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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 20 November to 2 December 2005

The German Government has requested the publication of the CPT's report on the visit to Germany in November/December 2005 (see CPT/Inf (2007) 18) and of its response. The response, translated into English by the German authorities, is set out in this document.

The German text of the response can be found on the CPT's website (www.cpt.coe.int).

Strasbourg, 18 April 2007

**Response of the German Government
to the recommendations, comments and requests for information
of the European Committee for the prevention of torture and inhuman or
degrading treatment or punishment (CPT) following its visit
from 20 November to 2 December 2005**

Introduction

The German Federal Government herewith submits its response to the Recommendations, Comments and Requests for Information set out in the Report on the visit to Germany of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 20 November to 2 December 2005 (CPT (2006) 36).

A delegation of the CPT visited Germany from 20 November to 2 December 2005. The visit formed part of the CPT's programme of periodic visits for 2005. It was the CPT's fourth periodic visit to Germany, and its fifth visit in total.

Germany wishes particularly to thank the CPT for the very good co-operation that was based on a spirit of trust. Germany has taken careful note of the critical recommendations and comments contained in the Report and sees occasion to make improvements. The Federal Republic of Germany is pleased that the CPT observed and also praised the considerable improvements made at the Eisenhüttenstadt Detention Centre for Foreigners and in the Nordbaden Psychiatric Centre during its follow-up visits. Germany notes with satisfaction that the CPT did not ascertain that there were any serious shortcomings in any of the establishments visited.

The Report was adopted by the Committee on 7 July 2006 and delivered to the Federal Republic of Germany on 28 July 2006.

This following response observes the structure of Appendix II of the Report, which contains a list of the CPT's recommendations, comments and requests for information. These will appear indented, in italics, at the beginning of the section to which they refer.

Consultations held by the delegation and co-operation encountered

Comments

- *The CPT encourages the federal authorities to continue and strengthen their efforts to ensure a uniform level of awareness of the obligations under the Convention which devolve to the Länder authorities (paragraph 6).*

The Federal Government and the *Länder* attach great importance to the protection of human rights. They therefore regard the work of the CPT to be very significant. Safeguarding uniform awareness of the obligations under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment is therefore a continuous matter of concern to the German authorities. The Federal Government is convinced that all authorities in Germany are doing their utmost to fulfil their human rights obligations. On the occasion of the publication of the CPT's Report it again reminded the *Länder* of their obligations and responsibilities under the Convention and requested that they be complied with.

The Federal Government regrets that the Committee gained the impression that the German authorities have not always taken sufficient action in regard to its recommendations (paragraph 7). The recommendations and suggestions made by the CPT following each of its visits have always been carefully noted and their implementation investigated. As the CPT also states, this has already led to many improvements being made. Nevertheless, there will always be measures recommended by the Committee which require a thorough investigation before they can be initiated. As far as this affects the legal safeguards for persons in police custody to which the Committee refers, the German authorities are prepared to examine introducing measures in the medium term (cf. response to paragraphs 22 and 23 below).

- *As regards the recent constitutional changes which resulted in the transfer of the responsibility for the prison legislation from the federal level to the Länder, the federal authorities should ensure that the standards and safeguards already achieved in prison law are maintained in future (paragraph 8).*

Following the transfer of legislative responsibility for the penal system to the *Länder*, the Federal Government no longer has any legal powers regarding the execution of sentences. However, there is no reason to assume that the *Länder* parliaments and the *Länder* ministers of justice, which now bear this responsibility, will not comply with constitutional regulations pertaining to the penal system. The *Länder*, too, are bound by constitutional law, basic and human rights and, in particular, the principle of rehabilitation of prisoners and legally binding agreements at international level.

Immediate observation under Article 8, paragraph 5 of the Convention

Recommendations

- *The federal and all Länder authorities to take the necessary steps to ensure that all the principles and minimum safeguards set out in paragraph 11 are applied in all establishments in Germany resorting to Fixierung (paragraph 11).*

The Federal Government shares without reservation the CPT's view that physical restraint (*Fixierung*) always represents the *ultima ratio*. It was made clear in the response submitted to the Committee by letter of 20 January 2006 regarding an immediate response to the observation under Article 8, paragraph 5 of the Convention that the CPT's principles as regards the *Fixierung* of persons who have been deprived of their liberty are already being complied with to the greatest possible extent.

