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## **Response**

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

**from 25 November 2015 to 7 December 2015**

The German Government has requested the publication of this response. The CPT's report on the November/December 2015 visit to Germany is set out in document CPT/Inf (2017) 13.

Strasbourg, 1 June 2017



Bundesministerium  
der Justiz und  
für Verbraucherschutz

**Observations by the Federal Government on the recommendations, comments and requests for information by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on the occasion of its visit from 25 November to 7 December 2015**

Berlin, 28 February 2017

## **Introduction**

A delegation of the CPT paid its sixth periodic visit to the Federal Republic of Germany in the period between 25 November and 7 December 2015. The CPT delegation visited 15 establishments, including police establishments, prisons and civil/forensic psychiatric establishments in Bavaria, Berlin, Brandenburg, Lower Saxony, Saxony-Anhalt and Thuringia. The main objective of the visit was to review the measures taken by the relevant authorities to implement recommendations made by the Committee after its previous visits. Particular attention was also paid to the situation of detained persons held in solitary confinement for prolonged periods in prisons and the use of other special security measures (including mechanical restraint [*Fixierung*]) in various types of establishments.

By letter dated 29 August 2016 the CPT transmitted to the Federal Government a report drawn up following its visit (CPT (2016) 32) containing a number of recommendations, comments and requests for information.

The CPT requested that the German authorities provide, within six months, a response giving a full account of action taken to implement, in particular, the CPT's recommendations. Further, the Committee trusted that it would also be possible for the German authorities to provide replies to its comments and requests for information.

The Federal Government hereby submit their observations on this report. As responses can be provided to all the issues raised by the CPT, the Federal Government's observations address in detail each of the CPT's remarks in the order in which they are addressed in the final report. The respective recommendations, comments and requests for information have been prefixed to each response.

The Federal Government have consented to the publication of the report and its observations.

Cooperation**Paragraph 10**

***The CPT urges all relevant federal and Länder authorities to take immediate action to ensure that visiting delegations of the Committee henceforth have unrestricted access to administrative and medical files of detained persons. It wishes to be informed of the specific measures that have been taken in this regard.***

As regards the prison system, a *Länder*-level meeting was held in Berlin on 15 and 16 December 2016. The meeting was attended by 12 of the *Länder* and addressed the issue of the right of access to files for CPT delegations. At the end of the meeting it was noted that the participating *Länder* each plan to establish the legal basis for CPT delegations to be able to inspect the personal files of detained persons, their health and medical records, as well as patient records during their visit to an establishment. A sample document was drawn up on that occasion. Hesse and Bremen did not take part in the meeting as they have already made provision for such access to files.

As regards the Federal Police, provision is already made for the CPT to be given access to the aforementioned files.

As regards psychiatric establishments, a meeting of the relevant Ministries of Health and Social Affairs of the *Länder* was also held in January 2017 at which the matter of access to files was discussed. Deliberations on how the issue can be resolved have not yet concluded. The Federal Government will keep the Committee abreast of developments in this regard.

## National Preventive Mechanism

### **Paragraph 11**

***The CPT encourages the German authorities to review again the functionalities of the National Agency for the Prevention of Torture and ensure that it will be provided with sufficient resources to effectively carry out its NPM mandate.***

Two years ago the Federal Government and the *Länder* significantly increased the National Agency for the Prevention of Torture's level of funding and staffing.

A Deputy Head was appointed to join the Federal Agency in June 2013. He and the Head of the Federal Agency are responsible for the (relatively narrow) remit of federal competencies. In June 2014 the 85th Conference of Ministers of Justice of the *Länder* doubled the number of members of the Joint Commission of the *Länder* (Joint Commission) to eight. The new members were nominated by the Federal Ministries of Health, Social Affairs, Families and Interior to boost the expertise available within the Joint Commission in those areas in which it had previously been lacking such specialist knowledge. The four new members of the Joint Commission took up their work on 1 January 2015. At the same time the Federal Government and the *Länder* agreed to increase the National Agency's budget, as a result of which as of 2015 it has a total budget of EUR 540,000 (compared to EUR 300,000).

The Federal Government and the *Länder* will continue to ensure that the National Agency is in a position to fulfil its tasks.

## Police establishments

### **Paragraph 14**

***The CPT trusts that the authorities of all Länder will remain vigilant and will continue to remind police officers that no more force than is strictly necessary should be used when carrying out an apprehension and that, once apprehended persons have been brought under control, there can be no justification for hitting or punching them.***

***Further, the Committee would like to be informed of the training which is provided to police officers, both at the federal level and in the various Länder, in order to deal in an appropriate manner with persons suffering from a mental disorder.***

Both the Federal Police and the police authorities in the *Länder* address practical aspects of the detention process as well as specific features as regards the vulnerable, sick, mentally ill and drug-addicted individuals within the context of their training. They also ensure that what has been learned in theory is applied in practice in training courses which focus on specific situations. The following examples illustrate this:

A working group was established in Bavaria in 2010 which, with the help of experts in the Bavarian Police Force's psychology service, conducted a detailed assessment of a number of typical operational situations. The findings were directly incorporated into training and advanced training concepts. Further, in 2011 a practical training module on dealing with aggressive individuals in an extreme mental state was developed and implemented uniformly across Bavaria in police tactical training courses in order to optimise officers' preparedness for such situations.

In Berlin, police officers take part in situational training courses focusing on communication and conflict-resolution which were devised in conjunction with psychologists and address those types of medical condition which officers will commonly encounter, i.e. schizophrenia, borderline personality disorder and dementia. The aim is to raise an awareness of the dilemma arising on account of the need to communicate on the one hand and the need, possibly, to use force to achieve police objectives on the other. The topic is not only dealt with in seminars dealing with how officers should conduct themselves but also in operational training in which course facilitators role play realistic situations to demonstrate how persons suffering from a mental disorder behave, for instance.

The training curricula of all the *Länder* include modules in which police officers are taught to deal appropriately and practically with persons suffering from a mental disorder, vulnerable individuals or those displaying behavioural problems.

## Paragraph 17

***The CPT would like to receive further information in this regard from the relevant authorities of all Länder.***

Unfortunately, pertinent statistics on this matter are not available. The statistics kept by the judicial authorities concerning the number of instituted proceedings do not allow any conclusions to be drawn as regards the concrete outcome of any criminal proceedings in which charges were preferred. One key reason is that proceedings are often not concluded by final decision in the same year in which the offence was reported and in which charges were pressed. However, a few decisions were taken from the personnel files kept by the employment authorities in Bavaria which show – by way of example and without it being possible to trace them to any specific cases included in the judicial statistics – that where charges were pressed against police officers in individual cases heavy criminal or disciplinary sanctions are imposed:

2013

- 7-month suspended sentence; decision still subject to appeal
- 11-month suspended sentence; disciplinary sanction: removal from post
- 6-month suspended sentence; disciplinary sanction: demotion

2014

- 8-month suspended sentence; disciplinary sanction: demotion
- 12-month suspended sentence; dismissal by operation of law

2015

- 10-month suspended sentence; disciplinary sanction: demotion

2016

- 18-month suspended sentence; decision still subject to appeal

Reference has already been made to proceedings being conducted in Saarland. In Saxony two people were sentenced to a fine and one person to imprisonment; several proceedings are still pending. One police officer was removed from post in Saxony-Anhalt; the criminal proceedings in one instance in which an officer was reported on suspicion of committing bodily harm in office were terminated and a fine was imposed in the subsequent disciplinary proceedings.

**Paragraph 18**

***The CPT would like to receive the German authorities' comments on this matter.***

The Federal Government are aware of the cited judgments of the European Court of Human Rights. However, the situation as set out in § 151 et seqq. of the judgment in the case of Eremiášova and Pechová by way of example for the Czech Republic differs fundamentally from the legal situation in Germany. In the cited case the investigating authorities were without exception subordinate to the competent police president and the police president was, in turn, subordinate to his/her minister. In Germany, however, investigations are always conducted by the public prosecution office, which conducts its investigations independently and is linked neither organisationally nor hierarchically to the police authorities concerned.

## Paragraph 19

***The Committee encourages the relevant authorities of all other Länder to create an independent mechanism to process complaints about police ill-treatment.***

## Paragraph 20

***The Committee encourages the police authorities of all Länder to follow this positive example.***

Where there is a suspicion of a criminal offence, criminal investigations are, as a general principle, conducted by the public prosecution office. Safeguards are in place in almost all the *Länder* to ensure that the specific investigations which are necessary in a particular case are transferred to another police station than that against whose staff the allegations have been made. Further, Bavaria, Bremen and Hamburg each have a central investigating body which is either affiliated to the *Land* Ministry of the Interior or the *Land* Criminal Police Office and which conducts investigations into complaints filed against police officers. Central police complaints offices have been established within the Ministries of the Interior of Lower Saxony, Saxony and Saxony-Anhalt, although in Saxony this independent office does not conduct criminal investigations where reports have been made against police officers. The same applies to the central office established in Saxony-Anhalt, which is also independent (*weisungunabhängig*).

Since 18 July 2014 citizens in Rhineland-Palatinate have been able to turn to the Police Commissioner (*Beauftragter für die Landespolizei*) to file complaints against the personal misconduct of individual police officers or against police measures. The Police Commissioner is the point of contact for both citizens' complaints and suggestions made regarding the *Land* police. Police officers can likewise make submissions in connection with their work directly to the Commissioner without having to go through official channels. The Police Commissioner acts in the capacity of an ancillary body to the *Land* Parliament in the conduct of its parliamentary oversight and is independent (*weisungsfrei*) in the exercise of the office and only subject to the law.

In Schleswig-Holstein disciplinary investigations are conducted by special disciplinary investigators in a central office in the Ministry of the Interior; the highest disciplinary authority is not part of any police department.

On 8 June 2016 the *Land* Parliament of Schleswig-Holstein adopted a bill to amend the Ombudsperson Act (*Bürgerbeauftragten-Gesetz, BüG*), which is based on the model applied in Rhineland-Palatinate and creates the post of Ombudsperson for the Schleswig-Holstein *Land* Police as an additional complaints entity. The Act entered into force on 1 October 2016.

The Ombudsperson for Social Affairs, Samiah El Samadoni, was thereupon appointed Ombudsperson for the *Land* Police.

Anyone in Mecklenburg-Western Pomerania is entitled to turn to the Ombudsperson of Mecklenburg-Western Pomerania at the *Land* Parliament of Mecklenburg-Western Pomerania in the event of alleged misconduct. The Ombudsperson is independent in the exercise of the office and only subject to the law.

Baden-Württemberg appointed an Ombudsperson in 2016 who is independent in the exercise of the office and only subject to the law (see Act on the Ombudsperson of the *Land* of Baden-Württemberg of 23 February 2016 [*Gesetz über die Bürgerbeauftragte oder den Bürgerbeauftragten des Landes Baden-Württemberg*, BürgBG BW], Law Gazette 2016, p. 151). The Ombudsperson has specific responsibility for the police. First, the Ombudsperson is a point of contact for police officers and, second, a central contact person who acts as an intermediary to safeguard the interests of citizens following reports of possible personal misconduct on the part of individual police staff or claims that a police measure is unlawful.

Berlin is reviewing and planning to strengthen civil rights and acceptance of police actions in office by establishing, based on the Rhineland-Palatinate model, the post of Ombudsperson of the *Land* of Berlin and Police Commissioner. The Berlin Police Commissioner is also to be the point of contact for police staff.

There have been various discussions in political committees in recent years in Bremen as regards establishing the post of Ombudsperson for the Police, though as yet without any conclusive outcome. However, each Senate Department has an Ombudsperson who is directly subordinate to each Head of the Senate Department and is the point of contact for all citizens' issues/complaints.

Further, the police have also established a complaints body in the President's Staff which deals with both external complaints and complaints lodged by police staff. Citizens can also turn to the Internal Investigations Department with any matters which may lead to criminal proceedings (e.g. bodily harm). Where this results in a complaint being filed against the police, the matter is immediately passed on to the Internal Investigations Department, which is subordinate to the Senate Administration for the Interior, for further investigation.

In the course of the 2015 to 2019 parliamentary term the Internal Investigations Department is to be moved from the Senate for Interior Affairs to the Senate for Justice and Constitution. Preparations are underway for this organisational change to be made.

A police integrity line (*Polizeivertrauensstelle*) is to be established within the Ministry of Internal Affairs and Local Government of the Free State of Thuringia in the first half of 2017.

We would also like to point out that the National Agency for the Prevention of Torture dealt in 2015, amongst other topics, with the prevention of police misconduct and independent complaints and investigation bodies. The results were published in its Annual Report 2015 (see Annex 1 – Annual Report 2015, p. 16 – 18).

## Paragraph 22

***The Committee urges the Federal Ministry of the Interior as well as the police authorities of Baden-Württemberg, Bavaria, Mecklenburg-Western Pomerania, Saxony and Saarland to re-consider their policy in this regard and take the necessary steps to ensure that police officers wearing masks or other equipment that may hamper their identification are obliged to wear a clearly visible means of identification (e.g. a number on the uniform and/or helmet).***

As far as the Federal Police are concerned, a means of identification can be applied to the backs of Federal Riot Police officers' uniforms during operations; these identify the officers' affiliation to a particular group. There are no plans to add any further means of identifying officers during police operations.

Mecklenburg-Western Pomerania plans to introduce a rule in the course of the current parliamentary term (2016 – 2021) requiring police officers in closed operational units to wear individual means of identification during operations to enable them to be singled out afterwards if necessary.

In Baden-Württemberg individual officers can in principle be singled out by means of identification applied to their backs and detailed documentation of each operation.

The police in Saxony have introduced a means of group identification worn on the backs of all officers deployed in closed operational units. In combination with full documentation of each operation, this allows each officer to be identified. There are currently no plans to oblige police officers to wear any further means of identification.

**Paragraph 23**

***The Committee would like to receive updated information on the use of body cameras by police officers in all Länder.***

The Federal Police as well as the police in several *Länder* (Bavaria, Bremen, Hamburg, Lower Saxony, Rhineland-Palatinate, Saarland and Thuringia) are currently testing the use of body cameras as part of pilot projects. Other *Länder* (Brandenburg, Mecklenburg-Western Pomerania, Saxony, Saxony-Anhalt and Schleswig-Holstein) are preparing similar projects. The Coalition Agreement for the *Land* of Berlin provides that a trial run is to be conducted, and the legal bases are currently being drawn up for the use of body cameras. North Rhine-Westphalia, Baden-Württemberg, Saarland and Hesse already have legislation in place which regulates the use of body cameras (see [Annex 2](#)).

## Paragraph 24

***The CPT recommends once again that the federal and all Länder authorities take the necessary measures to ensure that***

***– all persons deprived of their liberty by police officers – for whatever reason – are fully informed of their fundamental rights as from the very outset of their deprivation of liberty (that is, from the moment when they are obliged to remain with the police). This should be ensured by provision of clear verbal information at the moment of apprehension, to be supplemented at the earliest opportunity (that is, immediately upon the first arrival at a police establishment) by the provision of the relevant information sheet. Further, the persons concerned should be asked to sign a statement attesting that they have been informed of their rights and should always be given a copy of the information sheet. Particular care should be taken to ensure that detained persons are actually able to understand their rights; it is incumbent on police officers to ascertain that this is the case;***

***– relevant information on the implementation of the fundamental safeguards against ill-treatment (i.e. when the person was informed of his/her rights; when he/she had contacts with and/or visits from close relatives, a lawyer, a doctor or a representative of a consular service) is kept in respect of every police establishment in such a way that it can be retrieved retrospectively (on paper or in electronic form).***

When it comes to the Federal Police, the relevant legal provisions and police custody regulations are legally binding as regards the type and extent of information provided in respect of all procedures and measures relating to the detention of persons. The required information and documentation sheets relating to the detention of persons are available in the police stations and can be called up in several languages and can, as necessary, be completed electronically or on paper.

Once the information has been provided and the relevant sheets have been filled in, a record is made in the police station's custody record book.

Baden-Württemberg has appropriate means of ensuring that police officers provide each person taken into custody with detailed information as to their rights. This information is provided immediately in verbal form, generally at the point at which the person is deprived of his/her liberty. Information is then also provided in writing at the earliest opportunity thereafter. To that end the detained person is handed an information sheet (where possible in his/her native language). Persons taken into custody under the Baden-Württemberg Police Act (*Polizeigesetz für Baden-Württemberg, PolG BW*) are instructed as to their rights in the same manner. Where this information cannot immediately be translated into a foreign language, it is provided in the person's native language in a timely manner. Where the person taken into custody is in a mental state which rules out the free exercise of will, that person is provided with information as to rights at a later point in time.

Records are kept as regards practical implementation of basic rights and safeguards against the ill-treatment of persons taken into police custody. That includes information regarding any facilitated or requested contacts with relatives and consultations with a doctor or lawyer. This information is recorded either on paper or electronically and is kept in each police establishment to ensure the traceability of all dealings with persons taken into custody and so that the relevant information can be called up at a later date.

Bavaria enacted the revised version of its Police Questioning in Preliminary Criminal Investigations Guidelines on 3 April 2014. Amongst other things, the Guidelines provide the following when it comes to police questioning and the instruction of (young) accused persons who have been arrested or detained:

“Arrested or detained persons must be instructed as to their rights without delay, i.e. before commencing police questioning, and in writing in a language which they understand (section 114b of the Code of Criminal Procedure [*Strafprozessordnung*, StPO]). Irrespective of whether the instructions are given immediately in verbal form, written instruction after being taken to the police station is as a rule sufficient. Where a person taken into custody is first instructed as to their rights verbally, a written record must be made in a timely manner of when, where and by whom such instruction was given.”

Nationally standardised information sheets in various languages are available in the catalogue of forms at hand in Bavaria (via the Bavarian Police Force’s Intranet) and can be accessed by all members of the Bavarian Police Force across Bavaria.

Where instruction has been given after measures to deprive persons of their liberty under the Act on Police Tasks and Powers (*Polizeiaufgabengesetz*, PAG) this is also documented by means of a signature (Article 19 para. 1 of the Act on Police Tasks and Powers).

Finally, we would like to point out that the information sheets used in Bavaria are regularly reviewed and optimised. For example, on the recommendation of the National Agency on the Prevention of Torture the “Custody” sheet was recently expanded to include a field used to record why the information sheet was not handed out to a person deprived of his/her liberty under the Act on Police Tasks and Powers.

In Berlin, persons deprived of their liberty are instructed verbally about the reasons for the measure depriving them of their liberty as well as about their basic rights at the place where they are deprived of their liberty. Further, information sheets are available in various languages which are to be handed out when persons are deprived of their liberty; where a person is detained under section 114b of the Code of Criminal Procedure, he/she must sign

to confirm receipt of the information sheet. Although there is no statutory requirement to do so, the person concerned is always handed a copy of the sheet.

Language barriers are generally overcome by calling in either a member of staff who speaks the language in question or an interpreter. Interpreters must as a matter of principle be called in during police questioning.

A record is kept in custody establishments of any contact with relatives, lawyers, doctors or consular representatives and/or visits by these persons, which ensures subsequent traceability. Persons in police custody are offered the chance to call in a person providing legal assistance (*Rechtsbeistand*) and, where necessary, an uninterrupted meeting with a lawyer is made possible.

