solitary confinement are no longer to be deprived of outdoor exercise (paragraph 159);

- the safeguards against ill-treatment which are to be applied when force is used against persons detained under the aliens legislation (cf. paragraph 49), to apply equally to the use of force against prisoners (paragraph 161);
- steps to be taken to ensure that instruments of restraint are not applied to a prisoner for a period of days (paragraph 162);
- every instance of the resort to instruments of restraint - or to any other means of force - to be recorded in a specific register established for that purpose. The entry should include the times at which the measure began and ended, the circumstances of the case, the reasons for resorting to the measure and an account of any injuries sustained by inmates or staff (paragraph 164);
- the methods described in paragraph 165 no longer to be used to restrain inmates in German prisons (paragraph 166);
- the issue of access to a telephone for remand prisoners to be reviewed (paragraph 173).

#### **comments**

- in the context of both initial and in-service training of prison officers, considerable emphasis should be placed on the acquisition and development of inter-personal communication skills. Building positive relations with prisoners should be recognised as a key feature of a prison officer's vocation (paragraph 141);
- the German authorities are invited to review the operation in practice of the system of placement in unit DII at Bützow Prison and unit B2 at Hamburg Remand Prison for security purposes, in order to ensure that such placements are not being effected for quasi-disciplinary reasons (paragraph 152);
- the German authorities are invited to make a wider range of reading material available to prisoners subject to the disciplinary sanction of cellular confinement (paragraph 160);
- the German authorities are invited to consider taking concrete measures to improve the current visiting system at Moabit Prison (paragraph 170);
- ventilation in the visiting rooms at Bützow Prison was mediocre (paragraph 171).
- telephone contacts by remand prisoners could - where necessary - be made subject to appropriate supervision; in many cases such an arrangement should render redundant the imposition of judicial restrictions on telephone contact (paragraph 173).

**requests for information**

- whether all of the safeguards set out in paragraph 155 are available to remand prisoners subject to judicial restrictions (paragraph 155);
- as regards Moabit, Bützow and Hamburg Remand Prisons, in respect of 1995 and the first half of 1996:
  - the total number of prisoners who were subject to judicial restrictions, expressed as a percentage of the total number of inmates held on remand;
  - a breakdown of the nature of the restrictions applied to remand prisoners, together with an indication of the average length of time for which they were applied (paragraph 156);
- details of the measures taken at Tegel Prison in order to ensure that all disciplinary proceedings at that establishment are conducted in accordance with law (paragraph 157);
- the comments of the German authorities on the possibility of extending throughout Germany the system of allowing appropriately-equipped visiting areas to be used for maintaining family and personal relations (paragraph 174).



**APPENDIX II**

**LIST OF THE NATIONAL AUTHORITIES,  
NON-GOVERNMENTAL ORGANISATIONS AND OTHER PERSONS  
WITH WHOM THE DELEGATION HELD CONSULTATIONS**

**A. National authorities**

**Federal Ministry of Justice**

Ministerialdirigent LEHMANN  
Richter am Oberverwaltungsgericht BELL  
Regierungsdirektor KÜCK  
Regierungsrat z.A. RADZIWILL  
Richter am Amtsgericht ALTMANN

**Federal Ministry of the Interior**

Polizeidirektor im BGS, SEEGER

**Berlin**

**Department of Justice**

Staatssekretär BORRMANN  
Leitender Senatsrat FLÜGGE  
Leitender Senatsrat KREBS

**Department of the Interior**

Staatssekretär BÖSE  
Leitender Senatsrat VOB  
Senatsrat RABE  
Kriminaldirektor NIEWIND  
Kriminaloberrat TRENSCHEL

**Hamburg**

**Department of Justice**

Leitender Regierungsdirektor KAMP

**Department of the Interior**

Polizeidirektor VOGLER

**Mecklenburg-Western Pomerania**

**Ministry of Justice**

Staatssekretär BABENDREYER  
Ministerialrat SUHRBIER

**Ministry of the Interior**

Staatssekretär Prof. Dr. LETZGUS  
Ministerialdirigent BAHR

**Schleswig-Holstein**

**Ministry of Justice**

Ministerialdirigent Dr. MAELICKE

**Ministry of the Interior**

Ministerialdirigent ZIERCKE

**B. Non-governmental organisations and other persons  
with whom the delegation held consultations**

Pro Asyl  
Berlin Refugee Council  
Pax Christi Asyl  
Initiative Against the Detention of Foreigners

Prof. Frieder DÜNKEL