That was also the conclusion drawn following a renewed survey of the *Länder* and the competent federal ministries. These were asked for a response to the CPT's Report and its request that the principles and minimum standards established by the Committee as regards *Fixierung* be complied with.

Fixierung as defined in the CPT's Report is not standard Federal Police practice. In the *Länder* it is applied extremely rarely and is the measure of last resort, having regard to the requirement of proportionality of means of restraint for the purpose of preventing an individual harming themselves or others. Furthermore, it is only applied for as long as it serves its purpose. However, in the experience of the *Länder*, they do not expect to be able to completely dispense with the measure.

In Brandenburg *Fixierung* may only be applied on the recommendation of a doctor or a psychologist. In Berlin *Fixierung* is ordered by a doctor for medical reasons. In most *Länder*, it is not a doctor who orders *Fixierung*. However, these *Länder* have safeguards in place to ensure that each person subjected to physical restraint is examined by a doctor without delay in order to establish whether there are any obstacles to *Fixierung* or whether there are any risks involved. Safeguards are in place to ensure that, until that has occurred, the person in question is kept under especially careful observation.

As regards the apparatus used, the aim is for the person in question to be treated with as much care as possible. In Berlin, *Fixierung* is applied - depending on each individual case - using leather or textile straps, Securofix systems or special, extra-wide steel cuffs with rounded off edges. Members of the CPT inspected and found no fault with the latter during their last visit to Berlin-Tegel Prison.

In response to the CPT's Report of 6 July 2001, prisons in Brandenburg have already been instructed only to apply *Fixierung* to prisoners using a system of bandages.

The steel cuffs used in Hamburg are fastened to the bed to which the detainee is to be fettered. In addition, the individual may be secured by means of a leather belt around the chest. No injuries on account of the cuffs have been registered to date. Extra protection is provided in order to avoid the cuff coming into direct contact with the prisoner's skin. *Fixierung* is handled in such a way that the prisoner cannot harm himself/herself. Staff are trained in the use of the equipment.

After examining the methods applied, Hessen has abandoned its former practice of tying each of the detainees' wrists to the ankles (known as *Krummschließen*) and instead resorted to *Fixierung* on special beds, as is standard practice in medical/psychiatric settings. Training will be given in the use of the bed and the system of straps by which the detainee is to be fettered.

According to the judicial authorities of the *Länder*, safeguards are in place to ensure continuous, direct monitoring of the individual subject to *Fixierung*.

In Bayern, Brandenburg, Mecklenburg-Vorpommern, Nordrhein-Westfalen, Rheinland-Pfalz and Saarland, continuous, direct personal supervision by a member of staff (*Sitzwache*) is always performed. A doctor is involved in the decision on whether this is to be carried out by a member of the medical or general prison staff.

In Hamburg such personalised supervision is only used in one unit of the remand prison, where this is necessary because the cell is equipped neither with a two-way intercom nor with CCTV. The person responsible for supervising the detainee remains out of the prisoner's line of vision. In principle, it is believed that individualised staff supervision requiring the direct presence of a member of staff next to a prisoner is counterproductive, as the prisoner may well be enraged and thus under restraint. The immediate presence of a member of staff would lead to the prisoner focussing on the symptoms which led to the measure being taken and prevent the causes being investigated and dealt with.

In Thüringen a member of staff is charged with supervising a prisoner under restraint. CCTV is in continuous use and the member of staff visits the prisoner at regular, short intervals. Hessen is currently still investigating whether the monitoring of a prisoner subject to *Fixierung* is being carried out by direct supervision or using technical equipment.

All the *Länder* believe it is important that members of staff are available to speak to the prisoner if they so wish. The person subject to *Fixierung* is given the opportunity to talk to various members of staff, including psychologists, psychiatrists, doctors or directors of the institution. In Hamburg each prisoner is informed of the reason for the *Fixierung* prior to the measure being carried out. The aim is thereby to prevent the threatened measure actually being implemented.

Some *Länder* already document every instance of *Fixierung* in a specific register, essentially as suggested by the CPT. The *Länder* also have official regulations set out in writing on issues relating to *Fixierung*.