As part of the investigation process, officers are required to keep a record of the fact that instruction has been given pursuant to section 114b of the Code of Criminal Procedure, either electronically or by other means. No statutory provision has been made requiring any additional record providing proof that the person concerned has been taken into custody.

In Bremen, instruction as to a person's rights following measures depriving them of their liberty are given in accordance with the provisions of the Code of Criminal Procedure or the Bremen Police Act (*Bremisches Polizeigesetz, BremPolG*), respectively. Persons deprived of their liberty are on principle instructed as to their basic rights by those police officers making the initial apprehension. As part of the reporting process, a record is kept of the fact that instruction has been given, including reference to the possibility of already having court-appointed counsel (*Pflichtverteidiger*) assigned in the preliminary investigations, notifying the competent consulate for the purposes of representation of a foreign national and the right to notify relatives or trusted persons (in so far as this does not jeopardise further investigations). Court orders concerning measures depriving a person of their liberty are obtained without delay in accordance with statutory requirements. A sheet available in various languages is handed to arrested individuals upon their request. Where necessary, an interpreter is called in to ensure that instructions as to rights can be given verbally.

Based on the recommendations which the CPT made in 2013, instructions regarding procedural principles for dealing with suspects taken into police custody (*vorläufig festgenommene/festgehaltene Personen*) were again revised and the relevant training courses updated.

The rules applicable in Hamburg have been amended as follows:

When a person is arrested they must be instructed without delay as to the occasion for their being deprived of their liberty. They are as a matter of principle to be handed a completed instruction sheet in a language they can understand.

The arrested person must confirm in writing that they have been instructed as to their rights; should they refuse to do so, a record must be kept of that fact. Where necessary, for example because the person concerned is unable to read, the instructions are to be given verbally. Where the effort involved is proportionate, an interpreter is to be called in; reasons must be stated and added to the files where a person waives the right to call in an interpreter.

In addition, an arrested individual is to be informed or rather instructed as to his/her rights, for example to call in a trusted person or a person providing legal assistance. The date and time of instruction is recorded as part of the reporting process.

The police in Hamburg already apply the CPT's recommendation that information sheets be used for instructing persons as to their rights. Sheets are available in German and in other languages. Once the person concerned has signed the information sheet the original copy is placed in the file and, upon the person concerned's request, he/she is handed a copy. Hamburg police already use an electronic custody book (ECB), allowing basic rights and safeguards against ill-treatment to be implemented in practice.

The ECB keeps a traceable record when a trusted person, a person providing legal assistance or doctor was notified or the attempt was made to notify them. A record is also made thereof as part of the reporting process. Entries are stored for several years in line with the applicable retention periods.

In Mecklenburg-Western Pomerania persons deprived of their liberty are given a written information sheet instructing them as to their rights. The person concerned must sign the information sheet.

As far as Saxony-Anhalt is concerned, section 20 of the Lower Saxony Public Safety and Order Act (*Niedersächsisches Gesetz über die öffentliche Sicherheit und Ordnung*, Nds. SOG), section 114a et seqq. of the Code of Criminal Procedure and, additionally, the Police Custody Regulations (Circular from the Ministry of the Interior of 15 December 2008) set out rules on dealing with detained persons. Under the Police Custody Regulations, detained persons are to be handed an Information Sheet for Suspects Taken into Police Custody,

which details their rights whilst in detention. It is available in a total of 17 languages. The information sheet is handed out immediately as a matter of course.

After they are arrested/taken into custody by the police, those concerned in Rhineland-Palatinate are instructed as to their rights using the same sheets which are used across Germany. Under no. 2.5.1 of the Rhineland-Palatinate Police Custody Regulations of 2 February 2013 (20 009-2/344), a person must without delay be informed of the reason for their being taken into custody and in a language they can understand. To that end they are to be handed the Information Sheet on the Rights and Duties of Persons in Police Custody. Under no. 2.4.1 of the Custody Regulations, the admission report must record all the data and information regarding the time a person spends in custody (from admission to release), whether and when they appear before a judge, or whether they spend time elsewhere. Further, a record is kept of each contact with or visit by relatives, a lawyer and a doctor. Under no. 2.4.3 of the Custody Regulations, admission reports must be retained for a period of five years and must then be destroyed unless they are still needed.

Matters documented in those parts of the files which are kept by the public prosecution office are transferred to the judiciary after the end of the police investigations. Based on the Joint Circular from the Rhineland-Palatinate Ministry of the Interior and Sports (343/08 110-4) and the Ministry of Justice (4700-4-23) of 3 November 1997, a second file is only retained after passing a matter on to the public prosecution office in specific exceptional cases (e.g. where it is presumed that further police investigations will be necessary, an arrest warrant or warrant for a person's placement has been issued, and in the case of serial offences and unknown perpetrators). Data are stored electronically in the Rhineland-Palatinate Police Case Processing System, or POLADIS. The general order opening the POLADIS system contains rules on data processing. These were coordinated with the *Land* Commissioner for Data Protection (*Landesbeauftragter für den Datenschutz*).

The police service in Saarland uses preprepared information sheets to instruct persons deprived of their liberty. These can be called up both in the Police Case Processing System, or POLADIS, and via a page on the Saarland Police Force's Intranet, which lists various forms. The sheets are all available in various languages.

This topic was also addressed during a visit to Saarland by the Joint Commission of the National Agency on the Prevention of Torture in May 2015. Following this visit the *Land* Police Headquarters were once again instructed to raise awareness amongst superiors and staff responsible for a police custody suite and the custody service as regards the recommendations made by the Joint Commission: Regular checks are to be carried out to ensure that where no information as to rights could be given in the first instance, this is then imparted as soon as possible, at the latest, though, upon the person concerned's release. As a means of oversight, a record is made in a suitable manner in the custody documents of whether and when instruction was given.

As things currently stand, various bodies are responsible for recording matters relating to persons taken into custody. In its aforementioned visit to Saarland the Joint Commission put the previous practice – dividing responsibility for recording such matters up amongst various persons – up for discussion and recommended optimising the procedure. We plan to examine the suggestions when updating the Police Custody Regulations.

In April 2016 the ministry responsible for the police in Saxony-Anhalt revised the Administrative Regulations concerning Police Custody in consultation with the ministry responsible for prisons. It was, in particular, the rules concerning instruction of those concerned as to their basic rights which were subject to revision (no. 14 of the Police Custody Regulations).

No. 9 of the Police Custody Regulations contains detailed rules on which documents in regard to police detention are to be kept in electronic or in paper form. The retention and deletion requirements as regards the data subject's personal data, which the Regulations require must be kept in electronic form, are set out in a directory of procedures. This directory was drawn up in consultation with the Commissioner for Data Protection of Saxony-Anhalt. The Document Regulations for the *Land* Administration of Saxony-Anhalt (*Aktenordnung für die Landesverwaltung von Sachsen-Anhalt*, AktO) and the more detailed provisions in that regard apply to the recording of police custody procedures in paper form. Accordingly, documents kept in electronic and in paper form must be retained for one year, after which they are deleted and destroyed. Records are not deleted and destroyed if there is reason to believe that this would interfere with the data subject's interests warranting protecting or the data are required to eliminate an existing lack of evidence.

The rules under no. 14 of the Police Custody Regulations provide that the required instructions must be given without delay both in verbal and in written form. The information sheets need to be signed by the person concerned and a copy handed to them. When ensuring that the detained person is able to understand his/her rights, police officers employed in the custody service are required to observe the rules as regards fitness to enter custody.

The police in Schleswig-Holstein use the sheets made available online (in several languages) by the Federal Ministry of Justice and Consumer Protection for instructing persons as to their rights under criminal procedural law. These are available to each and every police officer in police stations via the case processing system's portal, called @rtus. An Information Sheet (Annex) (in several languages) is also available via the aforementioned @rtus portal where persons are deprived of their liberty under police law. It sets out and explains the required statutory instructions/information. The Police Custody Regulations contain rules on the procedure for taking and keeping persons in police custody. The police officer ordering that a person be taken into custody must issue the order to admit the person in question in writing. This is done using the "Pol SH 3.040" form in the @rtus case processing system. The copies held by the police custody facility are to be kept in chronological order in a file and retained for a maximum of five years. The deletion period for records stored in the @rtus case processing system depends on the type of procedure (criminal offence/preventing a threat to safety and order). The police officer responsible for the custody suite is also responsible for keeping the custody records (in the custody book). The custody records also document whether the person taken into custody was instructed as to their rights. The custody book must be retained for a period of five years (no. 6 of the Police Custody Regulations of 21 November 2016).

## Paragraph 25

***The CPT reiterates its recommendation that steps be taken to ensure that a record is made and kept in every police establishment in Germany of every instance of a person being deprived of his/her liberty on the premises of that establishment.***

Under no. 1.3.1 of the Police Custody Regulations for Custody Suites in Federal Police Stations, the Federal Police are required to keep full records of each person detained in police custody based on a preprepared model. The same applies to persons who only remain in custody for a short time. The Federal Police therefore already meet the requirement of keeping the requested records.

Police establishments in Baden-Württemberg keep a record of each instance in which a person is taken into custody (in line with the Custody Regulations of the *Land* Police Headquarters in the Ministry of the Interior). Regular checks are carried out to ensure that custody books are being kept diligently and thoroughly.

When it comes to persons kept in custody until the facts are established or until they are transferred to police custody in other police establishments, each police establishment in Berlin with a custody suite keeps a register (book) of persons who are brought in. The head of each police station signs and dates the register when it is started and when it is closed. Information on persons brought into police custody is recorded and stored electronically.

The police in Bremen use an electronic custody book in which all persons and data relating to their arrest are recorded. As well as the time of their arrest and release, a record is kept of all the times when the person in question is not in the custody suite (e.g. for the purposes of establishing their identity or questioning). The custody book remains permanently stored (see also paragraph 24, p. 20 above).

Under the Police Custody Regulations of Mecklenburg-Western Pomerania, complete proof must be furnished in a custody book regarding all persons brought into police custody. The records are kept for five years after the end of that calendar year in which the last entry was made.

In Lower Saxony each police station with a custody suite must keep a custody book.

The Police Custody Regulations of Saxony-Anhalt contain comprehensive documentation requirements as regards persons taken into police custody based on the deprivation of liberty and detention measures in police stations. The custody book concerning measures depriving persons of their liberty is an electronic register.

## Paragraph 26

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

Under section 163a (4), second sentence, and section 136 (1), second sentence, of the Code of Criminal Procedure read in conjunction with section 2 (2) of the Youth Courts Act (*Jugendgerichtsgesetz*, JGG), a (detained) juvenile must be advised at the commencement of the (first) police examination that the law grants him/her at any stage, even prior to the examination, to consult with defence counsel of his/her choice. This regulation, which guarantees the absolute right to access to legal assistance, is in accord with, for instance, Article 37(d) of the Convention on the Rights of the Child, according to which “[e]very child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance” (similar to no. 15 of Recommendation Rec(2003)20 of the Committee of Ministers of the Council of Europe to member states concerning new ways of dealing with juvenile delinquency and the role of juvenile justice). A distinction must be drawn between the right to access to legal assistance and the right to which reference is made in the recommendation, namely to the “presence of a lawyer or a trusted person”. The latter need only be provided ex officio at the State’s expense “if necessary” (see, e.g. no. III. 8, 2nd indent of Recommendation Rec(1987)20 of the Committee of Ministers of the Council of Europe to member states on social reactions to juvenile delinquency) or “when the interests of justice so require” (see Article 6(3)(c) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; see also Recommendation Rec(2008)11 of the Committee of Ministers of the Council of Europe to member states and no. 120.3 of the European Rules for Juvenile Offenders Subject to Sanctions or Measures: “The state shall provide free legal aid [...] when the interests of justice so require”). Under German law, legal assistance must be provided to a juvenile when, for example, remand detention or provisional committal is to be enforced against that juvenile pursuant to section 126a of the Code of Criminal Procedure; defence counsel must be appointed without delay (section 68 no. 5 of the Youth Courts Act). The law already provides that defence counsel can be appointed as early as “during the preliminary proceedings” and thus also before the (first) police examination (see section 141 (3), first sentence, of the Code of Criminal Procedure read in conjunction with section 2 (2) of the Youth Courts Act).

Nevertheless, the Federal Ministry of Justice and Consumer Protection is currently reviewing whether a legislative amendment is necessary to implement the CPT’s recommendation. The review is being conducted on account of Directive (EU) 2016/800 of the European Parliament and of the Council on procedural safeguards for children who are suspects or accused persons in criminal proceedings having entered into force on 11 June 2016. Under Article

6(6)(2) of that Directive, Member States must at any rate ensure that “children are assisted by a lawyer: (a) when they are brought before a competent court or judge in order to decide on detention at any stage of the proceedings within the scope of this Directive; and (b) during detention.” Under Article 6(3)(a) and (c) of the aforementioned Directive, children must at any rate be assisted by a lawyer (where no derogation on the grounds of proportionality under Article 6(6)(1) is possible) “from whichever of the following points in time is the earliest: (a) before they are questioned by the police or by another law enforcement or judicial authority; (...); (c) without undue delay after deprivation of liberty;”. Based on the aforementioned provisions, the Ministry will need to examine whether defence counsel must be appointed to detained juveniles before their (first) examination by the police. This review process has not yet been concluded. The three-year deadline for implementation expires on 11 June 2019. According to current plans, the Ministerial draft will (presumably) be submitted no earlier than the summer of 2017.

## Paragraph 27

**Therefore, the Committee must recommend once again that the relevant legal provisions be amended so as to reflect these precepts and that the practice in all police establishments be revised accordingly.**

The right of an arrested accused person to notify a relative or a trusted person is laid down in section 114c (1) of the Code of Criminal Procedure. The provision referred to in paragraph 27, namely section 114b (2) no. 6 of the Code of Criminal Procedure, merely lays down that the arrested accused is to be instructed as to that right.

Under section 114c (1) of the Code of Criminal Procedure, the arrested accused must be given the opportunity without delay to notify a relative or a trusted person, provided the purpose of the investigation is not endangered thereby. Contrary to the opinion expressed in the CPT's report, this rule is sufficiently precise both as regards the element of endangering the purpose of the investigation (a) and its temporal reference (b).

(a) The exemption as regards the right of notification is, first, to be understood against the following backdrop: Under section 114c (1) of the Code of Criminal Procedure, the accused has the right to make the notification himself/herself, that is to communicate directly with his/her relative or trusted person. This goes along with the right to choose which relative or trusted person to notify. The accused is also free to choose the means of communication. On the other hand, account must be taken of the fact that after an accused's arrest further investigations often need to be conducted and that these can, in particular, be endangered if accomplices or backers are tipped off by the arrested accused. By granting the accused the right to determine who to notify (as described in the above) only "provided the purpose of the investigation is not endangered thereby", section 114c (1) of the Code of Criminal Procedure first and foremost permits the investigating authorities to limit the group of persons notified and the manner of their notification; according to predominant opinion, ruling out the right of notification entirely is, by comparison, not permissible.

(b) As regards the temporal aspect, the accused is to be given the opportunity to notify these persons "without delay" (*unverzüglich*). According to the generally accepted definition applied in section 121 (1) of the German Civil Code (*Bürgerliches Gesetzbuch*, BGB), "without delay" (*unverzüglich*) here too means "without culpable delay". This corresponds to the requirements set by the European Court of Human Rights, which derives from the right to respect for private life and family life the State's obligation that a person who has been arrested must be able to communicate with his/her family "promptly" (French: "*rapidement*") (European Court of Human Rights, judgment of 4 April 2006, Application nos 42596/98 and 42603/98, *Sari and Colak v. Turkey*, § 36). Section 114c (2) of the Code of Criminal Procedure lays down a further temporal restriction: Under this provision the court must permit

the arrested accused to notify one of his/her relatives or a trusted person without (culpable) delay in the event that detention is executed against the accused. This obligation is absolute and, when compared to the right of the accused to notify persons under section 114c (1) of the Code of Criminal Procedure, is not restricted even where the success of the investigations is jeopardised. The decision to execute detention is taken when the arrested accused is brought before the competent judge. This is done without delay (again: without culpable delay) following the person's arrest, no later than the following day, though (section 115 (1), (2), section 128 (1) of the Code of Criminal Procedure). This means that on the day after a person's arrest at the latest a relative or trusted person of that arrested accused is notified of the arrest.

Since the relevant provisions are therefore sufficiently precise, we do not feel there is any need for any action on this matter.

**Paragraph 28**

*In the light of the above, **the CPT once again calls upon the federal and all Länder authorities to take the necessary measures to ensure that all persons detained by the police can effectively benefit, if they so wish, from access to a lawyer throughout their police custody, including during any police questioning. Save for highly exceptional circumstances when the matter is urgent, whenever a detained person has made a request to have a lawyer present, police officers should delay the questioning of the person concerned for a reasonable time pending the arrival of the lawyer.***

Under section 136 (1), second sentence, read in conjunction with section 163a (4), second sentence, of the Code of Criminal Procedure, an accused person must be informed even prior to his/her first examination by the police that the law grants him/her the right to respond to the charges or not to make any statement on the charges as well as the right, at any stage (even before his/her examination), to consult with defence counsel of his/her choice. As is correctly noted in the CPT's report, current legislation already provides that the accused may make his/her willingness to make a statement dependent on the presence of his/her defence counsel and thus, in effect, to force defence counsel to be present.

Nevertheless, the Federal Government's draft of a Second Act to Strengthen the Procedural Rights of Accused Persons in Criminal Proceedings and to Amend the Law on Courts with Lay Judges clarifies section 163a of the Code of Criminal Procedure in such a manner that the right to have defence counsel present during an accused's examination by a judge and the public prosecution office as laid down in section 168c (1) of the Code of Criminal Procedure is declared applicable mutatis mutandis to police questioning (Bundestag Printed Paper 18/9534, p. 5, 20 – 21).

## Paragraph 29

***The CPT recommends that the federal and all Länder authorities take the necessary steps – including, if necessary, at the legislative level – to ensure that indigent persons can effectively benefit from the presence of a lawyer free of charge throughout their police custody, including during police questioning. To this end, the text of the above-mentioned information sheets should be amended accordingly.***

In the first instance, under German law an accused person receives assistance from a lawyer who is paid for by the State on the basis of the assignment of court-appointed counsel (*Pflichtverteidiger*). The criteria for such assignment are listed in section 140 of the Code of Criminal Procedure. In particular, they focus on the severity of the offence at issue (section 140 (1) no. 1 and no. 2 of the Code of Criminal Procedure), the expected legal consequence (section 140 (1) nos 1, 2, 3 and 7 and (2) of the Code of Criminal Procedure), the complexity of the case (section 140 (2) of the Code of Criminal Procedure) and the personal circumstances of the accused, especially his/her ability to defend himself/herself (section 140 (1) nos 4, 5 and 9 and (2) of the Code of Criminal Procedure). The criteria correspond to those developed by the European Court of Human Rights on interpreting the term “the interests of justice” in Article 6(3)(c) of the European Convention on Human Rights (see European Court of Human Rights, judgment of 24 May 1991, Application no. 12744/87, *Quaranta v. Switzerland*, § 33; European Court of Human Rights, judgment of 10 June 1996, Application no. 19380/92, *Benham v. the United Kingdom*, § 60; European Court of Human Rights, judgment of 6 November 2012, Application no. 32238/04, *Zdravko Stanev v. Bulgaria*, § 38). This corresponds to the rule in section 140 of the Code of Criminal Procedure on mandatory defence. The assistance of court-appointed counsel is provided free of charge to the accused under the conditions set out in section 140 of the Code of Criminal Procedure regardless of whether the accused is in economic need. German legislation thus goes beyond the requirements set in Article 6(3)(c) of the European Convention on Human Rights.