As regards the fact that minimum standards set by the CPT are currently not being fulfilled, all the *Länder* are planning to have a debate on their implementation in the near future. Establishments have been requested to put forward suggestions.

Niedersachsen, Nordrhein-Westfalen and Schleswig-Holstein have already enforced by decree the principles pertaining to prisons established by the Committee. Sachsen-Anhalt intends to do the same by means of an administrative regulation; compliance with this regulation is to be ensured by means of regular reviews by supervisory bodies.

Police establishments

Ill-treatment

Recommendations

- *It to be made clear to all police officers that the force used when carrying out an apprehension should be no more than is strictly necessary and that, once the persons concerned have been brought under control, there can be no justification for striking them. More generally, they should be reminded regularly and in an appropriate manner that any form of ill-treatment - including verbal abuse - of detained persons is not acceptable and will be punished accordingly (paragraph 14).*

The *Länder* and the Federal Ministry of the Interior were asked to respond to the CPT's findings regarding the excessive use of force by police officers when carrying out an apprehension. They made it clear that it is a basic principle of police intervention that conflict resolution involves as little violence as possible and that force during an apprehension and that applied to persons taken into custody is to be restricted to the absolute minimum required. Nevertheless, it cannot be completely ruled out.

It is a key issue in training and further training courses of the *Länder* police forces and the Federal Police that police actions must abide by the rule of law, impeccably comply with official regulations and observe human rights. Police officers are taught how far they may go by receiving lessons in the content of current legislation. They undergo training in how to carry out an apprehension and how to take someone into custody, including techniques for carrying out an apprehension without excessive use of force. These techniques are refreshed during training courses that are held on a regular basis. In one particular training course (operational training) the police officers regularly train the entire range of police interventions, from verbal communication processes to re-establish law and order to the use of firearms.

Unnecessary or excessive use of force are as little tolerated as verbal abuse of apprehended persons. Insults against a person's honour and disproportionate use of force by a member of the police force are prosecuted under criminal and disciplinary law.

The following is an extract of a letter from the Chairman of Working Group II (Internal Security) of the Standing Conference of the Interior Ministers of the *Länder* to the Secretary-General of the German section of amnesty international (ai) dated 8 November 2006:

"The work of the police is based on the rule of law and tremendous professional ethos. The authorities therefore take very seriously each instance of the illegal use of force by police officers in the execution of their official duties. Safeguards are also in place in Germany to guarantee that any accusations made are examined by an authority other than the police unit in question, which is in turn bound by the law. The criminal prosecution authorities must apply the principle of mandatory prosecution and have the duty to investigate any suspicion of a criminal offence. Likewise, under the laws applicable to civil servants of the Federal Administration and of the *Länder*, superior officials are obligated to take action in any suspected case of violation of official duty."

- *The Federal Police and the police services of the Länder to follow the positive approach of the police authorities of the Land of Berlin and prohibit the combined use of hand- and ankle-cuffs (so-called "hogtie-Fesselung") (paragraph 15).*

To begin with it must be pointed out that the term "*hogtie-Fesselung*" cannot automatically be applied to the simultaneous use of hand- and ankle-cuffs, since the term refers only to a very specific combination of hand- and ankle-cuffs. The responses from the Federal Ministry of the Interior and the *Länder* show that this means of restraint is either not used or is already prohibited. Police practice is thus already in line with the CPT's request.

The *Länder* have rejected a general prohibition of the simultaneous use of hand- and ankle-cuffs. However, the Federal Government interprets the CPT's recommendation such that it does not criticise all forms of the simultaneous use of hand- and ankle-cuffs. In some individual cases hand and foot *Fixierung* must be carried out simultaneously against considerable resistance in order to protect uninvolved third parties, to protect a prison officer or to protect the individual concerned. This can be the case, for example, where there is a risk of escape, the individual resists the apprehension / being taken into custody or it is to be assumed that the person will put up resistance during transportation or other police measures. Reference is here in particular made to especially dangerous individuals. Introducing a regulation which prohibits the simultaneous use of hand- and ankle-cuffs during a restraint measure *per se* could in the aforementioned cases lead to the legally sanctioned goals, in particular the protection of the highest objects of legal protection, such as the life and limb of third parties, not being achieved or not to the necessary degree. Some police forces have instructions regarding this aspect, such as Police Service Regulation *PDV* 202, No. 5 and Manual LF 371, No. 3.9 in Baden-Württemberg, Manual (LF) 371 "Personal Safety " in Rheinland-Pfalz and Section 255 Land Administrative Procedure in conjunction with the General Administrative Regulations Concerning the Use of Direct Force in conjunction with the Rules on Custody of the Police of Schleswig-Holstein.