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

The Federal Ministry of Justice and Consumer Protection is currently preparing the implementation of Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (OJ L 297, p. 1, 4.11.2016). In this context consideration may, in particular, be given to introducing a right which guarantees that the accused himself/herself can apply for court-appointed counsel to be assigned and to have such assignment made at an earlier point in the proceedings.

**Paragraph 31**

***The CPT once again calls upon the police authorities of Bavaria, Berlin and Saxony-Anhalt, and where appropriate, of other Länder to take immediate steps to implement the long-standing recommendation that all persons held overnight in police custody be provided with a clean (and, if necessary, washable) mattress.***

Safeguards are in place in Bavaria to ensure that detention cells, including mattresses, are cleaned regularly, where necessary outside of the regular cycle. Heavily soiled mattresses are replaced by new ones.

Clean mattresses are thus always available in the cells.

Two mattresses are available in each detention facility in Berlin. When persons are brought into a facility in a helpless state, a case-by-case assessment is done to establish how appropriately to meet that person's needs. The procurement of additional mattresses is being reviewed.

A sufficient quantity of (flame-resistant, washable) mattresses is available in custody suites in Saxony-Anhalt. Each person who is kept overnight in a custody cell can thus be supplied with a mattress. However, these mattresses are (still) not being used in the sobering-up cell. The CPT delegation's attention was drawn to this fact. This is due to the fact that it is not known at this stage whether the heatable bed in the sobering-up cell emits any dangerous fumes. This matter is currently being investigated.

**Paragraph 32**

***The CPT encourages the police authorities of all Länder to take steps to ensure that all persons held for 24 hours or more in police custody (and, in particular, those held in prolonged preventive custody) are offered outdoor exercise every day.***

The *Länder* are endeavouring to follow this recommendation in line with the practical means available for its implementation in the respective facilities. Most facilities have the means of offering outdoor exercise every day.

**Paragraph 33**

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

In the view of the *Land* authorities concerned it is not possible to do without mechanical restraint (*Fixierung*) as a means of last resort. This option must at least be available so as to be able to protect the person concerned and others. *Fixierung* continues to be used in only very specific isolated cases, and strict safety precautions are always taken.

**Paragraph 34**

***The Committee recommends that the Federal Police and the police services of all Länder take the necessary steps to ensure that these precepts are applied in all police establishments throughout Germany. Further, steps should be taken to remove the metal ring in the security cell of Munich Police Headquarters.***

The CPT already established back in 2010 that the Federal Police have discontinued this practice. The Federal Police do not permit any restraint equipment in their custody cells.

*Fixierung* using metal rings is only applied in the prison in Munich Police Headquarters in isolated cases involving particularly aggressive and refractory detainees. Munich Police Headquarters have recently begun examining appropriate alternatives. Some steps have already been taken.

For example, padding has been affixed to the bed in what is known as the “pacification room”. Further, foam-padded protective headgear was procured to protect prisoners against self-harm.

In addition, a fettering and restraint system was recently tested. However, its technical shortcomings, amongst other reasons, mean it cannot be used. An alternative system is currently being sought.

It is also worth mentioning in this context that the State Capital of Munich and Munich Police Headquarters are considering whether to establish a central sobering-up facility in one of the city’s hospitals.

Since the use of *Fixierung* is primarily necessary in specific cases where a person is heavily drunk and/or under the influence of other drugs, it is assumed that establishing such a sobering-up facility will obviate the need for the use of *Fixierung* in police establishments.

Prison establishments**Paragraph 40**

***The Committee recommends that the prison authorities of Bavaria deliver a clear message to all members of the health-care staff at Kaisheim Prison, reminding them that any disrespectful or provocative behaviour towards prisoners is unacceptable and will be dealt with accordingly. The management of the prison should also demonstrate increased vigilance in this regard.***

The prison management were aware of the issue of several members of the establishment's health-care staff using rude and disrespectful behaviour and language because of complaints lodged by individual prisoners. The matter has repeatedly been the subject of supervisory meetings with members of staff. Such behaviour and language is unacceptable, regardless of whether some prisoners in the facility use provocative, disrespectful behaviour towards staff in the prison infirmary. The situation has eased considerably of late – including due to changes in the staff – which is in particular manifesting itself in a noticeable decline in the number of prisoners lodging complaints.

## Paragraph 41

***The CPT encourages the prison authorities of Bavaria, Lower Saxony and Thuringia, as well as these of all other Länder, to introduce a clear reporting line and appropriate whistle-blower protective measures in all prison establishments.***

Under no. 7 para. 1 of the Administrative Regulations concerning Article 176 of the Bavarian Prison Act (*Verwaltungsvorschriften zum Bayerischen Strafvollzugsgesetz*, VV BayStVollzG), the prison management must report extraordinary incidents to the supervisory authority without delay. Under no. 7 para. 2 (a) of the aforementioned Administrative Regulations, “extraordinary incidents” are defined, in particular, as offences committed by prisoners against other prisoners, as well as offences or other misconduct on the part of prison staff which might occasion disciplinary sanctions. The extent and scope of the reporting requirements are also regularly discussed at meetings between the supervisory authority and prison directors. The CPT’s recommendation will be addressed in this context and awareness will once more be raised regarding the fact that prisons must continue to ensure that any misconduct by staff is brought to the attention of the prison management and that disciplinary measures are taken and, where necessary, criminal proceedings instituted.

Clear reporting lines and measures have already been introduced in all prison establishments in Lower Saxony.

The Staff and Security Regulations for the Prison Service (*Dienst- und Sicherheitsvorschriften für den Strafvollzug*, DSVollz) set out reporting requirements for all staff in prison establishments. They cover all relevant procedures and observations which are important when it comes to assessing and treating prisoners, for prison safety and order, for dealing with submissions and complaints, and when prisoners fall ill.

Under the implementing provisions regarding the Lower Saxony Prison Act (*Niedersächsisches Justizvollzugsgesetz*, NJVollzG), all allegations made by prisoners and all information and incidents concerning possible criminal acts must be notified without delay to the competent public prosecution office for an examination under criminal law. The prison establishments thus have no decision-making competence or competence for examining such matters themselves.

The rules on reporting lines in the prison system in Thuringia are unequivocal, both as regards those applicable within the respective prison establishment and vis-à-vis external bodies (supervisory authority, public prosecution office, police etc.). It is part of the basic knowledge and basic duties of each member of staff to know these rules.

### Paragraph 43

***The CPT encourages the authorities of Bavaria and Thuringia to redouble their efforts to improve the programme of activities for prisoners at Kaisheim and Tonna Prisons, in the light of the above remarks. The aim should be to ensure that all prisoners, including those on remand, are able to spend a reasonable part of the day (i.e. eight hours or more) outside their cells engaged in purposeful activities of a varied nature (work; vocational training; education; sport; recreation/association).***

Under the soon-to-be revised prison scheme of execution of the Free State of Bavaria, Kaisheim Prison will no longer be responsible for enforcing remand detention, which is why this issue will no longer be of relevance for the establishment.

Generally speaking, however, it must be said that it is specifically the purposeful employment of remand prisoners which poses a huge challenge for prisons. In consequence of the presumption of innocence laid down in Article 6(2) of the European Convention on Human Rights and Fundamental Freedoms and in Article 3 of the Bavarian Act on the Execution of Remand Detention (*Bayerisches Untersuchungshaftvollzugsgesetz, BayUVollzG*), under Article 12 para. 1 of the Bavarian Act on the Execution of Remand Detention prisoners are not obliged to engage in work or other employment. Therefore, prisoners who are obliged to engage in work in accordance with the first sentence of Article 43 of the aforementioned Act are given priority when there are not enough jobs available to be able to assign opportunities for work to all those prisoners willing to engage in work.

In addition, it is very difficult to implement the entire range of vocational training courses available in the context of the enforcement of remand detention on account of it being extremely hard to predict how long remand prisoners will in fact be in detention. The vocational training courses offered in Kaisheim Prison, for example, last either one or two years. Therefore, only those detainees whose term will likely be sufficiently long and interrupted (by trial dates, for instance) are offered the chance to take part in these courses so as to ensure that they can actually be completed whilst the prisoner is on remand.

However, remand prisoners do not generally meet these conditions. An arrest warrant can be revoked or suspended at any time, with the consequence that the prisoner concerned is then released immediately and is unable to complete the training course he/she has started, rendering it futile.

Thuringia is of the opinion that particular importance is to be attached to prisoners' employment and to educational and vocational training qualifications in a prison context.

Happily, the prison system in Thuringia can offer a very large number of high-quality educational and vocational training measures. In addition, employment opportunities are

available in its own and other businesses as well as in enterprises. Thuringia will continue its efforts to increase its employment rate, although it will likely be difficult to achieve full employment.

The range of other employment opportunities has been continually expanded and is regarded by the competent authorities as sufficient.

**Paragraph 44**

***The CPT would like to receive updated information on this matter.***

The “motivation group” (*Motivationsstation*) in Celle Prison was set up to develop and promote, on a continuous basis, the willingness of sentenced prisoners with subsequent or reserved preventive detention to cooperate in achieving the objectives laid down in section 5, first sentence, and section 107 of the Lower Saxony Prison Act. A total of 10 places are available in the group, eight of which are currently taken (as at: 11 January 2017). As part of their treatment, prisoners have monthly one-to-one meetings with a member of the psychology and social service, during which they are to look at their offences, needs and influences, and improve their social skills. Further, the psychology service runs a victim/offender group in which ways of making amends are discussed. The “reference person system” is an established feature of this group: In addition to their tasks in regard to all the prisoners detained in the group, each member of staff working with the motivation group is assigned two specific prisoners for whose concerns they have particular responsibility. These members of staff hold regular meetings with the prisoners assigned to them to discuss any misconduct and behavioural changes. In addition to on-duty staff, members of the psychology and social service are in attendance several times a day so as to be able to address problems in a timely manner and to maintain daily contact by talking to staff and prisoners. These measures are supplemented by group recreational activities as well as a monthly discussion group (known as the “themed breakfast”). A new concept is currently being developed with the aim of incorporating the group into the socio-therapeutic unit.

**Paragraph 51**

***The CPT recommends that the prison authorities of Lower Saxony review the detention regime of inmate A in the light of the above remarks.***

Inmate A was repeatedly examined by an external psychiatrist in late 2015. According to the psychiatric report drawn up on 30 January 2016 for the purpose of making a criminal prognosis, inmate A's continued placement in the high-security unit is still deemed to be imperative in order to prevent his making preparations to flee and committing related offences. The expert does not feel there is any alternative but to detain the prisoner in the high-security unit. In addition, the expert found that the prisoner's mental state had undergone no significant changes in the course of his detention. This form of detention does not appear to be having any negative impact on inmate A's mental well-being. No further circumstances have arisen to date which could change anything in regard to the assessment of the need for the solitary confinement order.

**Paragraph 52**

***The CPT requests the authorities of Lower Saxony to provide detailed information on the out-of-cell activities offered to inmate B, as well as on the measures taken to provide him with human contact.***

It is based on expert assessment and recommendations that preventive detainee B is being detained separately in the “secure placement” residential unit in Rosdorf Prison. Preventive detainee B has himself expressed the wish to remain in this unit as he values the comparatively intensive level of support he receives from staff there and, in addition, he has no interest in maintaining any permanent contact with other preventive detainees. Preventive detainee B has a structured daily routine and engages in recreational activities with staff in the unit and the team treating him. He is permitted to engage in sports activities in the sports area under the supervision of at least one member of staff; when more members of staff are available to provide supervision he is also permitted to engage in sports with another preventive detainee. Since February 2014 he has not only been having one-to-one meetings with the psychology service but also fortnightly meetings with an external psychotherapist. Preventive detainee B has a job in the unit. He pays accompanied visits to the prison shop where he is permitted to make purchases. Prison staff encourage him to make and maintain contact with other preventive detainees. He is permitted to visit other preventive detainees. Upon his request he is allowed short leave under escort at least once a month.

## Paragraph 55

***The CPT recommends that the prison authorities of Bavaria, Lower Saxony and Thuringia review the nursing staffing levels at Celle, Kaisheim and Tonna Prisons, in order to ensure that:***

- a qualified nurse is present on a 24-hour basis at Kaisheim Prison (including at weekends);***
- someone competent to provide first aid, preferably with a recognised nursing qualification, is always present at night on the premises of Celle and Tonna Prisons;***
- medication is no longer distributed to prisoners by prison officers but by health-care staff at Celle and Kaisheim Prisons.***

We in principle welcome the suggestion that additional posts be created in the infirmary in Kaisheim Prison.

However, the doctors in the infirmary feel that the focus should be on ensuring that a sufficient number of nursing staff are available during core working hours. This is because doctors and nurses cannot work in the prison infirmary entirely independently of one another, but are dependent on each other's assistance. If no doctor is on duty, the nursing staff are limited as to the kinds of decisions they can take on their own.

Only very few prisoners need nursing staff during the night or on weekend afternoons. Prisoners are locked in at these times and are only permitted to leave their cells in an emergency.

In the case of a medical emergency, on the other hand, it is nearly always essential that prisoners be taken to see a doctor. In such cases, general prison service staff can just as easily take a prisoner to see the doctor or notify an on-call doctor as nursing staff can.

General prison service staff are instructed not to take any risks if the situation is unclear, always to call in an on-call doctor and, in case of doubt, to have the prisoner taken to hospital.

Each member of prison staff should in principle be able to render first aid. Training and refresher courses are held on an annual basis by members of the nursing service to that end.

The dispensing of medicines can indeed be delegated to members of the general prison staff under the applicable legal provisions. Since the medicines to be administered by the general prison staff will have been checked and labelled by the nursing staff before being dispensed, the task of the general prison staff is limited to correctly identifying the patient and supervising their intake of the relevant medicine. No special knowledge on the part of the

general prison staff is required for them to be able to do this. However, dispensing medicines under supervision is very time-consuming and thus resource-intensive.

In Lower Saxony no trained night nurse is required to be present in prison establishments. In those cases in which nursing staff are not rotating in a three-shift operation, the General Medical Emergency Service (*Kassenärztlicher Notdienst*) takes over when a prisoner falls ill at night. In an emergency, an on-call doctor is then brought in. Further, prison establishments have been asked to procure automatic defibrillators which can be operated by laypeople and to regularly train the relevant members of staff in their use. Prisoners thus have at least the same access to health-care during the night as they would have in the outside community.

The rules set out in the Staff Regulations for the Health-Care System in Prison Establishments provide sufficient guarantee that medicines are dispensed by health-care staff. In Lower Saxony, prison staff are only permitted to dispense prescription medicines if these have previously been placed in a tablet organiser and labelled by qualified medical staff with the prisoner's surname, given name and date of birth on the basis of a doctor's prescription.

In the course of 2017 a working group will be looking into all the procedures around the dispensing of medicines to prisoners and will determine what additional rules need to be introduced for the various categories of prisoners.

In Thuringia, prisoners are guaranteed around-the-clock health-care provision. Outside of doctor's surgery hours and the working hours of medical orderlies (i.e. at night, the weekend and on public holidays), prison establishments in Thuringia draw on the services of the General Medical On-Call Service (*kassenärztlicher Bereitschaftsdienst*) or the emergency medical service in an emergency or they have the prisoner taken to an A&E department in a nearby hospital.

A well-functioning emergency chain of command in the prison infrastructure ensures that both prisoners and staff are guaranteed a very rapid response in a health emergency. Since none of the prison establishments in Thuringia has a prison infirmary or any prisoners requiring long-term nursing care, apart from in a few isolated cases, it is not regarded as essential for medical staff to be available around the clock.

In some cases nursing care was provided by external care providers.

Medical staff can dispense minor medications to prisoners upon doctor's instructions.

Further, Thuringia is paying close attention to developments as regards the prison age structure. Should a unit for older prisoners be established, nursing and therapeutic staffing levels will once again be reviewed.

## Paragraph 57

*In the light of the above, the CPT recommends once again that the prison authorities of Bavaria, Lower Saxony, Thuringia and all other Länder take steps to ensure that the file drawn up after the examination of a prisoner – on admission or during imprisonment – contains:*

*i) a full account of objective medical findings based on a thorough examination (supported by a “body chart” for marking traumatic injuries). It would also be desirable that photographs be taken of the injuries;*

*ii) a full account of statements made by the person concerned which are relevant to the medical examination (including the description of his/her state of health and any allegations of ill-treatment);*

*iii) the doctor’s observations in the light of i) and ii) above, indicating the consistency between any allegations made and the objective medical findings.*

*Further, the results of every examination, including the above-mentioned statements and the doctor’s observations, should be made available to the prisoner and his/her lawyer.*

In Kaisheim Prison each newly arrived prisoner is taken to see the prison doctor within 24 hours of admission (except at weekends, unless urgently necessary). Each newly admitted prisoner undergoes a physical examination and his/her medical history is taken. Only those prisoners who are transferred from another prison are not subjected to a full, detailed physical examination if they have already been examined in detail by the prison doctor in the previous facility and the prisoner’s state of health does not give any reason to subject him/her to a renewed in-depth physical examination, for example because he/she is healthy or does not present with any symptoms. However, each prisoner’s cardio and respiratory functions are always tested and recorded in his/her medical file.

The case queried by the CPT concerns a prisoner who had been admitted to Kaisheim Prison late in the afternoon two days before the Committee paid its visit.

Unfortunately, due to language barriers, it was not possible to take down this Polish national’s medical history in sufficient detail on the day of his admission, it was not deemed essential to seek a suitable interpreter and plans had been made to do this in the coming days. On account of the suspicion that the prisoner had an alcohol addiction, he was taken to Kaisheim Prison infirmary for observation on the day of his admission. Whilst being examined on admission to the infirmary, abrasions and small haematomas were discovered on several parts of his body and these were photographed (on the day of his admission) and stored in the prison’s EDP system.

As far as could be ascertained given the language barrier, the prisoner claimed that he suffered the injuries in the course of his arrest by the police. Since the injuries were not noted

as being serious and it was to be assumed that they would heal quickly without requiring treatment, the prison doctor merely ordered that the patient be checked on regularly.

On the first day after the patient was admitted the prison doctor was unavailable to take another look at him and to check and record the previous omissions (including taking a medical history in the presence of an interpreter). On the third day after admission the Committee announced its visit and, arriving that same day, members of the Committee talked to the prisoner in the prison infirmary where he was still being kept because the doctor had not yet completed his physical examination.

Summing up, it is clear that Kaisheim Prison both carries out a physical examination and takes down a medical history when a prisoner is admitted. Where there are language barriers, an interpreter is preferably called in. Any visible injuries noted upon admission are consistently recorded and photographed and the records are added to the patient's medical file.

In rare cases and in special circumstances, however, it is not possible to complete all planned medical measures as well as to take detailed records on the day of admission or the day after. The omissions are at any rate always rectified as soon as possible.