Safeguards:

Recommendations

- *The federal and all Länder authorities to ensure without further delay that all persons deprived of their liberty by any federal or Länder police service, for whatever reason, are granted the right to notify a close relative or third party of their choice about their situation as from the very outset of their deprivation of liberty (that is, from the moment when they are obliged to remain with the police). The exercise of this right could be made subject to certain exceptions designed to protect the legitimate interests of the police investigation, provided those exceptions are clearly circumscribed in law and made subject to appropriate safeguards (e.g. any delay in notification of custody to be recorded in writing with the specific reasons therefor and to require the approval of a senior police officer unconnected with the case at hand or a public prosecutor) (paragraph 22).*

The current legal situation is as follows:

1. Apprehension pursuant to the Code of Criminal Procedure (StPO)

a. Arrest (Section 114 StPO)

Section 114b StPO contains regulations governing the notification of relatives of an arrest. Accordingly, a relative or another trusted person is to be notified without delay of the arrest and of every further decision concerning the continuation of detention. Pursuant to Subsection 2 of the provision, the arrested person is to be given the opportunity to notify a relative or a trusted person of the arrest, provided the purpose of the investigation is not endangered thereby. A judge is competent to make the order to notify a relative or another person pursuant to Subsection 1 and to grant the right under Subsection 2.

The obligation to inform a relative or a third party under Subsection 1 of the provision refers to the arrest and any further decision concerning the continuation of detention. An arrest is the apprehension of a person based on an arrest warrant in accordance with Section 114b StPO or Sections 230(2), 236 StPO.

b. Provisional arrest (Section 127(2) StPO)

Section 114b StPO does not cover cases of provisional arrest under Section 127 StPO, because the latter is a temporary measure which will be cease directly or which must be turned into remand retention. Under Section 128(1) StPO, the person under provisional arrest must be brought before the competent judge without delay, at the latest the day after the arrest. The judge examines the person brought before him/her in accordance with Section 115(3) (Section 128(1) second sentence StPO). Only when the judge has issued an arrest warrant in accordance with Section 128(2) second sentence StPO and ordered its execution does the duty to inform a relative or other person under Section 114b(1) StPO arise, or rather the arrested person is given the opportunity pursuant to Subsection 2 of the provision to inform a relative or person trusted by him/her.

The same applies in cases where the accused is apprehended on the basis of an arrest warrant in accordance with Section 115(1) StPO. Then, as under Section 128 StPO, he/she must be brought before the competent judge without delay, at the latest the day after the arrest. Here the duty to inform under Section 114b StPO also only arises when the arrest warrant is upheld and executed. Only then must the judge also give the accused the opportunity to notify a third party.

As the CPT has again ascertained, the StPO thus does indeed not contain any regulations giving the apprehended person the right to notify third parties immediately after being apprehended. Such provisions under police law, for example Section 41(2) Federal Police Act, only find application during apprehensions that are a (preventive) police measure. The Convention for the Protection of Human Rights and Fundamental Freedoms does not contain any obligation to introduce such regulations in regard to criminal prosecution measures. The referral in Article 5 para. 1 of the Convention to domestic law results in the Member States' obligation to uphold substantive and procedural provisions. However, the Federal Government is willing to examine introducing such a right in the medium term.

Notwithstanding that fact, the arrested person may be given the opportunity to notify a relative or another person. A survey of the *Länder* showed that this is also made use of in principle - under the restrictions applicable to apprehensions. This is the case, for example, in Bayern. In Hamburg Police Service Regulation *PDV* 350 ("Normal Duties") stipulates in binding form that a person taken into custody under the law on criminal procedure or police law is to be given the opportunity to inform a relative or other person without delay provided the purpose of the deprivation of liberty is not thereby endangered (e.g. if non-notification is necessary to prevent a criminal offence, Section 13b(2) first sentence Law on the Protection of Public Security and Order (SOG) of Hamburg). Instructions and information in reference to that are put on record. Police officers in Hamburg carefully weigh up justified police interests against the rights of the arrested person, as the Committee requests they should. Arbitrary delays to or the prevention of such notification would constitute a violation of official police duties and would result in disciplinary measures.