Taking newly admitted prisoners to see the prison doctor as soon as possible at any rate allows urgently required therapies or diagnostic measures to be initiated without delay.

The results of the doctor's physical examination on admission are made available to each patient or his/her lawyer upon request.

From the supervisory authority's perspective, the specific case referred to in the CPT's report does not provide any reason to amend current tried and tested practice, especially since this specific case proves that the injuries were photographed and recorded on admission and it is only not possible to reconstruct whether these photographs were added to the prisoner's medical file as per normal procedure. The prisoner or his representative can in any case easily apply to be informed of the doctor's findings.

The nature and extent of medical records kept in prisons across Berlin is comparable to and meets the requirements as to quality applied in Moabit Prison, which the CPT explicitly praises.

The provisions of Chapter 3 of Title 2 of the Berlin Prison Data Protection Act (*Berliner Justizvollzugsdatenschutzgesetz, JVoIzDSG Bln*) (Information and Inspection of the Files) concern the making available of the results of the medical examination to the prisoner

concerned or his/her lawyers. Prisoners are entitled to request information regarding the personal data stored about them in their personal files and to inspect these files. Prisoners may call in lawyers, defence counsel and notaries to assist in asserting this right. Where a restricted disclosure notice has been added to any parts of the files, these parts are not available for inspection, although the data subject must at least be notified of the key reasons therefor. Restricted disclosure notices may only be added where this is absolutely essential for medical reasons and only for the good of the data subject or to protect elementary personality rights of those subject to professional secrecy, and account must also be taken of the data subject's interest in the information. A written record must be made of the reason for and the extent of the restriction (sections 28, 29 of the Berlin Prison Data Protection Act). Particular restraint is to be applied when it comes to adding restricted disclosure notices, since it runs the risk of dictating how people are to use their personal data. Nevertheless, in specific circumstances, for example in connection with psychiatric treatment, adding a restricted disclosure notice may also be justified in the data subject's interest.

Under section 12 (3) of the Thuringian Prison Code (*Thüringer Justizvollzugsgesetzbuch, ThürJVollzGB*), each prisoner in Thuringia is examined by a doctor soon after being admitted to prison. This examination also covers infection prophylaxis, such as, for example, an obligatory tuberculosis test, voluntary screening for hepatitis and HIV, and various vaccinations recommended by the Robert Koch Institute.

The CPT's recommendations will nevertheless be discussed with the specialist medical advisor to see if they could be introduced as benchmarks and they will be included in the specialist medical advisor's annual monitoring mechanism of the medical services in prison establishments in Thuringia.

Prisoners and, where applicable, their authorised legal representatives are granted inspection of their medical files upon request if the provision of information is not sufficient to safeguard their legal interests and they need to inspect the files in order to do so (section 135 (1) of the Thuringian Prison Code).

**Paragraph 58**

***The CPT reiterates its recommendation that existing procedures be reviewed in all German prisons to ensure that, whenever injuries are recorded by a doctor which are consistent with allegations of ill-treatment made by a prisoner (or which, even in the absence of an allegation, are clearly indicative of ill-treatment), the record is systematically brought to the attention of the competent prosecutor, regardless of the wishes of the person concerned.***

Under the relevant *Land* legislation, such duties of disclosure exist either directly vis-à-vis the public prosecution office or, when it comes to medical staff, vis-à-vis the prison management, which must then decide whether to report the matter to the public prosecution office.

Any suspicion of ill-treatment of a prisoner must as a matter of principle be reported to the relevant public prosecution office.

**Paragraph 59**

***The CPT urges the relevant authorities of Bavaria and Thuringia to review as a matter of urgency the existing arrangements for the hospitalisation of severely mentally-ill prisoners, in the light of the above remarks.***

The matter has since been discussed in detail with all the competent agencies in Bavaria. Any further improvements to psychiatric care must, however, take account of the fact that it is extremely difficult to find sufficient specialists (in particular psychiatrists) both within and outside of the prison system to fill vacant posts.

In order to be able to place even more prisoners with mental health issues either in psychiatric wards in prisons or in district hospitals in the future, plans are being drawn up to establish a new (third) psychiatric ward. Further, the supervisory authority is in constructive dialogue with the district hospitals and their supervisory authority. The aim in drawing up joint recommendations for action as regards the temporary treatment of prisoners in forensic psychiatric establishments is to further improve cooperation in this area. These recommendations are currently being coordinated with the Forensic Psychiatry Office (*Amt für Maßregelvollzug*, an advisory and supervisory agency).

Thuringia does not have a prison infirmary of its own. Up until now, five beds have always been available in the psychiatric ward of the infirmary in Leipzig Prison. Finding additional beds always involves a great deal of organisational effort on the part of the prison concerned. The guidelines drawn up by medical associations already provide for six- to eight-week in-patient care in the case of acute psychiatric illness, which poses an additional challenge (e.g. guards, principle of separation) for the prison system.

Awareness of the need to provide psychiatric care in line with these guidelines has been raised in the *Land* department of justice. An interdisciplinary working group is currently developing benchmarks for needs-based psychiatric care in the prison system in Thuringia, which will also explicitly look into in-patient care and the situation in the prison system.

**Paragraph 60**

***The CPT would like to receive updated information on the measures taken by the relevant authorities regarding this issue.***

Therapeutic strategies are subject to a case-by-case assessment by the relevant doctor which takes account of those aspects referred to in the medical guidelines. Given that this is the case, administering strong medications to prisoners, in some cases opiate painkillers, poses a particular challenge. The Ministry of Justice is aware of the comparatively large number of prescriptions issued for such medications. The Ministry has therefore taken various steps aimed at reducing the number of prescriptions issued.

The *Land* department of justice has put in place different organisational measures, for example in regard to the dispensation of medicines (“6 R rule”, needs-based medication, over-the-counter medicines) and the case-based involvement of a psychiatrist, to reduce the number of prescriptions for opiate-based painkillers.

As things currently stand, first steps have been taken or are at the planning stage, but there has already been a noticeable drop in the number of prescriptions being issued. Further, the Ministry of Justice and an external medical expert are together developing an objective monitoring and intervention mechanism in order to be able to assess prisoner compliance, intake and treatment adherence as well as, based on the outcomes, to gradually phase out certain medications.

As a result, staff changes will also shortly be being made when it comes to the provision of health-care to prisoners in Tonna Prison. The post of prison doctor at Tonna Prison was recently advertised.

## Paragraph 61

***The CPT recommends that the authorities of Bavaria and, where appropriate, of other Länder review their approach regarding the treatment of drug-addicted prisoners in the light of the above remarks.***

Several aspects of the Committee's description that in Kaisheim Prison substitution therapy is "as a matter of policy usually not offered to prisoners (...), despite the fact that it was generally available in the outside community" are incorrect.

At the time of the CPT's visit one prisoner was in point of fact undergoing substitution therapy in Kaisheim Prison infirmary. A member of the Committee was informed of that fact.

Further, "general availability" of substitution therapy is guaranteed neither consistently within prisons outside of Bavaria nor in the non-prison community across Germany as a whole.

Rather, there are significant differences in the prison systems of each of the *Länder*, both as regards the availability of substitution therapy in individual prisons and in respect of the treatment strategies applied and access criteria for such treatment.

There are also striking regional differences when it comes to the availability of substitution programmes in the non-prison community. Since many addicts are bound to a particular location, they in reality do not have access to substitution programmes if they do not live close to a facility which runs such a programme. There is no general entitlement to substitution therapy supervised by a general medical practitioner.

The Committee further criticises the fact that Kaisheim Prison and other prisons in Bavaria apply a specific treatment concept which takes particular account of the length of detention and the patient's behaviour before going to prison (e.g. as regards motivation/ interest in dealing with the drug problem prior to going to prison).

The current state of science as regards the practice of substitution treatment is, by contrast, detailed in the Substitution-Based Treatment of Opiate-Dependent Patients Guidelines issued by the German Medical Association (*Bundesärztekammer*) in 2010. The Guidelines are authoritative for doctors in Germany when it comes to substitution-based treatment and give doctors a wide margin of discretion, in particular when it comes to determining the length of the required treatment, access criteria, treatment concept/goals, as well as the maximum number of patients one doctor can and should treat.

This means that there are considerable differences between establishments both outside of as well as within the prison system when it comes to conducting substitution treatment,

without that necessarily leading to the conclusion that one establishment is “better” than another.

It should be added that one prisoner is currently undergoing substitution treatment under the supervision of prison doctors. A drug-addicted person will, however, not automatically be given substitution treatment just because he/she asks for it. Under the aforementioned Guidelines, the decision as to whether to administer substitution treatment or not is left to the doctor treating the patient. The Guidelines state: “In the case of manifest opiate-dependency, substitution-supported treatment is indicated where, after having weighed up all those aspects relevant to the decision-making, it appears to be the most promising treatment strategy compared to primarily abstinence-oriented forms of treatment.”

From the medical perspective, substitution treatment is therefore not a panacea for treating opiate-dependency. Prison doctors do not, thus, per se have a negative attitude to substitution treatment, otherwise such treatment would not be being provided to specific individuals. However, doctors do apply strict criteria when supervising substitution treatment in exceptional cases, as provided for under section 13 (1) of the Narcotics Act (*Betäubungsmittelgesetz*, BtMG). According to that provision, the use of narcotics is in particular not justified if the intended purpose can be achieved by another means.

In future, when weighing up the various relevant medical aspects, the considerations of the European Court of Human Rights as set out in its judgment of 1 September 2016 (Application no. 62303/13, *Wenner v. Germany*) are included in the decision-making.

We would also like to inform the Committee that substitution treatment of prisoners was the main topic of the conference of prison doctors in January 2017 and was discussed with an external expert on that occasion.

In conclusion, it can be said that awareness has again been raised amongst prison doctors for this issue and they have been reminded of the need to comply with the German Medical Association’s aforementioned Guidelines as well as with the case-law of the European Court of Human Rights.

**Paragraph 62**

***The CPT encourages the prison authorities of all other Länder to follow this example.***

Similar pilot projects are already being run in several *Länder* (Brandenburg, Hesse and Lower Saxony). Other *Länder* are currently awaiting the outcome of these pilot projects before deciding whether or not to introduce video interpretation services. Berlin, Hamburg and Bremen do not feel there is any need to introduce video interpretation services as they have recourse to sufficient numbers of interpreters.

**Paragraph 63**

***The CPT recommends that the prison authorities of all Länder take the necessary steps to ensure that the health-care services of all prison establishments are subjected to external professional supervision, in co-operation with the Ministries of Health, in the light of the above remarks.***

Safeguards are in place in all the *Länder* to ensure that the necessary medical expertise is available to those responsible for the professional supervision of prison health-care services. Those responsible for such professional supervision either have recourse to specially appointed medical consultants, professional associations or specialist medical commissions, or else specialist staff are available in the authorities themselves.

Further, prisoners can also turn to bodies such as the chambers responsible for the execution of sentences at the courts and the expert commissions in individual medical associations to have their medical treatment reviewed.

**Paragraph 64**

***The CPT would like to receive updated information on this matter.***

The telephone service available to prisoners in all 13 prison establishments in Lower Saxony was put out to Europe-wide tender in August 2016. The contract will be awarded by way of a framework concession agreement to be concluded with the Ministry of Justice of Lower Saxony. The contractor in each case will be the respective prison establishment. As per the tender, the service is to be available in the prison establishments as of 1 November 2017.

Thuringia regularly reviews the possibilities available on the market when it comes to organising prisoners' access to telephones inside their cells and is endeavouring to make improvements in this regard.

**Paragraph 65**

***The CPT encourages the prison authorities of all other Länder to follow this positive practice.***

**Paragraph 66**

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

In Bavaria, sentenced and remand prisoners are not as a general rule banned from using the telephone.

Article 35 para. 1, first sentence, of the Bavarian Prison Act (*Bayerisches Strafvollzugsgesetz*, BayStVollzG) concerns sentenced prisoners and their access to telephones. According to that provision, prisoners may be permitted to use the telephone in urgent cases. Kaisheim Prison applies this rule following a generally very generous case-by-case examination. For example, the prison director has instructed that prisoners who do not receive any visitors are permitted to speak to one of their contact persons by telephone every two months as a substitute for such visits. This applies to all sentenced prisoners regardless of the length of their term of imprisonment, unless an examination of the specific security concerns precludes this.

Under Article 21 para. 1, first sentence, of the Bavarian Prison Act, remand prisoners may likewise, in urgent cases, use the telephone to make a call, unless prison safety and order or spatial, personnel and organisational aspects of the prison context preclude this. However, when it comes to telephone calls made by remand prisoners, attention must also be paid to any court decisions restricting the authorisation to make calls pursuant to section 119 of the Code of Criminal Procedure. Where no such decision precludes calls being made, remand prisoners may also be permitted to use the telephone on a case-by-case basis.

**Paragraph 67**

***The Committee reiterates its recommendation that the prison authorities of all Länder take the necessary measures to ensure that this precept is effectively implemented in all prisons.***

**Paragraph 68**

***With a view to safeguarding prisoners' relations with their families, the CPT encourages the prison authorities of Bavaria and, where appropriate, of other Länder to introduce unsupervised visits for prisoners.***

Regular visiting time for adult prisoners is two hours in most of the *Länder*, more in some of the *Länder*. Depending on the situation in the respective establishment, unsupervised visits (*Langzeitbesuche*) are often possible.

**Paragraph 69**

***The CPT recommends that the relevant authorities of Bavaria and, where appropriate, of other Länder, take steps to ensure that the rules governing remand prisoners' contacts with the outside world are revised, in the light of the preceding remarks.***

In principle, visits to remand prisoners pursuant to Article 15 et seqq. of the Bavarian Prison Act do not require the consent of the court. Where, however, the court has ordered that visits be restricted, Kaisheim Prison merely implements the provisions of section 119 of the Code of Criminal Procedure. Given that the judges make such decisions independently, the prison is unable to influence the content and scope of the court order.

## Paragraph 70

***The Committee recommends that the authorities of Bavaria, Lower Saxony, Thuringia and all other Länder concerned take steps to ensure that the above-mentioned precepts are effectively implemented in practice and that the relevant Länder laws are amended accordingly.***

Under Article 110 para. 1 no. 8 of the Bavarian Prison Act, it is permissible to order solitary confinement (*Arrest*) as a disciplinary sanction for up to four weeks in Bavaria. Under para. 2 of that Article, such orders may only be made in the case of severe misconduct or misconduct repeated several times.

For example, it is established practice for solitary confinement to be imposed only in the event of serious violations against the prison rules, such as the consumption and possession or manufacture of narcotic substances, the refusal to undergo alcohol or drug tests in this connection, illicit possession of a mobile phone, violence against others, insults, serious violations of instructions after the prisoner's regime has been relaxed (*Vollzugslockerungen*) or when prisoners refuse to enter their cell or barricade themselves in their cell.

The instances to which the CPT makes reference in which solitary confinement was ordered for more than 14 days are exceptional and extremely rare cases to which the courts have never objected upon review under the procedure provided for in section 109 et seqq. of the Prison Act (*Strafvollzugsgesetz, StVollzG*).

In addition, all disciplinary decisions taken by heads of department are submitted to the prison director. In no instance has there ever been any indication of any disproportionate disciplinary sanctions being imposed.

Under current legislation it can also not be ruled out that a prisoner will be placed in solitary confinement several times in immediate succession.

This occurs from time to time where solitary confinement which was suspended has to be revoked on account of the prisoner committing new violations.

In individual cases the maximum period ordered for one disciplinary sanction, namely four weeks, may be exceeded. However, such cases are rare exceptions; the prisoner concerned will generally be taken out of solitary confinement between successive enforcements of solitary confinement.

It is not felt to be necessary to amend the relevant statutory provision in this regard. Especially considering the make-up of the general prison population, attempts should be

made to ensure the prison rules are adhered to by means of effective and carefully balanced disciplinary sanctions since other measures are and have not been expedient in regard to these individuals.

It would also be hard to get the large number of prisoners who abide by the prison rules to understand why effective disciplinary sanctions are being abandoned, especially those who have themselves been the victims of the misconduct by the person being disciplined.

Further, juvenile detainees can in any case only be placed in solitary confinement in exceptional cases and after a careful weighing up of all the facts. Under Article 156 para. 3 no. 7 of the Bavarian Prison Act, the measure is limited to two weeks.

Article 110 para. 1 no. 7 of the Bavarian Prison Act provides for the possibility, as a disciplinary sanction, of restricting a prisoner's contact with the outside world. In practice, however, this measure is generally only ordered in justified individual cases, where indicated, together with and for the duration of placement in solitary confinement. The question of whether restricting contact to family members is also necessary can be addressed in the course of the required examination of proportionality.

It therefore does not appear necessary to amend the law. However, the matter will be discussed in the context of a meeting between the supervisory authority and prison directors.

Under section 95 (1) no. 8 of the Lower Saxony Prison Act, solitary confinement is permitted as a disciplinary sanction in Lower Saxony. The maximum duration is four weeks for adult prisoners, two weeks for juvenile detainees. It may only be imposed in the case of serious misconduct or misconduct repeated several times. Before taking a decision to impose solitary confinement the prison director must hold a meeting with those persons involved in its enforcement (section 98 (2), first sentence, of the Lower Saxony Prison Act). Unless otherwise stipulated, the prisoner's privilege of being able to furnish his/her cell with his/her own belongings and possessions rests throughout the enforcement of solitary confinement, as does the right to wear own clothing, to make purchases, to engage in work, training and further training, and sports activities, to purchase newspapers and magazines, to listen to the radio and watch TV, and the right to possess items required in the pursuit of advanced training or recreational activities (section 96 (4) of the Lower Saxony Prison Act). This proviso enables account to be taken of the circumstances of the specific case. There are no plans to amend this statutory provision.

No provision is made under the law applicable to youth detention for ordering solitary confinement as a disciplinary sanction.

Against the backdrop of the – already very restrictive – use of disciplinary sanctions, Thuringia does not feel the need to make any legislative amendments, especially not when it comes to lowering the maximum permissible period for which solitary confinement may be ordered. As the delegation itself established, solitary confinement has been imposed “only very rarely in recent years and only for a short time.”

**Paragraph 71**

***The Committee recommends that the authorities of Bavaria, Lower Saxony and all other Länder concerned take steps to ensure that the above-mentioned precepts are effectively implemented in practice and that the relevant Länder laws are amended accordingly.***

Article 110 para. 1 no. 7 of the Bavarian Prison Act provides for the possibility, as a disciplinary sanction, of restricting a prisoner's contact with the outside world. In practice, however, this measure is generally only ordered in justified individual cases, where indicated, together with and for the duration of placement in solitary confinement. The question of whether restricting contact to family members is also necessary can be addressed in the course of the required examination of proportionality. The issue will be discussed at a meeting between the supervisory authority and prison directors.

Berlin, Brandenburg, Bremen, Hamburg, Hesse, Mecklenburg-Western Pomerania, North Rhine-Westphalia, Rhineland-Palatinate, Saxony und Saxony-Anhalt make no provision for restricting contact with the outside world when disciplinary sanctions are imposed.

**Paragraph 72**

*Whilst acknowledging that this restriction was not strictly applied in practice at Celle Prison, the CPT once again calls upon the authorities of Bavaria, Lower Saxony and of other Länder concerned to formally abolish the aforementioned restriction without any further delay.*

Under Article 111 para. 5, third sentence, of the Bavarian Prison Act, a prisoner's privileges, amongst other things as regards the possession of newspapers/magazines and books, are suspended for the duration of the solitary confinement (Articles 70 and 72 of the Bavarian Prison Act).