2. Preventative police custody

As the CPT notes in paragraph 20, the right to inform a close relative or a third person without delay is already sufficiently regulated as regards preventive police custody under Section 41(2) Federal Police Act and under Section 21(7) Act on the Federal Office of Criminal Police. This complies with the CPT's call for the person taken into custody to be given the possibility of notifying a close relative or a third person of their choice from the very outset of their deprivation of liberty. As regards the call to introduce legal provisions governing exceptions to these rules and to introduce appropriate safeguards, the Federal Ministry of the Interior holds to the Federal Government's response to the CPT's Report following its 2000 visit, which is cited in paragraph 20.

As the CPT notes, the basic principles described in the previous section also apply where a person has been taken into police custody by a *Land* police force for the prevention of threats.

- *The federal and all Länder authorities to ensure that the right of access to a lawyer is guaranteed to all persons deprived of their liberty on suspicion of having committed a criminal offence, as from the very outset of their deprivation of liberty (that is, from the moment when they are obliged to remain with the police) (paragraph 23).*

Reference is here made to the Federal Government's most recent responses in this regard. According to the German law on criminal procedure, the accused may draw on the assistance of a defence counsel at any stage of the proceedings (Section 137(1) first sentence StPO), that is also during investigative proceedings. This right is guaranteed under the Code of Criminal Procedure from the moment they become accused. A person is classed as "an accused" (*Beschuldigter*) when the criminal prosecution authorities take measures whose recognisable purpose is to prosecute that person. Persons become "accused" at the latest when they are taken into custody for a punishable criminal offence (cf. also Section 127(1) StPO, which refers to the accused). They also then enjoy the right of access to a lawyer.

- *Steps to be taken at Frankfurt an der Oder Regional Police Headquarters and, if appropriate, in other police establishments in Germany, to ensure that all medical examinations are conducted out of the hearing and – unless the doctor concerned expressly requests otherwise in a given case – out of the sight of police staff (paragraph 28).*

1. After examining the statements made by the CPT, the Ministry of the Interior of Brandenburg cannot confirm that police officers are as a general rule present during medical examinations carried out at Frankfurt an der Oder Regional Police Headquarters. Police officers are only present during the giving of medical treatment when there is a recognisable risk to the security of those persons giving or receiving the treatment.

For example, police officers must be present during an examination carried out in accordance with Section 81a StPO in the event of the aforementioned risk. Persons who are in police custody as accused and who are suspected of having committed a criminal offence under the influence of alcohol are regularly ordered to provide a sample of blood in accordance with Section 81a StPO; such blood samples are taken by a doctor. For the purpose of the protection of the physician at least one police officer is in attendance during such an examination ordered by the police. This is no patient-doctor meeting in the classic sense, which is subject to medical secrecy. Where either the accused or the doctor registers the need for medical supervision or treatment prior to or following a measure in accordance with Section 81a StPO, police officers leave the treatment room after an analysis of the risks.

2. Based on the CPT's Report, all the *Länder* have been asked to take note and comply with the CPT's recommendation regarding medical examinations.

- *The federal and all Länder authorities to ensure without further delay that all persons detained by the police – 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 oral information at the very outset, to be supplemented at the earliest opportunity (that is, immediately upon first entry into police premises) by provision of a written form setting out their rights in a straightforward manner. This form should be available in an appropriate range of languages. Further, the persons concerned should be asked to sign a statement attesting that they have been informed of their rights (paragraph 33).*

1. The Code of Criminal Procedure (StPO) does not contain any provisions requiring persons detained by the police to be fully informed of their fundamental rights, as requested by the CPT, when the apprehension is made in connection with criminal proceedings. Sections 136, 163a(2) StPO provide for the accused not being informed of his/her rights until the start of formal questioning. Section 136 StPO also applies to the first examination by the competent judge in the case of an examination in accordance with Section 115 StPO. Nor does the Convention for the Protection of Human Rights and Fundamental Freedoms result in the duty to which the CPT refers, namely to inform the accused of his/her rights. However, the Federal Government is prepared to examine introducing a corresponding regulation in the medium term.