It is true that in the past this provision has at times been applied more strictly in Kaisheim Prison, when prisoners kept in solitary confinement were only issued with the Bible or a comparable book required for the exercise of their religion. However, this practice was discontinued some time ago, which is why prisoners in solitary confinement can once more be issued with books.

Therefore, it does not appear necessary to make any legislative amendments. The matter will, however, be discussed at a meeting between the supervisory authority and prison directors.

A proviso in section 96 (4), third sentence, of the Lower Saxony Prison Act permits prisoners in Lower Saxony access to reading material whilst in solitary confinement. There is, therefore, not felt to be any need to make any legislative changes.

### Paragraph 73

***The CPT recommends that the authorities of Bavaria, Lower Saxony, Thuringia and other Länder concerned take steps to ensure that prisoners subjected to a disciplinary sanction receive a copy of the disciplinary decision, informing them about the reasons for the decision and the avenues for lodging an appeal. In this context, prisoners having difficulties in understanding the German language should be provided with the necessary assistance.***

It is true that prisoners in Kaisheim Prison receive neither a copy of the disciplinary decision issued against them nor written instructions as regards lodging an appeal.

This is neither provided for under currently applicable law nor necessary. Upon admission each prisoner receives information about the Bavarian Prison Act and the house rules. These contain information on how prisoners can lodge an appeal. Upon request the head of the unit will also instruct prisoners verbally on how to lodge an appeal.

In practice, however, most prisoners accept disciplinary sanctions ordered against them, as the small number of appeals and/or applications for court rulings in accordance with section 109 et seqq. of the Prison Act and oral statements by those concerned shows.

Prisoners who file an application for a court ruling in accordance with section 109 et seqq. of the Prison Act receive from the chamber responsible for execution of sentences a copy of the prison's statement in this regard, including annexes, in the context of their right to a hearing in accordance with the law, that is normally the dossier concerning the disciplinary procedure together with the reports by members of staff on which it is based.

A qualified interpreter will be present at the hearing if the prisoner does not have sufficient command of the German language.

Under section 98 (3) of the Lower Saxony Prison Act, disciplinary decisions are related to prisoners verbally in Lower Saxony and recorded in writing together with brief grounds. The written reasoning is handed to prisoners upon request. Prisoners receive general information about how to lodge an appeal upon their admission to the prison. This includes information about disciplinary decisions.

If no information is provided about lodging an appeal or this information is incorrect, pursuant to section 58 (2) of the Code of Administrative Court Procedure (*Verwaltungsgerichtsordnung*, VwGO) it is permissible to lodge an appeal within one year of service of the disciplinary sanction rather than within two weeks.

In the case of prisoners who are not in sufficient command of the German language, prison staff who speak their language or external interpreters are called in to assist.

Under section 101 (5), second sentence, of the Thuringian Prison Code, the prison director relates the (disciplinary) decision verbally to prisoners and the decision is recorded in writing with brief grounds. Upon request, each prisoner in Thuringia already receives, in writing, a copy of the disciplinary decision showing the main reasons for the decision.

## Paragraph 74

***The CPT reiterates its recommendation that the prison authorities of Bavaria, Lower Saxony, Thuringia and, where appropriate, of other Länder review the role of health-care staff in relation to disciplinary matters in the light of the above remarks, if necessary, by amending the relevant legal provisions. In so doing, regard should be had to the European Prison Rules (in particular, Rule 43.2) and the comments made by the Committee in its 21<sup>st</sup> General Report (see paragraphs 62 and 63 of CPT/Inf (2011) 28).***

Under Article 114 para. 1, first sentence, of the Bavarian Prison Act, a doctor must be heard before solitary confinement is enforced in Bavaria; under Article 114 para. 1, second sentence, of that Act, prisoners are subject to regular medical supervision throughout the enforcement of solitary confinement.

This is necessary on account of the duty of care, since only the prison doctor can establish beforehand whether any health-related restrictions pose an obstacle to the solitary confinement. Thus, prison doctors are themselves not involved in taking disciplinary decisions, they are merely involved in their capacity as experts so as to ensure that the enforcement of solitary confinement does not have any harmful consequences for the prisoner concerned. The suggestion that prison doctors should not be brought in until enforcement of solitary confinement has begun would in many cases prove too late if the prisoner's health were to suffer on account of the sanction having already commenced.

There is, therefore, no need to amend the provision, which in fact serves to effectively protect prisoners' health.

Both under statutory provisions and in line with how doctors define their role, doctors in Lower Saxony are only involved where disciplinary sanctions are enforced to protect prisoners' interests and to prevent damage to health. Given how doctors understand their role, there are no fears that the doctor–patient relationship will suffer as a result.

Under section 101 (6) of the Thuringian Prison Code, a doctor is involved before and whilst solitary confinement is enforced in Thuringia in order to prevent prisoners suffering damage to health. In some cases it may not be possible to enforce solitary confinement or it may have to be interrupted. Medical supervision is provided during enforcement of solitary confinement. This, first, encompasses a sheet having to be filled in at short intervals to record details regarding food intake, state of health and other specific features, for instance, and, where appropriate, the medical service visiting the detainee.

The medical service checks on prisoners placed in a security cell (*besonders gesicherter Haftraum*) once every day.

**Paragraph 75**

*Bearing in mind that there should never be financial obstacles for prisoners to lodge an appeal against disciplinary sanctions, **the CPT encourages the relevant authorities in all other Länder to abolish the legal requirement that prisoners pay court fees in the context of such proceedings.***

The decision as to who pays the costs of proceedings and necessary expenses is regulated at federal level in section 121 of the Prison Act and is taken by the independent courts, over whom the judicial administration has no influence. A general waiver of the costs of proceedings would in particular make little sense when it comes to ensuring that the chambers responsible for execution of sentences are capable of effective work given the number of wanton and manifestly unfounded applications.

**Paragraph 76*****Steps should be taken to remedy this shortcoming.***

It is correct that the toilet area in neither of the security cells in Kaisheim Prison is pixelated on the CCTV images.

It is not possible to pixelate the images, and full CCTV monitoring of these cells is necessary. The toilet area (a floor-level, squat toilet) is located either on the left- or right-hand side of the cell. If this area were obscured by pixelating the CCTV images, there would be a blind spot in the cell and it would be impossible to determine what the prisoner was doing there.

Since, under Article 96 para. 2 no. 5 of the Bavarian Prison Act, placement in a security cell containing no dangerous objects is above all ordered specifically in the case of prisoners at acute risk of suicide or self-harm, such prisoners would then be able to inflict considerable harm on themselves in this area on account of its not being monitored by CCTV due to pixelation of the images and without this being noted in real time by the staff monitoring them and staff having the possibility of immediately stopping them. Ongoing and direct monitoring, which would then be necessary, would also be much more stressful for prisoners – in addition to its being personnel-intensive – and would thus not defuse the situation and possibly even extend the time the prisoner needed to spend in the security cell.

There are plans to retrofit the CCTV system in the security cells in all prisons in Berlin so as to protect prisoners' privacy in a suitable manner. The new CCTV system will enable prisoners placed in a security cell to see when the camera is in operation by means of the red light which illuminates when the camera is in operation. In addition, it will be possible to pixelate the camera images via additional heat sensors in a predetermined section of the cell, i.e. the toilet area. According to the current schedule, retrofitting of the cameras will be completed in all prisons in Berlin by the end of this year.

The competent ministry in North Rhine-Westphalia was prompted by the CPT's report to indicate to forensic psychiatric establishments that they must guarantee patients placed in rooms with full CCTV monitoring a minimum level of privacy, for example by pixelating images captured of the toilet area.

We find it hard to understand the delegation's observation that the toilet area in the security cells in Tonna Prison is not pixelated on the CCTV monitors. The National Agency for the Prevention of Torture had already addressed this matter. Thuringia endorsed the National Agency's recommendations in this regard and is implementing them.

The matter of pixellating CCTV images captured of the toilet area in security cells was discussed with the director of each prison during the security-related inspections of prison establishments in Thuringia in 2014.

By order of 5 March 2014, prison establishments in Thuringia were called on to take steps – unless they had already done so – to exclude the sanitary area from CCTV monitoring in all cells fitted with the optical monitoring technology.

When asked, Tonna Prison confirmed that it had immediately implemented the supervisory authority's requirement.

## Paragraph 77

***The CPT once again calls upon the authorities of all Länder concerned to take the necessary steps to ensure that prisoners subjected to segregation are offered at least one hour of outdoor exercise per day and that prohibition of outdoor exercise is abolished from the relevant legislation as a special security measure (in respect of all categories of inmate).***

The ordering of the withdrawal or restriction of outdoor exercise as a special security measure is permissible under Article 96 para. 2 no. 4 of the Bavarian Prison Act.

This sanction is not generally imposed in isolation, only in conjunction with the ordering of placement in a security cell containing no dangerous objects in accordance with Article 96 para. 2 no. 5 of the Bavarian Prison Act. This measure is only imposed where there is an acute risk of self-harm or violence against other persons to protect the prisoner concerned or his/her fellow inmates or members of staff.

In such cases there may be no alternative but to deny the prisoner concerned his/her outdoor exercise if it is anticipated that he/she will attack the attending members of staff or himself/herself whilst exercising outside on account of the extreme mental state he/she is in. In such situations temporarily forgoing outdoor exercise is less stressful for the prisoner than being allowed outside alone and in hand- and ankle-cuffs.

As soon as the prisoner is no longer in an acute state in which he/she might be aggressive towards others or himself/herself, the aforementioned measures can be immediately revoked. This is generally the case after one to three days at most, after which the prisoner concerned will then once more be permitted outdoor exercise.

This special security measure, which is necessary only in exceptional cases, serves to protect the right of members of staff and fellow inmates to physical integrity, to which greater weight must be attached in justified individual cases than to the prisoner concerned's right to one hour of outdoor exercise.

Legislation applicable to prisons in Berlin provides that it is permissible to withdraw outdoor exercise only where a prisoner has been placed in a security cell and where, due to the ongoing considerable risk of self-harm or harm to others, granting the prisoner outdoor exercise every day is unjustified (see section 86 (4), second sentence, of the Berlin Prison Act [*Strafvollzugsgesetz für das Land Berlin*, StVollzG Bln]). This provision thus meets the requirement of no. 27.1 of the European Prison Rules: In derogation of section 88 of the German Prison Act, it is now explicitly no longer permissible to order withdrawal of exercise in the open air every day in isolation or in conjunction with segregation without placement in a security cell. Nevertheless, it is not possible to entirely dispense with this security measure

in prison practice, as it cannot be ruled out that prisoners placed in a security cell will be at acute risk of self-harm or of harming others for more than 24 hours and, under these circumstances, it is not possible to justify why they should spend time outside separated from other prisoners. Consideration must here also be given to the fact that placement in a security cell is possible only where strict conditions are met and the measure is often ordered only for a very limited period of time of a few hours, so that the other statutory possibility of withdrawing outdoor exercise is applied in very rare exceptional cases, though they cannot be ruled out.

Under section 90 (2) no. 4 of the Brandenburg Prison Act (*Brandenburgisches Justizvollzugsgesetz*, BbgJVollzG), only the restriction of outdoor exercise is provided for as a special security measure in Brandenburg so as to largely meet the requirement of no. 27.1 of the European Prison Rules. Complete withdrawal is therefore permissible in Brandenburg neither when enforcing imprisonment or juvenile detention nor in remand detention.

In Bremen the time prisoners spend with inmates may be restricted (section 12 (2) of the Bremen Prison Act [*Bremisches Strafvollzugsgesetz*, BremStVollzG]). Prisoners may be segregated from inmates and their outdoor exercise withdrawn or restricted (section 79 (2) nos 3 and 4 of the Bremen Prison Act) in order to prevent threats to safety and order.

Such orders presuppose an imminent danger. It is not anticipated that it will lead to undesirable isolation effects, since segregation is permissible for more than 24 hours only in exceptional cases and the preconditions for and the extent of the security measures ordered are reviewed (section 80 (4) of the Bremen Prison Act).

Other legislation applicable to prisons in Bremen contains identical rules.

In Hamburg, prisoners are normally placed in security cells for a very limited period of a few hours and this is ordered only very rarely. Where, in a particular case, less severe measures are unavailable to prevent the threat to safety and order, the withdrawal or restriction of outdoor exercise is still regarded as necessary and can, therefore, not be deleted from prison legislation.

In Hesse, sentenced and remand prisoners placed in a security cell are kept under particular supervision. The medical service generally checks on them once every day.

Under section 81 of the Lower Saxony Prison Act, it is permissible to withdraw or restrict outdoor exercise as a special security measure in Lower Saxony too. In isolated cases in which spending time in the open air would present an incalculable risk or would, ultimately, be irreconcilable with the prisoner's dignity on account of his/her being fully shackled and

escorted by prison staff, it must be possible to restrict outdoor exercise for a short period. In addition, a doctor must always be heard before the measure is imposed.

In Rhineland-Palatinate and North Rhine-Westphalia, segregated prisoners are permitted to spend one hour outdoors. This rule does not apply to those placed in a security cell, however. Since this special security measure serves to prevent the concrete danger to persons or property which the prisoner poses (e.g. danger of violence against persons or property, or of suicide or self-harm), it is not possible to interrupt the security measure so as to allow the prisoner to spend time outdoors.

The basic right of each prisoner to outdoor exercise may only be restricted but not revoked in prisons in Saxony.

In prison establishments in Saxony-Anhalt the special security measure of withdrawal or restriction of outdoor exercise is permitted by law. It can be essential in particular where the prisoner's behaviour or his/her mental state poses a risk of his/her escaping or of committing violence against persons or property, self-harm or suicide. It is rarely applied and is subject to particularly thorough examination. It may not be ordered against juvenile detainees.

The new Schleswig-Holstein Prison Act (*Strafvollzugsgesetz für Schleswig-Holstein, StVollzG SH*) no longer makes statutory provision for the ordering of the special security measure of "withdrawal or restriction of outdoor exercise". Segregated prisoners are thus permitted one hour of outdoor exercise, which is also offered to them.

An exception is only made where "necessary to achieve the purpose of the measure". In such cases segregated prisoners or prisoners placed in a security cell may be denied outdoor exercise.

An order was issued to prisons indicating that they may on principle order such withdrawal of outdoor exercise only in regard to prisoners who have to be shackled or are being restrained in a security cell.

Under section 89 (1) of the Thuringian Prison Code, special security measures may be ordered against prisoners if their behaviour or their mental state poses an increased risk of their escaping or committing violence against persons or property, of committing suicide or self-harm. It is not permissible to cumulatively order the special security measures listed in section 89 (2) of the Thuringian Prison Code. In isolated cases and in certain situations this may also lead to the necessary restriction of outdoor exercise in conjunction with the equally necessary placement in a security cell. In order to be able to meet the requirements of such situations – though they are rare – the statutory option of restricting outdoor exercise in conjunction with placement in a secure cell must at least be available.

**Paragraph 78**

*In this regard, reference is made to the remarks and recommendation made in paragraph 74.*

Prisoners placed in a security cell containing no dangerous objects in Kaisheim Prison are checked on by the prison doctor on a daily basis, as provided for in Article 100 para. 1, first sentence, of the Bavarian Prison Act.

Under paragraph 2 of the Administrative Regulations concerning Article 100 of the Bavarian Prison Act, health-care staff check on prisoners placed in a security cell on those days on which no prison doctor is in attendance in the prison.

A record of this is always made on the relevant form (paragraph 3 of the aforementioned Administrative Regulations).

**Paragraph 79**

***The CPT encourages the relevant authorities of all Länder to abandon the resort to Fixierung in prisons.***

Although the use of mechanical restraint (*Fixierung*) is an unwelcome occurrence which is stressful for all those involved, the competent authorities are of the opinion that the prison system cannot do entirely without coercive measures. There are situations in which members of staff must take decisions about measures which go beyond the mere coaxing and persuading or segregation of prisoners. *Fixierung* is not only permissible to prevent prisoners harming themselves and others, it is also needed as a means of preventing threats to safety and order. The existing, strict statutory conditions for the ordering of this measure and provisions regarding its implementation ensure that *Fixierung* is only ordered as a measure of last resort.

**Paragraph 80**

***The CPT reiterates its recommendation that steps be taken by the relevant authorities in Berlin and, where appropriate, in other Länder to ensure that every instance of Fixierung in a prison hospital is recorded in a specific register established for that purpose (for example, the register on special security measures), in addition to the individual's file. 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, the name of the person who ordered or approved it, and an account of any injuries sustained by the person or staff.***

In consultation with the Berlin Senate Administration for Justice, Consumer Protection and Anti-Discrimination, the director of Berlin-Plötzensee Prison, who is also the administrative head of the prison infirmary, will shortly be introducing a separate register in which a record will be kept of all instances of recourse to means of restraint.

**Paragraph 81**

***The CPT recommends that the authorities of Thuringia and, where appropriate, of other Länder take steps to ensure that the house rules of prisons are translated into relevant foreign languages and made available to newly-arrived prisoners.***

Legislation applicable to prisons in Berlin in each case provides that prison house rules must be translated into the most frequently required foreign languages (see section 108, fourth sentence, of the Berlin Prison Act). This rule is implemented in each of the prisons in Berlin, depending on requirements. On account of its being the central location enforcing remand detention for adult male prisoners in Berlin, Moabit Prison, for instance, has copies of its house rules available in a number of foreign languages, including Arabic, Russian, Bulgarian, Serbo-Croatian, Polish, Vietnamese, Rumanian, Turkish, Lithuanian, English, French and Spanish. In addition, the Moabit Prison house rules were also rendered in pictorial language as part of an art project.

In Rhineland-Palatinate framework house rules were drawn up and translated into 16 foreign languages. This means that, upon admission, almost all prisoners can be given the house rules in their native language or in a language they understand.

Unless already available, translations will be commissioned of the house rules of prison establishments in Thuringia into various frequently spoken languages.

## Psychiatric establishments

### **Paragraph 87**

***The CPT welcomes this legislative initiative and would like to receive updated information on this matter.***

The Federal Government welcomes the CPT's endorsement in paragraph 87 of its report of the revision of legislation concerning placement in a psychiatric hospital under section 63 of the Criminal Code (*Strafgesetzbuch*, StGB). The revised Act was promulgated on 14 July 2016 (Federal Law Gazette I, p. 1610) and entered into force on 1 August 2016.

We would, however, like to clarify one important point in footnote no. 64 (p. 41): Under section 67d (6), second sentence, of the Criminal Code, committal to a psychiatric clinic for six years is generally no longer proportionate unless there is a risk that the person concerned will commit significant unlawful acts on account of his/her mental state which will lead to victims suffering serious mental or physical harm or to the risk of victims suffering physical or mental harm. In the case of committal for more than ten years, under section 67d (6), third sentence, read in conjunction with (3), first sentence, of the Criminal Code, the court will declare the measure satisfied unless there is a risk that the person concerned will commit significant offences which would inflict serious mental or physical harm on victims.