2. Based on the CPT's Report, all the *Länder* have been informed of this recommendation and asked to comply with it. A survey has shown that all the *Länder* inform a person taken into custody without delay of the reason for the deprivation of liberty and that they inform them of other rights in connection with the deprivation of liberty. Where required, all the *Länder* draw on the services of interpreters to inform the person taken into custody of their rights.

In some *Länder*, for example in Niedersachsen, Hamburg, Bayern and Rheinland-Pfalz, each person who is taken into custody is given an information sheet that is available in the most commonly used languages and which contains information on the rights associated with being taken into custody. Berlin and Schleswig-Holstein will first be exchanging experiences with other *Land* police forces and the Federal Police on their practical experience in this matter. Mecklenburg-Vorpommern intends to draft an information sheet which is to be signed by the instructed person following his/her instruction. Baden-Württemberg does not see any urgent need for this instruction to be given in writing. In accordance with 28(2) Police Act, the person taken into custody is informed without delay of the reason for this measure and of the permissible legal remedies against it; the legal situation is explained in a straightforward manner. Police stations in Saxony have been notified of the CPT's recommendation and asked to comply with it.

3. The CPT specifically praises the instruction leaflets used by the Federal Police, which are available in more than 60 languages. In line with the CPT's recommendation, the Federal Police also now uses a declaration to be signed by persons to confirm that they have been informed of their rights.

- *Steps to be taken throughout Germany to ensure that juveniles do not make any statement or sign any document related to the offence of which they are suspected without the benefit of a trusted person and/or a lawyer being present and assisting them. The relevant legal provisions should be amended accordingly (paragraph 35).*

1. According to German law a confession can be no substitute for the furnishing of evidence of an offence. Even when a conviction may be based on a confession, this is only permissible following a critical appraisal of the value of the evidence. In addition, a police record of interrogation may not be read out for the purpose of taking evidence (Section 254 StPO only permits this during hearings before a judge) if the accused later retracts the confession during further proceedings or does not give testimony during the main hearing.

That said, the current legal situation is as follows:

a) Presence of legal representatives, parents/legal guardians and other trusted persons

According to applicable law, the accused's legal representatives or parents/legal guardians also have the right to be present during any questioning by the police (Section 67 Youth Court Act (JGG), Investigations) (cf. Diemer/Schoreit/ Sonnen, *JGG-Kommentar*, 4th ed., Section 67 No. 14; Brunner/Dölling, *JGG-Kommentar*, 11th ed., Section 67 No. 19; Ostendorf, *JGG-Kommentar*, 6th ed., Section 67 No. 10; Eisenberg, *JGG-Kommentar*, 11th ed., Section 67 No. 11). As a result, the police have the duty always to inform the legal representative or parent/legal guardian (in the case of an arrest, Section 114b StPO applies; cf. also response to paragraph 22 of the Report and *PDV* 382 Nos. 6.4.1 to 6.4.3). Even where reference is not made to Section 67(2) JGG because the summons of a juvenile to questioning by the police is not specified by law and Sections 168c(5), 163a(3) StPO do not apply, it is necessary to inform these persons so that their right to be present does not come to nothing (Diemer/Schoreit/Sonnen, loc. cit., Section 67 No. 14; Eisenberg, loc. cit., Section 67 No. 11; Ostendorf, loc. cit., Section 67 No. 10).

On account of the fact that, according to Section 2 JGG, Section 163a(4) StPO in conjunction with Sections 136, 163a, 168c StPO must be interpreted such that they are appropriate to juveniles, a young person also has the right at any time, including before the first examination, to draw on the advice of a legal representative or parent/legal guardian (Eisenberg, loc. cit., Section 67 No. 11, 11b; Ostendorf, loc. cit., Section 67 No. 10). The juvenile must be informed of this right as he/she must, among other things, of his/her right not to make any statements on the charges made (Section 163a(4) StPO, Section 136(1) second sentence StPO, Section 2 JGG).