**Paragraph 89**

***The CPT recommends that the management of Brandenburg and Wasserburg Forensic Psychiatric Clinics exercise continuous vigilance and remind staff that any form of ill-treatment (including verbal abuse and threats) or disrespectful/provocative behaviour towards patients is unacceptable and will be sanctioned accordingly.***

Wasserburg Forensic Psychiatric Clinic as well as all the other forensic psychiatric establishments in Bavaria employ qualified and well-trained staff. The operators and heads of the establishments and those responsible for professional supervision undertake permanent efforts and are vigilant when it comes to preventing all forms of ill-treatment. The Bavarian Forensic Psychiatry Office has received no submissions whatsoever regarding the type of behaviour of which the CPT accuses members of staff (insults, threats and disrespectful behaviour); nor was any mention made of any such allegations during the recent visit by the authority responsible for professional supervision, during which numerous patients were interviewed.

The management of Wasserburg Forensic Psychiatric Clinic would like to stress that disrespectful or provocative behaviour towards patients in the forensic psychiatric facility is on no account tolerated. The Head of Forensic Psychiatry is always vigilant and reminds staff in the context of regular training events and employee meetings that neither disrespectful behaviour of any kind nor threats are not allowed.

Staff in Brandenburg Forensic Psychiatric Clinic regularly take part in obligatory training courses dealing with measures depriving patients of their liberty. A de-escalation training course is held once a year. Participation in these courses is strictly monitored so as to ensure that all members of staff undergo the relevant training. A doctor called in the event of a crisis will then give instructions as to the type and extent of action to be taken whilst security measures are being carried out. Such situations are analysed with patients afterwards in a debriefing meeting and the clinic notifies each incident without delay to the public prosecution office/chamber responsible for execution of sentences.

The Brandenburg Ministry for Labour and Social Affairs, Health, Women and Families has received no submissions or information whatsoever regarding the allegation that staff at Brandenburg Forensic Psychiatric Clinic on several occasions used force in one specific case against a particular patient. Also, no such incident was confirmed in a debriefing meeting held after the allegation was made.

**Paragraph 90**

***The CPT would like to receive the comments of the authorities of Berlin on this matter.***

St Joseph's Psychiatric Hospital in Berlin-Weißensee has for more than 15 years run regular de-escalation training courses. All teams on the various hospital wards have undergone this training, and refresher courses are held every three months.

Where patients commit physical violence against other patients, staff intervene circumspectly to de-escalate the situation. If patients commit serious physical violence which injures either other patients or staff members, teams on the relevant ward and the management weigh up on a case-by-case basis whether it is necessary to file a criminal complaint with the police. In the case of patients with a highly acute mental disorder or those who commit violence due to their mental disorder, for example if they suffer a psychotic episode, St Joseph's Psychiatric Hospital does not report the matter to the police since the aggression is a symptom of the illness and it is also due to the illness that patients are unable to understand and unable to control their actions. The patients or staff concerned are taken to see the professional association's accident insurance consultant (*Durchgangsarzt*) and are looked after both physically and in regard to the psychological consequences of such an attack. They may, where necessary, also be referred to psychotherapeutic crisis intervention facilities.

St Joseph's Psychiatric Hospital does file criminal complaints with the local police in the case of patients who can be presumed to be sufficiently able to understand and control their actions.

**Paragraph 91**

***The CPT trusts that the management at Brandenburg Forensic Psychiatric Clinic will pursue its efforts to address the problem of inter-patient violence and protect all patients from other patients who might cause them harm. This requires not only adequate staff presence and supervision at all times, including at weekends, but also specific arrangements being made for particularly vulnerable patients.***

Whenever any inter-patient violence occurs in the Clinic, a meeting is held with the patients and the head of the health-care service. Patients are told about possible steps which might be taken, for example recourse to the courts. Where necessary, the patients involved are kept in separate parts of the clinic.

It should be borne in mind that patients still need to be given the necessary freedoms. The clinic is a therapeutic facility. Permanent monitoring is therefore not to be endorsed.

**Paragraph 92**

***The CPT would like to receive updated information on this matter.***

The average in-patient occupancy rate across all psychiatric wards in St Joseph's Psychiatric Hospital was not – as reported by the CPT – 120% in the cited period under review, but 98.93% for the period May 2015 to April 2016.

St Joseph's Psychiatric Hospital is tasked with the care of all those suffering from a mental disorder in the district of Pankow (which has a population of 400,000) as part of what is known as mandatory care provision (*Pflichtversorgung*). In the same period, the four acute psychiatric wards were, naturally, operating above their average capacity (104.4%) compared to the average across all wards. It is true to say that the two geriatric psychiatric wards were operating at the highest average capacity in the aforementioned period, namely approx. 106.5%.

In the early summer of 2016 the hospital was able to increase its capacity to admit psychiatric patients by adding a total of 31 beds/places. This was based on the current hospital plan, which entered into force in 2016. The hospital management acted promptly and commissioned the construction of a modular block in the garden of the spacious hospital grounds in order to increase its capacity. The new psychiatric ward with 27 places opened in November 2016. The rehabilitation ward for people with an alcohol addiction was closed on 30 September 2016, which created further capacity and means the four acute wards are no longer overcrowded.

**Paragraph 93**

***The CPT encourages the authorities of Bavaria and Brandenburg to strive to accommodate long-term patients in single rooms (as is the usual practice for sentenced prisoners throughout the country).***

Article 8 of the Bavarian Forensic Psychiatry Act (*Bayerisches Maßregelvollzugsgesetz, BayMRVG*) provides that patients be accommodated in one- or two-bed rooms, but also permits up to four people to be accommodated in one room.

Efforts are being undertaken in all establishments in Bavaria to accommodate long-term patients in single rooms. However, due to the structural situation and high occupancy rates this is not always possible and patients often do not wish to be accommodated in single rooms, even if they have already been in hospital for a long time.

Appropriate attention will be paid to creating single rooms in the context of upcoming construction projects.

**Paragraph 94**

***The CPT recommends that steps be taken at Wasserburg Forensic Psychiatric Clinic to ensure that patients are provided with daily outdoor exercise in the light of the preceding remarks.***

In the Free State of Bavaria all patients have a statutory right to spend at least one hour outside every day (see Article 11 para. 2 of the Bavarian Forensic Psychiatry Act). Each patient in Wasserburg Forensic Psychiatric Clinic is also able to make full use of his/her statutory right to a minimum of one hour's outdoor exercise. The Clinic does, however, admit that in the past it has not always been possible in isolated cases to enable each patient to have one hour of outdoor exercise. This situation has now been remedied. No patient stated anything to the contrary during the last inspection visit by those responsible for professional supervision.

### Paragraph 95

***The CPT recommends that the authorities of Brandenburg redouble their efforts to fill the vacancies for psychologists and nursing staff as quickly as possible, and to take steps to ensure the continuity of the therapeutic treatment at Brandenburg Forensic Psychiatric Clinic.***

First it should be noted that the staffing levels cited on page 45 of the report do not correspond to the findings of the relevant authorities. The correct figures are as follows:

	Full-time staff 2015 Agreed target	Full-time staff 2015 Actual at end of year
Medical service	8.87	6.08
Nursing service	124.63	113.36
Medical-technical service (psychologists/social workers)	12.71	16.78
Functional service (occupational therapists)	8.02	9.88
Total	154.23	146.10

The Clinic and the Ministry undertake efforts to quickly fill every post which becomes vacant. This is difficult, in particular due to the lack of specialist staff.

The sickness rate is high; however, new staff are hired to fill the posts of those on long-term sick leave.

**Paragraph 96**

*With a view to safeguarding the development and maintaining of a therapeutic relationship between health-care staff and patients, **it would be desirable for the above-mentioned practice to be discontinued.***

Staff may, on occasion, wear blue plastic gloves when carrying out their work. They will do so, for instance, when applying disinfectant or where there is a risk of infection due to the patient's illness. At the time of the CPT's visit there was one patient on the ward referred to who has a hepatitis C infection and who often bites his lips and then spits blood at nursing staff. That is why it is proportionate and justified for members of staff to wear blue plastic gloves in this situation in order to protect themselves, and this is in line with existing hygiene regulations.

**Paragraph 97**

***The CPT recommends that the management of Wasserburg Forensic Psychiatric Clinic take steps to ensure that patients are involved in the preparation/review of their individual treatment plans and that they are informed of their progress. Further, the Committee encourages the management of the Clinic to redouble their efforts to encourage patients who are currently not enrolled in any therapy to participate in therapeutic activities (individual or group therapies) that are adapted to their specific needs.***

Article 5 para. 1 of the Bavarian Forensic Psychiatry Act provides that a treatment and enforcement plan be drawn up for each patient. Under Article 5 para. 3, first sentence, of that Act, any changes to the plan must be discussed with the detained person.

The management of Wasserburg Forensic Psychiatric Clinic ensure the Committee that all patients are involved in the drawing up and revision of their treatment plans and they are kept up to date on their progress during regular ward rounds.

The Head of the Clinic explained that all members of staff make ongoing efforts to motivate patients, but that the number of patients who do not make use of any therapy options remains constant. Since the new building (Block 27) was taken into operation, patients in both admission wards have had an extended range of employment activities available to them.

The staff at Brandenburg Forensic Psychiatric Clinic encourage patients on a daily basis to take up the therapy options available to them. Both sports and occupational therapies are on offer. Despite all their efforts, however, a small proportion of patients refuse to avail themselves of the opportunities open to them.

## Paragraph 99

***The CPT recommends that more attention be paid to ensuring that these precepts are being fully implemented in practice at Brandenburg Forensic Psychiatric Hospital and, where appropriate, in other forensic psychiatric establishments in Germany, taking into account the above remarks. Further, anti-androgen treatment should not be a general condition for the release of sex offenders (or the granting of Lockerungen).***

The Bavarian Forensic Psychiatry Office would like to draw the Committee's attention to the Bavarian Forensic Psychiatry Act which is applicable to establishments in Bavaria.

Article 6 para. 2 of the Act only permits measures to treat mental disorders which interfere with physical integrity if the patient concerned has consented thereto in writing. In turn, this consent can only be given after the person concerned has been informed by the doctor treating him/her and on the basis of his/her free will (informed consent).

It is only possible to carry out treatment measures without the consent of the patient in those exceptional cases listed in Article 6 paras 3 to 6 of the Bavarian Forensic Psychiatry Act.

Under Article 6 paras 3 and 4 of that Act, patients can only receive anti-androgen treatment against their consent based on a court order. The Bavarian Forensic Psychiatry Office, however, has no knowledge of any such decisions or of other information to support the assumption that any patient is receiving anti-androgen treatment against his/her consent.

The Brandenburg Ministry for Labour and Social Affairs, Health, Women and Families and the management of the Clinic have taken note of the CPT's recommendation. They assure the Committee that the principles on which anti-androgen treatment is based are always observed. They are aware of the legal situation. Anti-androgen treatment is, incidentally, neither the precondition for an offender's release nor for the granting of relaxations of his regime.

It should be borne in mind that patients are legally entitled to treatment, that is to all possible therapies for treating their disorder. Patients are also legally entitled to anti-androgen treatment since the drug is available on the market. The attending physicians are aware that it has considerable side effects. The drug is, however, prescribed only after the specialist and general preliminary examination has been carried out as recommended by the manufacturer.

Hamburg Forensic Psychiatric Clinic provides anti-androgen treatment in isolated cases. The principles of treatment (including voluntariness, detailed information, possibility of breaking off treatment at any time) are strictly observed.

Anti-androgen treatment is not a precondition for the release of sex offenders or for the granting of relaxations of their regime. It can, however, have a positive influence on the assessment of their dangerousness with a view to granting such relaxations.

**Paragraph 100**

***The CPT recommends that the authorities of Brandenburg take the necessary steps to ensure that the patients' medical and administrative files are adequately and maintained in a timely manner at Brandenburg Forensic Psychiatric Clinic. To this end, consideration might be given to the introduction of an electronic records management system and/or increasing administrative staff.***

The authorities in Brandenburg accept the criticism as regards their previous handling of patient files. Wide-ranging measures have been taken to ensure that files are now always kept up to date. A program for what is referred to as "electronic dictation" is currently being successfully tested by the clinic operator in a model project run in another specialist unit of the Clinic. If the test is successful, the program will also be used in forensic psychiatry. However, we must also clarify once more in the context that each measure depriving a patient of his/her liberty is reported without delay to the public prosecution office and to the chamber responsible for execution of sentences and that no shortcomings can be identified as regards the area in which the suspicion of possible torture or inhuman treatment or punishment might arise.

During the CPT's visit it was unfortunately not possible to make the requested documents concerning one segregated patient available immediately. This was due to the fact that the clinic operator uses a "one-IT system", meaning that staff cannot use one another's PCs. The delegation was given the requested statistics later during the visit.

## Paragraph 102

***The CPT recommends that the relevant authorities of Berlin and all other Länder take the necessary steps to ensure that all newly-arrived patients are examined somatically by a doctor within 24 hours of their admission in all psychiatric establishments in Germany. Further, all medical examinations of newly-admitted patients in psychiatric hospitals should be conducted out of the hearing and – unless the health-care professional concerned requests otherwise in a particular case – out of the sight of non-medical staff.***

***The Committee also recommends that the relevant authorities of Berlin and all other Länder take the necessary steps to ensure that the recommendations made in paragraphs 57 and 58 are effectively implemented in all civil and forensic psychiatric establishments in Germany.***

St Joseph's Psychiatric Hospital provides in-patient treatment to approx. 3,400 people each year. The medical examination of each patient upon admission must be conducted in line with guidelines and recorded in the hospital's information system.

In the case of patients who are not cooperative upon admission or who refuse to be examined, the admission examination is carried out at a later point as soon as they are willing to cooperate. Unfortunately, some patients refuse an intensive physical examination until their release.

Following an internal meeting after the CPT's visit, a reminder function was incorporated into the hospital's information system to enable patients who refuse to be examined upon admission or who are uncooperative and could not be examined to be flagged up. This means all the doctors responsible are reminded to conduct the examination – if the patient is willing – and to make a record thereof.

Based on the Committee's recommendation, the practice of examining acute psychiatric patients upon admission in the presence of police officers who are separated from the patient only by a curtain will be discontinued as of 1 April 2017.

In 2014 the management at St Joseph's Psychiatric Hospital commissioned the construction of an urgent admissions department within the grounds of the hospital in the close vicinity of the acute wards. This was based, first, on the state of affairs which the Committee had criticised and, second, on the fact that the urgent admissions department is currently located in the main hospital building within view of Gartenstraße. Patients will no longer be visible to passers-by on the street when they are brought into the urgent admissions department by ambulance or escorted by police officers.

The newly constructed urgent admissions department is located between Acute Ward 4 and the therapeutic exercise hall in the centre of the grounds, and is thus out of the unwelcome view of passers-by. It comprises a spacious waiting room and two consulting rooms partitioned by means of solid walls and sound-proofed doors. This guarantees that privacy is protected whilst the admission examination is being carried out.

**Paragraph 104**

***The CPT would like to receive detailed information on the use of Fixierung in this case.***

The requested data cannot be reconstructed since the patient had already left Brandenburg Forensic Psychiatric Clinic at the time of the CPT's visit.

**Paragraph 109*****Steps should be taken to remedy this shortcoming.***

The suggestion (which was already put forward during the CPT's visit) has since been examined as part of the continuous efforts of the Forensic Psychiatry Office and the relevant establishments in Bavaria in which such CCTV monitoring is carried out. Based on currently available information, the recommendation cannot, however, be followed for reasons of security and the duty of care.

We would like to point out that following the CPT's visit Wasserburg Forensic Psychiatric Clinic arranged for the images recorded by the digital cameras installed in the wet rooms in the newly constructed Block 27 to be pixellated. However, pixellation of the camera images was unjustifiable on the grounds of security and the duty of care, since no self-harming actions whatsoever would then have been recognisable on the camera images and it would thus no longer have been possible for staff members to intervene where necessary. This was verified by the authority responsible for professional supervision.

The Forensic Psychiatry Office naturally recognises that patients in forensic psychiatric clinics have a basic right to respect for their privacy. This in particular applies in regard to personal hygiene measures and going to the toilet. The use of CCTV monitoring in the bathroom/toilet area interferes with this basic right to respect for privacy. CCTV monitoring is used to protect patients' basic rights to life and health. Its sole purpose is to ensure that patients do not engage in any auto-aggressive, self-harming and/or suicidal activities. Experience gained in recent years shows that auto-aggressive actions, in particular suicide, almost exclusively occur in the sanitary area. The authority is of the opinion that as long as no technical means of pixellating the camera image is available which continues to permit activities in the sanitary area to be monitored without interfering with patients' privacy to the same extent as is currently the case, then pixellation of the toilet area must be rejected on the grounds of safety and the duty of care. However, the authority is continuing its efforts to find a technical solution which will enable both patients' privacy to be sufficiently protected and the requirements of the duty of safety and care to be met. Particular attention is being paid to this issue in the context of visits by the authority responsible for professional supervision.

## Paragraph 111

*In the light of the remarks made in paragraphs 103 to 110, the CPT reiterates its recommendation that steps be taken at St Joseph's Psychiatric Hospital, Brandenburg and Wasserburg Forensic Psychiatric Clinics, as well as in all other psychiatric establishments in Germany, to ensure that:*

*– a specific register, in addition to the records contained in the patient's personal medical file, is established to systematically record all instances of recourse to means of restraint – including chemical restraint – which also shows the length and frequency of individual restraint measures. The entries in the register should include the time at which the measure began and ended; the circumstances of the case; the reasons for resorting to the measure; the name of the doctor who ordered it; staff who participated in the application of the measure; and an account of any injuries sustained by patients or staff. Such information is an indispensable tool for effective management and staff monitoring of these measures and will greatly facilitate the oversight into the extent of their occurrence with a view to possibly reducing the resort to such measures in the future;*

*– relevant staff are trained in the use of restraint techniques and equipment. Such training should not only focus on instructing health-care staff how to apply means of restraint but, equally importantly, it should ensure that they understand the impact the use of restraint may have on a patient and that they know how to care for a restrained patient;*

*– whenever a patient is subjected to Fixierung, they always benefit from continuous, direct and personal supervision (Sitzwache) of a trained member of staff nearby who maintains the therapeutic alliance and may provide prompt assistance. Such assistance may include escorting the patient to a toilet facility or, in the exceptional case where the measure of restraint cannot be brought to an end after a very short time, helping him/her to drink water and/or consume food;*

*– metal hand- and/or ankle-cuffs are never used for the purpose of Fixierung;*

*– a debriefing is offered to patients concerned once restraint measures have been discontinued.*

The Free State of Bavaria does not believe it is necessary to set up a central forensic psychiatry register at *Land* level. Coercive treatment and *Fixierung* are reviewed by the courts. In addition, the professional supervisory authority is involved in implementing the relevant statutory regulations: Twice a year it collects data on coercive measures applied, including information on the length and frequency of such measures, and it carries out on-site checks of the relevant records kept. Further, members of the local advisory councils responsible for forensic psychiatry (*Maßregelvollzugsbeiräte*) may also inform themselves about the use of coercive measures.

Members of staff in all forensic psychiatric establishments in Bavaria regularly undergo training in how to carefully apply various types of restraints and they receive instruction during these training courses on legal aspects of this measure.

Two training courses will be outlined in the following by way of example:

Pair Training: This training course deals with preventing and de-escalating aggression and violence. The course focuses on teaching participants how to recognise when aggression and violence may erupt, as well as self-awareness and -control in aggressive situations and how to influence an escalating situation by means of de-escalating communication. Participants also learn how to hold professional meetings with all those involved after the situation has passed.

Conservative Fixierung: *Fixierung* is a potentially traumatic occurrence for both patients and staff. The risk of injury on both sides is very high. Both physical and psychological injuries can arise in the context of *Fixierung*. The goal is therefore to reduce the number of cases in which this measure is applied. When *Fixierung* is nevertheless necessary, it should be carried out as safely and carefully as possible for all those involved. This seminar specifically addresses issues of safety and human dignity when applying *Fixierung*. The course objective is to teach staff to be aware of possible risks when applying the measure, to correctly use the system of belts, ensure the safety of all those involved and support patients professionally throughout.

*Fixierung* is carried out based on current guidelines issued by the German Society for Psychiatry and Psychotherapy (DGPPN) and the recommendations of the German Professional Association of Psychiatric Care (DFPP). In addition, Article 26 para. 1, second sentence, of the Bavarian Forensic Psychiatry Act provides that detained persons must be continuously supervised and monitored by a member of staff. Accordingly, a person undergoing *Fixierung* must never be left alone, but continuously supervised in a suitable manner and, in particular, monitored to satisfy both hunger and thirst and their urge to urinate and defecate.

Metal hand- and ankle-cuffs are not used in forensic psychiatric establishments in Bavaria.

A debriefing following incidents involving aggression and coercive measures are conducted in a timely manner depending on the patient's state of health and, wherever possible, together with the care worker responsible for the patient concerned and his/her therapist.

In Berlin, comprehensive organisational instructions have been issued as regards the use of coercive measures such as segregation, *Fixierung* and forced medication. These include a debriefing which must be held with the patient concerned and the doctor responsible after a coercive measure has been applied. The aim of the debriefing is to explain to the patient why the measure was applied, to discuss any problems which may have arisen in the doctor-patient relationship and, where necessary, to reach agreement as regards dealing with future crises.

We would like to inform the Committee that its recommendation was implemented in Brandenburg Forensic Psychiatric Clinic and that a consistent record is now kept of all cases in which coercive measures are applied.

Continuous, direct personal supervision by a member of staff (*Sitzwache*) is always provided where the doctor feels this is necessary. However, there are patients who do not calm down whilst being directly monitored. Since the length of time patients spend in the “crisis room” is to be kept to a minimum, in such cases an exception is made to the rule that continuous, direct personal supervision must be provided, and monitoring by means of visual contact is deemed to be sufficient.

The competent ministry has already been prompted by the CPT’s concluding statement to review the use of metal hand- and ankle-cuffs in the Clinic. To that end it arranged for the use of such cuffs to be demonstrated in January 2016 and held in-depth meetings. Following this review, the ministry concluded that the use of hand- and, where necessary, ankle-cuffs prior to *Fixierung* using the Segufix patient positioning and restraint system is proportionate and unobjectionable when necessary to calm patients down and to protect other patients and staff. The short-term use of metal hand- and/or ankle-cuffs fulfils a legitimate aim, namely to protect patients in a crisis from causing further injury to themselves and to protect other patients and members of staff from injury. The use of such cuffs is also a suitable means of achieving the goal (of taking the patient into the crisis room to apply the Segufix system) because it enables the patient to be taken into the crisis room without injuring uninvolved bystanders.

A debriefing is regularly conducted with patients, amongst other things to ensure they can understand why the measure was applied.

Under the Hamburg Mental Health Act (*Hamburgisches Psychisch-Kranken-Gesetz*, HmbPsychKG), coercive measures applied to patients committed in Hamburg are reported in anonymised form to the relevant supervisory authority on a quarterly basis and evaluated by that authority.

Amongst other things, this evaluation is the subject of the supervisory meetings involving the relevant authority and hospitals in which patients are placed under the Act, which in accordance with the Act are held annually. In addition, the Senate of the Free and Hanseatic City of Hamburg submits the evaluation of coercive measures to the Hamburg City Parliament at approx. two-yearly intervals for public discussion.

As well as being recorded in the relevant medical file, coercive measures applied in forensic psychiatry are also systematically recorded by the head of the forensic psychiatric clinic and, upon request, these are made available to and discussed with both the supervisory commission in accordance with section 48 of the Hamburg Forensic Psychiatry Act (*Hamburgisches Maßregelvollzugsgesetz*, HmbMVollzG) during its visits and the supervisory authority during its own quarterly supervisory meetings.

Staff on specialist psychiatric wards in hospitals in Hamburg as well as in the forensic psychiatric establishment undergo systematic and regular training in the use of de-escalation techniques and how to apply coercive measures.

Section 16 of the North Rhine-Westphalia Mental Health Act (*Psychisch-Kranken-Gesetz für Nordrhein-Westfalen*, PsychKG NRW) contains rules on keeping a record of all coercive measures. Section 18 of the Act regulates the debriefing which must follow the use of such measures.

No register of coercive measures is kept in North Rhine-Westphalia, although the aforementioned Act contains wide-ranging requirements as regards annual reporting to the supervisory authority (section 32) regarding the placement, coercive treatment (section 18) and special security measures (section 20). Coercive treatment also needs to be authorised by a judge, as does *Fixierung* for more than 24 hours or which is repeated on a regular basis.

All establishments are regularly asked whether staff in the clinics undergo training and advanced training on the use of coercive measures and de-escalation strategies in the course of annual inspection visits conducted by the independent external visiting commissions (*Besuchskommissionen*) in accordance with section 23 of the aforementioned Act. Complaints are followed up by the supervisory authority.

Section 20 of the Mental Health Act regulates the use of special security measures. Under that provision, only members of staff are permitted to monitor the application of special security measures. Continuous, personal supervision by a trusted member of staff and supervision together with continuous monitoring of the patient's vital functions during *Fixierung* (continuous, direct personal supervision during *Fixierung*) must be ensured. A traceable record must be kept of the occasion and order for and the type, extent and length of placement in a special room and *Fixierung*.

Only especially careful means of mechanical restraint may be applied.

Detailed regulations apply in all forensic psychiatric establishments as regards the keeping of records, according to which the name of the doctor ordering a measure as well as the

reasons for the order and course of the *Fixierung* must be traceably recorded. General requirements are also set out in the Patient-Related Records in Forensic Psychiatry in North Rhine-Westphalia Quality Standard, which applies to the whole of North Rhine-Westphalia.

As from mid-2012 the Commissioner for Forensic Psychiatry began collecting data on the use of *Fixierung* in forensic psychiatric clinics in North Rhine-Westphalia. As well as the number of cases, the length of each instance of *Fixierung* is also recorded. The Commissioner examines the lawfulness of the indication for and application of the measure in specific individual cases. Unusual numbers of cases in individual clinics are discussed with the competent heads of therapeutic departments during inspection visits.

Staff in the clinics take part in regular training courses on how to use coercive means and how to handle the available aids.

Metal hand- and ankle-cuffs are not used as a means of restraint in forensic psychiatry. The clinics all have hospital beds and special systems of belts for restraining patients. Under the currently applicable statutory provisions, only those means of restraint are permitted which rule out as far as possible any risk of injury to patients.

By order of 14 December 2009 the Commissioner required that any patient undergoing *Fixierung* must always be kept under continuous, direct personal supervision. Further, a debriefing is conducted with patients to therapeutically work through any coercive measures applied.

Rhineland-Palatinate is examining the CPT's recommendation that a separate register be kept of coercive measures to see whether it is practicable. The results of an ongoing Germany-wide project commissioned by the Federal Ministry of Health on "Avoiding Coercive Measures in the Psychiatric Care System" will be included in this review.

The Working Group of Chief Physicians and Leading Care Professionals in Psychiatric Clinics in Rhineland-Palatinate has set out standards and made suggestions regarding the prevention, diagnosis, de-escalation and treatment of aggressive patient behaviour in its Guidelines on Dealing with Aggressive Behaviour in a Psychiatric Context. The Guidelines also address the use of coercive measures as a last resort and, naturally, in compliance with all statutory requirements. The benchmarks applied in this context include psychiatric and nursing expertise, humane and, where possible, restrictive use, and patient and staff safety. Another objective is to standardise everyday practice in psychiatric clinics across Rhineland-Palatinate. The Guidelines were presented to the Rhineland-Palatinate Psychiatry Advisory Board in May 2015. The Board explicitly welcomes these Guidelines and recommends that

they be implemented by service providers and funding agencies across Rhineland-Palatinate.

A record is kept of coercive and security measures applied to patients in Saarland. Staff must be instructed about how to apply these measures.

*Fixierung* is used as a security measure of last resort in forensic psychiatry in Saarland to the extent and in so far as it is necessary. It is only applied when ordered and monitored by a doctor. A record is made on special documentation sheets of the length and extent of and reason for the measure.

The CPT's report has been sent to the forensic psychiatric establishments and the socio-psychiatric services in Schleswig-Holstein together with a reference to the recommendation and the request that they report and comment on the recommendation. Based on these reports it will be examined whether statutory or non-statutory measures are necessary.

**Paragraph 114**

***The CPT recommends that appropriate steps be taken to remedy this shortcoming.***

Following the CPT's visit, the nursing and medical teams were instructed to follow the CPT's recommendation that patients be consistently handed a copy of the reasoned court order and that they be consistently required to sign to confirm receipt of that copy. The recommendation has also been incorporated into the organisational instructions.

## Paragraph 115

***The CPT recommends that the relevant federal authorities and the authorities of Berlin and all other Länder take the necessary steps – including at the legislative level – to ensure that the opinion of an external expert in the field of psychiatry, who is independent of the hospital in which the patient is placed, is provided in the context of involuntary placement procedures (outside emergency procedures and provisional placement).***

The procedure for obtaining judicial authorisation to place a person in a measure which is associated with deprivation of liberty (section 1906 (1) and (2) of the German Civil Code) is laid down in the Act on Proceedings in Family Matters and in Matters of Non-Contentious Jurisdiction (*Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit*, FamFG). This procedure includes a number of precautions and safeguards for the person concerned. They aim to ensure that cooperation between the person concerned, their custodian (*Betreuer*)/authorised representative, adult guardianship court (*Betreuungsrichter*), guardian ad litem (*Verfahrenspfleger*), experts and other involved persons guarantees that the interests of the person concerned are safeguarded:

- The person concerned has the capacity to participate in proceedings without regard to his/her capacity to act (section 316 of the aforementioned Act).
- The court must appoint a guardian ad litem for the person concerned when this is necessary for representing his/her interests (section 317 (1), first sentence, of the aforementioned Act).
- The court must conduct an in-person hearing with the person concerned (section 319 (1), first sentence, of the aforementioned Act).
- The court may also hear the custodian or authorised representative, as well as the custodianship authority (*Betreuungsbehörde*) and relatives or a person to whom the person closely relates if these are involved in the proceedings (section 320 read in conjunction with section 315 (3) and (4) of the aforementioned Act).
- An expert opinion regarding the necessity for the placement is to be obtained by way of the formal taking of evidence. The expert must first personally examine or interview the person concerned before preparing the expert opinion (section 321 (1), first and second sentence, of the aforementioned Act).
- Under section 58 of the aforementioned Act, the parties involved may lodge an appeal against the court order.

Establishing the facts is one of the courts' key tasks (section 26 of the Act on Proceedings in Family Matters and in Matters of Non-Contentious Jurisdiction, Inquiry *ex officio*). The court is free to choose experts at its discretion. The court examines whether an expert opinion is sufficient and convincing or whether it needs to be supplemented by a further expert opinion. The court may at any time order the rendering of further expert opinions *ex officio*.

It is in principle at the due discretion of the court to decide which doctor to commission with preparing an expert opinion in regard to placement measures. This discretion is, however, restricted under section 321 (1), fourth and five sentence, of the Act on Proceedings in Family Matters and in Matters of Non-Contentious Jurisdiction as follows: The expert should be a psychiatrist and must be a doctor with experience in the field of psychiatry. In the case of committal for a total of more than four years, the court should not appoint an expert who has previously treated the person concerned or already prepared an expert opinion regarding the person concerned or who works in the facility to which the person concerned has been committed (section 329 (2), second sentence, of the aforementioned Act). These requirements as regards the choice and qualification of the expert, which increase incrementally, aim, on the one hand, to ensure that the expert opinion is prepared on the basis of professional expertise and, at the same time, to do justice to different procedures and practical needs when it comes to choosing suitable experts. Only in closely delimited exceptional cases are derogations from the directory legal provision possible and justified. When reviewing the continuation of long-term placement it must be ensured that placement is not maintained for longer than necessary based on entrenched opinions held by doctors employed in the establishment to which the person concerned has been committed (Bundestag Printed Paper 11/4528, p. 186).

As regards the preparation of an expert opinion, it may be of advantage for the doctor to already know the patient and for him/her to have been able to observe the patient over a longer period of treatment. The expert may then possibly be able to evaluate the person concerned's current state more accurately and thus make a more sound professional assessment regarding the matter of that person's placement.

Under the Berlin Mental Health Act (*Psychisch-Kranken-Gesetz für Berlin*, PsychKG B) and thus in line with practice at St Joseph's Psychiatric Hospital, such decisions regarding placement are never solely based on the expert opinion submitted by a psychiatrist employed at the hospital.

It is true that the psychiatrists employed at St Joseph's prepare a specialist medical attestation before proposing to the district health authority's socio-psychiatric service that a specific patient be placed in a psychiatric clinic. In a next step, the psychiatrist in the district socio-psychiatric service examines the patient in the hospital and submits an application for placement measures under the Mental Health Act.

The judge then conducts an in-person hearing of the patient on the hospital grounds within the period laid down in the Mental Health Act.

Where a person is committed under the provisions of the German Civil Code, it is up to the statutory custodian to propose placement to the local court. In some cases the person in question is then examined by an external psychiatrist, in others by a psychiatrist at the hospital, though by one working on a ward other than where the patient is being treated.

**Paragraph 116**

***The CPT would like to receive further clarification on this point.***

Patients at St Joseph's Psychiatric Hospital are normally informed about the fact that they can apply to the court for release before the end of any placement ordered by the court. Where the court orders placement, this must be agreed with the official custodian.

### Paragraph 119

***The CPT recommends that the authorities of Bavaria, Berlin and Brandenburg as well as of all other Länder take steps to ensure that all newly-arrived psychiatric patients (and, if applicable, their legal representative) are provided with an information brochure setting out the hospital's routine and patients' rights, including information on legal assistance, review of placement (and the patient's right to challenge this), consent to treatment and complaints procedures. Patients unable to understand this brochure should receive appropriate assistance.***

### Paragraph 120

***To this end, the CPT recommends that the authorities of Bavaria, Berlin and Brandenburg, as well as of all other Länder, take steps to ensure that psychiatric patients are systematically informed of existing avenues to lodge complaints.***

Article 4 para. 1, first and second sentence, of the Bavarian Forensic Psychiatry Act lays down that, upon admission, detained persons are to be provided with written information detailing their rights and obligations during placement and that they must confirm receipt of that information in writing. If a detained person has a legal representative, that person is also to be given the opportunity to be present when the information is being given.

The aforementioned Act already provides that information concerning provisional enforcement, the address of the authority responsible for professional supervision and the advisory councils as well as other information must be made available to patients on all hospital wards.

The Administrative Regulations concerning the Bavarian Forensic Psychiatry Act which entered into force on 1 February 2017 provide that in future all persons placed in psychiatric clinics in Bavaria are to receive a copy of the Information for Detained Persons brochure upon admission. This serves to standardise the information provided across all forensic psychiatric establishments. The brochure summarises key rights and obligations of persons placed in forensic psychiatric clinics. It also contains information on appeal procedures, consenting to treatment and complaints procedures. Specific procedures in individual establishments are described in the ward and house rules, which are handed to the persons concerned upon admission to the ward.

St Joseph's Psychiatric Hospital provides all patients with an information brochure upon admission which contains details about the hospital, its diagnostic and therapeutic services, and other services.

The hospital has for many years been cooperating closely and on a basis of trust with the Complaints and Information Office for Psychiatry in Berlin.

An information brochure is available to patients on each ward in Brandenburg Forensic Psychiatric Clinic. It contains all important contact details regarding the relevant complaints bodies (e.g. Brandenburg *Land* Office for Social Affairs and Benefits; Ministry of Labour and Social Affairs, Health and Families; independent external visiting commissions; the court responsible for execution of sentences). It also includes a list of lawyers.

Patients already receive wide-ranging information during the admission meeting, including about how to file complaints. They also receive a copy of the house rules. Patients then sign to confirm that they have received the information, and the form is added to their patient records.

In Hamburg each person who is newly admitted to a forensic psychiatric ward is without delay handed a copy of the relevant ward rules. In addition to these ward rules, pursuant to section 48 of the Hamburg Forensic Psychiatry Act, each ward displays the address and telephone number of the supervisory committee in a prominent place in the corridor. Patients placed in psychiatric wards are instructed by the judge at the custodianship court about the possibility of lodging a complaint against the placement order (instruction as to the right of appeal). Under 23 of the Hamburg Mental Health Act, each ward where patients are placed under that Act must display the address and telephone number of the supervisory committee in a prominent place in the corridor.

Under section 20 (2) of the Mecklenburg-Western Pomerania Mental Health Act (*Psychisch-Kranken-Gesetz für Mecklenburg-Vorpommern*, PsychKG M-V), all those suffering from a mental disorder and the person having the duty of care and custody of such a person and, so far as persons suffering from a mental disorder are not able to give their consent, their legal representative (so far as their authority covers the right to determine their place of residence or care and custody regarding their health) must be informed about the rights and obligations of persons suffering from a mental disorder during placement without delay after admission; this also comprises the right to lodge complaints. This information must be made available to them in writing. Patients suffering from a mental disorder must be given information in a form in which they can understand it. Separate information is provided to persons undergoing medical treatment (sections 25 and 26 of the Mecklenburg-Western Pomerania Mental Health Act).

Section 17 of the North Rhine-Westphalia Mental Health Act provides that clinics must inform those concerned about their rights and obligations while being detained in the clinic. This information is often provided in writing in several languages. A trusted third party, guardian ad litem or legal representative is also informed about the person concerned having been admitted, about their rights and obligations and the court order. Section 24 of the Mental Health Act contains concrete rules regarding the provision of information about independent

complaints bodies. Consultation hours must be offered within the grounds of that hospital in which the persons concerned have been placed (i.e. including protected wards).

Patients placed in forensic psychiatric establishments are given information upon admission (Forensic Psychiatry Act, which is now available in several languages; ward rules etc.) which also makes reference to the avenues for lodging a complaint and the right of petition.

Patients are supported by social services staff and by the care and educational service in asserting their rights.

Patients in forensic psychiatric establishments and in establishments enforcing the Mental Health Act in Rhineland-Palatinate are normally informed about relevant procedures applied in the establishments and about their rights. However, no standardised procedure is applied and no standardised guidelines are available. The CPT's recommendation will be used as an occasion to rethink whether it may be necessary to standardise these procedures.

The statutory provisions applicable in Schleswig-Holstein guarantee that patients in both civil and forensic psychiatric establishments are given information about their rights and avenues for lodging a complaint.

**Paragraph 121**

***The Committee trusts that the authorities of Brandenburg will remedy this shortcoming.***

The independent external visiting commissions' reports are regularly sent to the clinic managements.

**Paragraph 122**

***The CPT would like to receive a confirmation that a visiting commission has been created in Berlin and that advisory councils have been established for all forensic psychiatric clinics in Bavaria. Further, the Committee would like to receive further information about the composition, frequency of visits and competences of the advisory councils.***

Two independent external visiting commissions have been legally established in Berlin. They generally visit each psychiatric clinic and department once a year. Under section 13 of the Berlin Mental Health Act, these commissions are required to report to the *Land* Advisory Council for Mental Health (*Landesbeirat für seelische Gesundheit*, previously known as the *Land* Advisory Council for Psychiatry) once every year, and the Senate Administration for Health and Social Services is required to report to the *Land* Parliament once per parliamentary term.

Under Article 51 of the Bavarian Forensic Psychiatry Act, independent external advisory councils have been established for all forensic psychiatric clinics since the spring of 2016. The members of these advisory councils are a varied mix of members of the *Land* Parliament, dependents' representatives, representatives of self-help organisations, local government politicians, former judges, clergy and various other public figures.

Under Article 51 of the aforementioned Act read in conjunction with Article 187 of the Bavarian Prison Act, the members of the advisory council may accept requests, suggestions and complaints from patients and staff of the forensic psychiatric clinic they visit. They are also permitted to acquaint themselves with aspects of placement, employment, vocational training, meals, medical services and treatment in the forensic psychiatric clinic as well as to visit it. When visiting an establishment the members of the advisory councils are permitted to visit patients in their rooms. Inspection of patient records may be granted only with the consent of the patient concerned or – where applicable – of the patient's representative.

The members of the advisory councils exercise their authorities at least twice a year.

**Paragraph 126, part 1**

***The CPT recommends that the authorities of Bavaria take steps to ensure that the rules governing Lockerungen are reviewed at Wasserburg Forensic Psychiatric Clinic and, where appropriate, in other forensic psychiatric establishments in Bavaria, in the light of the above remarks. Further, the house rules should be revised accordingly.***

The final version of the Administrative Regulations concerning the Bavarian Forensic Psychiatry Act entered into force in Bavaria on 1 February 2017. They contain additional explanations regarding decisions concerning *Lockerungen* and disciplinary sanctions. They also make explicit reference to the fact that decisions concerning *Lockerungen* may not be used as a disciplinary sanction and to the fact that some disciplinary measures do not automatically lead to the revocation of *Lockerungen*.

Now that the final version of the Administrative Regulations has been issued, the Forensic Psychiatry Office will review the house rules and the handling of decisions concerning *Lockerungen* and will, where applicable, have the necessary changes made. For the rest, reference has consistently and explicitly been made during visits by the authority responsible for professional supervision conducted in recent months to the distinction between therapeutic and disciplinary measures.

**Paragraph 126, part 2**

***Further, the Committee encourages the authorities of Bavaria, Hessen and Saxony-Anhalt to totally abolish disciplinary sanctions vis-à-vis (forensic) psychiatric patients.***

The authorities in Saxony-Anhalt will discuss the Committee's recommendation with the establishments.

The Free State of Bavaria does not currently feel any need to amend the provisions on disciplinary sanctions in Article 22 of the Bavarian Forensic Psychiatry Act.

The Bavarian Forensic Psychiatry Act, including the new Article 22 (Disciplinary sanctions), entered into force on 1 August 2015. It was necessary to create the legal basis for disciplinary sanctions in forensic psychiatry since therapeutic measures can often also be classified as disciplinary sanctions. It was felt there was a particular need to be able to impose disciplinary sanctions in regard to patients placed in forensic psychiatric clinics under section 64 of the Criminal Code, especially those who discontinue their treatment, since they sometimes spend some time in the clinic before being transferred to a prison.

Disciplinary sanctions are not repressive measures and must not serve a punitive purpose. In addition, they can only be considered where a detained person has culpably breached the obligation imposed under the Bavarian Forensic Psychiatry Act or by means of an order issued under the Act (see Article 22 para. 1). Therefore, disciplinary sanctions are ruled out from the outset in the case of persons who are without fault. The decisive factor when assessing whether a detained person is without fault is the point at which he/she breached an obligation. Further, minor breaches of obligations do not justify disciplinary sanctions being imposed. Paragraph 2 of Article 22 of the aforementioned Act contains a full list of permissible disciplinary sanctions.

**Paragraph 127**

***The Committee recommends that the management of St Joseph's Psychiatric Hospital ensure that sufficient staff are present at the hospital at all times, including at night, and that they pursue their efforts to provide training on de-escalation and restraint techniques to all members of staff concerned in order to avoid interventions by police officers in the hospital.***

St Joseph's Psychiatric Hospital admits more than 3,400 patients each year. The police are called in to assist with agitated, violent patients in around ten of these cases. The police are only ever called in to assist in extremely dangerous situations involving knives and other weapons.

Staff undergo regular training in de-escalation techniques as well as methods of controlling and restraining patients. They can also call in an intervention team comprising staff from across the hospital via an emergency call button when such situations arise. However, it would be too much to ask for them to have to deal with violent threats alone.

In order to ensure that cooperation with the police in the few instances in which they provide administrative assistance is as untraumatic an experience as possible for patients, the hospital's management and the on-call doctors hold an intensive meeting with the competent police station twice a year.

Since 2016 the hospital and its doctors have been involved in the training courses which are regularly offered to police across Berlin in order to teach police officers about the characteristic features of those suffering from a mental disorder and how to deal with them sensitively and appropriately.

**Paragraph 128**

***The Committee would like to receive detailed information on the composition and training of the group, its equipment, the number and circumstances of its interventions and any injury sustained at interventions by patients and/or staff in the Clinic.***

The Clinic does not have a “special intervention team”. A group is formed neither of external nor internal staff, nor is any specific training etc. carried out.

It is true that the Clinic provides gloves, shields and helmets for the staff to use so that they can, in particular cases, protect themselves against injury from aggressive patients.

These accessories are used restrictively, i.e. only on a case-by-case basis.

**Paragraph 130**

***The Committee recommends that the authorities of Berlin and all other Länder concerned take the necessary steps to ensure that the aforementioned precepts are effectively implemented in practice in civil and forensic psychiatric establishments.***

Patients in Brandenburg are continually encouraged by staff to spend time exercising outside. Patients make extensive use of this possibility. To get to the cafeteria, patients need to leave the building where their ward is located. The care and educational service makes a note of when they leave the building. Each patient may spend at least five hours per day outside.

Saxony-Anhalt will use the occasion of the report to review its current practice.

Given that each ward in the forensic psychiatric establishment in Hamburg has been allocated a secured yard, detained persons can exercise outside every day without the need for any additional staff. Where a detained person's psychopathological state means that he/she must be accompanied by a member of staff, this is facilitated. Nearly all closed psychiatric wards have a secured outdoor area with direct access from the protected ward. Where this is not possible for structural reasons, patients are accompanied outside.

As of 1 January 2017 the North Rhine-Westphalia Mental Health Act has provided that hospital operators must enable patients to spend time outside every day, generally for at least one hour. Any restriction of outdoor exercise is subject to the provisions on special security measures under section 20 of the Act and must be reasoned in each individual case.

**Paragraph 132**

***The CPT encourages all relevant federal and Länder authorities to put a definitive end to the use of surgical castration as a means of treatment of sex offenders, including by amending the relevant legal provisions.***

The Federal Government would like to emphasise once again that voluntary castration is not a punitive measure, but primarily serves to prevent, treat or alleviate the person concerned's serious illnesses, mental disorders or problems associated with his/her abnormal sex drive. As already explained, it can be carried out only where very strict conditions are met, in particular after the person concerned has consented thereto. An expert also needs to confirm that these conditions are met. Further, in practice – as the CPT correctly states – it is carried out in only very rare exceptional cases and was neither authorised nor carried out in the period 2013 to 2015.

National Agency for the Prevention of Torture - Annual Report 2015:

[http://www.nationale-stelle.de/fileadmin/dateiablage/Dokumente/Berichte/Jahresberichte/Annual\\_Report\\_2015\\_National\\_Agency.pdf](http://www.nationale-stelle.de/fileadmin/dateiablage/Dokumente/Berichte/Jahresberichte/Annual_Report_2015_National_Agency.pdf)

**Baden-Württemberg Police Act**  
**(*Polizeigesetz für Baden-Württemberg, PolG BW*)**

(as amended on 18 October 2016,  
effective from 29 October 2016)

**Section 21**  
**Overt use of video and audio recording technology**

(1) The police service may make video and audio recordings of persons for the purpose of detecting and preventing threats to public safety and order during and in connection with public events and assemblies presenting a particular threat. Events and assemblies present a particular threat if

1. the latest threat assessment gives reason to believe that events and assemblies of a comparable type and size are at risk of terrorist attack or
2. experience shows that the type and size of the events and assemblies present a substantial threat to public safety.

(2) The police service may make video and audio recordings of persons in the properties and facilities referred to in section 26 (1) no. 3 or in their immediate vicinity in so far as facts support the assumption that criminal offences are to be committed around or in such properties and facilities which present a threat to persons, those properties and facilities, or items located inside them.

(3) The police service or the local police authorities may make video and audio recordings of persons in public places if the crime rate is significantly higher at those places than in the municipality as a whole and facts support the assumption that further criminal offences are expected to be committed there in the future.

(4) The police service may, when carrying out measures to prevent threats to public safety and order or to detect criminal or regulatory offences, collect data at public places to prevent a threat by making video and audio recordings using devices worn close to the body. Personal data may be collected even where third parties are inevitably affected.

(5) It is permissible to store data collected pursuant to subsection (4) for a period of more than 60 seconds only where facts support the assumption that this is necessary to protect police officers or third parties against a danger to life or limb. Data collection pursuant to subsections (1) to (3) and (6) remains unaffected.

(6) The police service may overtly monitor persons taken into custody by means of video transmission in so far as this is necessary to protect those persons or to protect the members of staff employed in the custody facility or to prevent criminal offences on police premises.

(7) Appropriate reference must be made to the fact that monitoring by means of video transmission and video and audio recording is being carried out, unless this is apparent. Video and audio recordings must be deleted without delay, after four weeks at most, unless, in a particular case, they are needed to detect criminal offences or regulatory offences of substantial significance, to assert public-law rights or, in accordance with the provisions of section 2 (2), to protect private rights, in particular to eliminate an existing lack of evidence.

They may also be further processed if third parties are inevitably affected. The significance of a regulatory offence is substantial where, based on the circumstances of the particular case, there is a danger to an important legal interest or other legal interests of a substantial nature or if the provision concerned protects another important general public interest.

(8) Subsection (7) applies mutatis mutandis to data collected pursuant to subsection (4), with the proviso that they must be automatically deleted after no more than 60 seconds and that any processing over and above their collection is ruled out, unless the conditions set out in section 21 (5) were previously met.

**Hessian Public Safety and Order Act**  
**(Hessisches Gesetz über die öffentliche Sicherheit und Ordnung, HSOG)**

(as published on 14 January 2005,  
as last amended by Article 7 of the Act of 28 September 2015,  
effective from 1 November 2015)

**Section 14**

**Data collection and other data processing in public places and particularly vulnerable public facilities**

(1) The police authorities may collect personal data, including data concerning persons other than those referred to in sections 6 and 7, during or in connection with public events or assemblies where factual indications support the assumption that there is a danger of criminal offences or more than minor regulatory offences being committed during or in connection with the event or assembly. The documents must be destroyed no more than two months after the end of the event or assembly, unless they are needed to prevent a threat to public safety and order, to detect a criminal or regulatory offence, or enforce a penalty. Processing for other purposes is not permissible. Section 20 (7) remains unaffected.

(2) The police authorities may collect personal data, including data concerning persons other than those referred to in sections 6 and 7, during or in connection with public events or assemblies where factual indications support the assumption that there is a danger of criminal offences being committed during or in connection with the assembly or the procession. The documents must be destroyed without delay after the end of the assembly or the procession or events closely related to it in terms of time and subject matter, unless they are needed to prevent a threat to public safety and order, to detect a criminal offence or regulatory offence, or enforce a penalty. Processing for other purposes is not permissible. Section 20 (7) remains unaffected.

(3) The police authorities may overtly monitor and record public places by means of video transmission to prevent a threat to public safety and order or where factual indications support the assumption that there is a danger that criminal offences will be committed. The fact that the monitoring is taking place and the body responsible for it must be identified by suitable means. Permanently installed systems may be operated for a period of two years regardless of whether the conditions for their installation under the first sentence are still met; the period is extended accordingly where the conditions are still met. The second and third sentences of subsection (1) as well as section 15 of the Hessian Data Protection Act apply mutatis mutandis.

(4) The civil administrative and regulatory authorities responsible for the prevention of threats to public safety and order may conduct overt monitoring and recording by video transmission

1. to secure public streets and squares where criminal offences have repeatedly been committed, in so far as there are factual indications that further offences will be committed,
2. to protect particularly vulnerable public facilities,
3. to monitor systems for directing and controlling road traffic, unless this is precluded by the provisions of road traffic law.

The person or body exercising householder's rights is also a civil administrative and regulatory authority responsible for the prevention of threats to public safety and order within the meaning of no. 2. The second and third sentences of subsection (1), the second and third sentences of subsection (3) and section 15 of the Hessian Data Protection Act apply mutatis mutandis.

(5) The police authorities may collect vehicle registration data by automatic means on public roads and squares for the purpose of checking them against data files. Data which are not contained in the data files must be deleted without delay.

(6) The police authorities may use video and audio recording technology to record persons in the short term at public places for the purpose of establishing their identity under this Act or other statutory provisions, they may overtly monitor and record such persons where this is necessary in the given circumstances to protect police officers or third parties against a danger to life and limb. Personal data on third parties collected in doing so may also be recorded in so far as this is essential in order to be able to carry out a measure as referred to in the first sentence. They must be deleted without delay once the data are no longer needed for the purposes of ensuring the police officers' own safety or for detecting criminal offences.

**Fourth Act to Amend the Police Act of North Rhine-Westphalia  
(*Viertes Gesetz zur Änderung des Polizeigesetzes des Landes Nordrhein-Westfalen*)**

of 6 December 2016

**Section 15c  
Data collection using body worn recording devices**

(1) The police may use body worn recording devices overtly to make video and audio recordings when carrying out measures to prevent threats to public safety and order and to detect criminal or regulatory offences where facts support the assumption that this is necessary to protect police officers or third parties against a danger to life or limb. Personal data may also be collected where third parties are inevitably affected thereby. The police officer wearing the recording device takes the decision whether to make the recording based on the specific circumstances of the individual case.

(2) It is permissible to make recordings in residential accommodation (section 41 (1), second sentence) when carrying out measures to prevent threats to public safety and order and to detect criminal or regulatory offences only where facts support the assumption that this is necessary to protect police officers or third parties against an imminent danger to life and

limb. Unless there is an imminent danger, the officer leading the operation takes the decision whether to make a recording in residential accommodation. The second sentence of subsection (1) applies *mutatis mutandis*.

(3) The use of recording devices must be made apparent by suitable means and the persons concerned notified thereof. Such notification may be dispensed with in the event of imminent danger. Recordings are not permissible in areas which serve the exercise of the activities of those with the right to refuse to testify pursuant to sections 53 and 53a of the Code of Criminal Procedure. Recordings are made and stored in an encrypted and tamper-proof form.

(4) The recordings made pursuant to subsections (1) and (2) are to be deleted two weeks after they were made. This does not apply where the recordings are needed to prevent a threat to public safety and order or to detect criminal or regulatory offences. The officer making the recording takes the decision to delete it, with the consent of his or her superior. Subsection (6) applies to the use of information gathered from recordings made pursuant to subsection (2). Section 23 (1) and section 32 (5) remain unaffected.

(5) It is not permissible to record personal data concerning the core area of the private conduct of life. The recording process must be interrupted without delay where, in the course of making a recording, factual indications arise that data concerning the core area of the private conduct of life are being recorded. Recordings of such statements and actions must be deleted without delay. Once interrupted, a recording may be continued only where, based on a change in circumstances, it can be assumed that the reasons which led to the interruption no longer apply.

(6) It is permissible to use information gathered pursuant to subsection (2) and the fourth sentence of subsection (5) to prevent a threat to public safety and order only where a court has first determined the lawfulness of the measure. In the event of an imminent danger, a court order must be obtained subsequently without delay. When playing back the recording it must be stated that it originated during a measure pursuant to subsection (2). Following transmission to another agency, such labelling must be maintained by that agency. The provisions of the Code of Criminal Procedure remain unaffected.

(7) Section 24 (6) and (7) remains unaffected.

(8) A record must be kept of measures pursuant to subsections (1) to (6). The Ministry of the Interior shall regulate further details by way of administrative regulations. The *Land* Government shall notify the *Land* Parliament on the 31st of December each year of measures pursuant to subsections (2) and (5).

(9) The impact of this regulation and of its practical implementation is to be reviewed by the *Land* Government by 30 June 2019 with the involvement of an independent expert in the social sciences or an expert in the police sciences. The *Land* Government shall report the results of the evaluation to the *Land* Parliament. Section 15c ceases to be effective on 31 December 2019.

**Saarland Police Act**  
**(Saarländisches Polizeigesetz, SPoIG)**

(Article 1 of Act no. 1252) of 8 November 1989,  
as published on 26 March 2001 (Gazette, p. 1074),  
as last amended by the Act of 18 May 2016 (Gazette I, p. 440)

**Section 27**  
**Video and audio recordings**

(1) The police service may collect personal data during or in connection with public events or assemblies which are not subject to the provisions of the Act concerning Assemblies and Processions, including by making video and audio recordings of persons, where factual indications support the assumption that there are plans to commit criminal offences or regulatory offences of substantial significance. The measure may also be carried out where third parties are inevitably affected.

(2) The police service may overtly make video recordings of persons

1. in public places to prevent a threat to public safety and order or where facts support the assumption that criminal offences are being arranged, prepared or committed there,
2. in the properties or facilities referred to in section 9 (1) no. 3 or in their immediate vicinity in so far as factual indications support the assumption that criminal offences presenting a threat to persons or these properties or facilities are to be committed there. Attention is to be drawn to measures pursuant to the first sentence by means of notices or in another suitable manner.

(3) The police service may, in public places, store personal data in the short term (pre-recording) and overtly make video and audio recordings in so far as this is necessary to protect police officers or third persons to prevent a concrete threat to public safety and order. Attention is to be drawn to measures pursuant to the first sentence by means of notices or in another suitable manner.

(4) The police service may collect personal data on police premises by means of the overt use of video and audio recording technology in so far as this is necessary to protect detained persons or police officers.

(5) The police service may record in-coming emergency calls to keep a record of emergency incidents. It is permissible to record other calls only in so far as this is necessary to prevent a threat to public safety and order. In the cases referred to in the second sentence, the caller's attention must be drawn in a suitable manner to the fact that the recording is being made, unless this will jeopardise the purpose of the recording.

(6) Where the recordings are not needed to detect criminal offences or regulatory offences of substantial significance, they must be deleted

1. without delay in the case of measures pursuant to subsections (3) and (4),
2. after no more than two weeks in all other cases.