Police Service Regulation *PDV* 382 provides for the following as regards the examination of the accused without summons (3.3.1 and 3.3.2 *PDV* 382 also apply to summons to a hearing):

No. 3.4.2: "Prior to their first examination, juveniles shall be instructed of their rights under Sections 163a(4), 136 StPO in a manner which corresponds to their stage of development. Their decision shall be respected. Before taking such decisions juveniles shall be given the opportunity to speak to a parent/legal guardian and legal representative. The juvenile and the parent/legal guardian or legal representative shall be instructed of that right beforehand (Section 67 JGG). This does not apply when there are indications to suggest that this would pose a risk to the investigation of an illegal act."

No. 3.6.5: "Where juveniles are to be examined as accused, parents/legal guardians and legal representatives shall have the right to be present and to be involved (Section 67 JGG). Where possible, they shall be instructed of this right prior to the examination."

According to No. 3.6.4 Police Service Regulation *PDV* 382, which the CPT quotes in part in paragraph 34, it may be appropriate, in order to avoid any influence upon the juvenile, to interview the juvenile alone, with the agreement of the parent/guardian and legal representative. However, this regulation refers to the examination of a juvenile as a witness.

According to prevailing opinion, however, the legal representatives' and parents'/ guardians' right to be present can be restricted (cf. Diemer/Schoreit/Sonnen, loc. cit., Section 67 No. 15; Brunner/Dölling, loc. cit., Section 67 No. 20; Eisenberg, loc. cit., Section 67 No. 11a; a. M. Ostendorf, loc. cit., Section 67 No. 10). Possible reasons are, among other things: unknown whereabouts or unavailability of the persons concerned, the juvenile himself/herself expressly refuses their notification or presence. Furthermore, Section 51(2) JGG has also in the past been called into play as justification. However, where this provision permits persons to be excluded from the main hearing who have parental responsibility within the meaning of Article 6 para. 2 of the Basic Law (Decisions of the Federal Constitutional Court 107, 104ff; NJW 2003, p. 2004ff), the Federal Constitutional Court declared the provision too vague and thus null and void on account of a violation of Article 6 para. 2 of the Basic Law. The Second Act to Modernise the Judiciary thus provides in Article 23 No. 2 for a change to Section 51(2) JGG (Federal Law Gazette I, p. 3416, 3432). The Act came into force on 1 January 2007.

Section 51(2) JGG was replaced by the following Subsections 2 to 5:

- "(2) *The presiding judge may also exclude the accused's parents/legal guardians and legal representatives from the hearing if*
1. *there is a risk of considerable educational disadvantages because of the fear that by discussing the accused's personal situation in their presence this would render considerably more difficult any necessary future co-operation between the persons mentioned and the juvenile court assistance agency in implementing the expected sanctions imposed by the judge in juvenile matters;*
 2. *they are suspected of being involved in the accused's misdemeanour or have been sentenced on account of such involvement;*
 3. *a threat to the life, limb or freedom of the accused, a witness or another person or other considerable harm to the accused's wellbeing is to be feared;*
 4. *it is to be feared that their presence would impede the investigation of the truth; or*
 5. *circumstances concerning the personal life of one of those persons involved in the proceedings, witnesses or those injured by an illegal act are to be discussed and such discussion in their presence would violate their legally protectable interests, unless the interests of the parents/legal guardians and legal representatives in discussing these circumstances in their presence outweigh the other interests.*

In the case of sentence 1 Nos. 3 to 5, the presiding judge may also exclude the parents/legal guardians and legal representatives of the injured party from the hearing; in the case of No. 3 this is also possible when another considerable detriment to the injured party's wellbeing is to be feared. Parents/legal guardians and legal representatives are to be excluded if the preconditions set out in sentence 1 No. 5 are given and the person whose circumstances are to be discussed applies for them to be excluded. Sentence 1 No. 5 shall not apply where those persons who are affected contradict the exclusion during the main hearing."

At least in these cases the rights of the parents are set against not only the state's duty to protect but also against the constitutional principle of the protection of legal interests under criminal law, and its assertion during legal proceedings, or against the constitutionally protected rights of others; thus the restriction imposed on parental rights is justified. The Federal Constitutional Court also made it clear in its decision that, for the purposes of investigating criminal offences (which, for the protection of its citizens, is to occur in judicial proceedings geared to ascertaining the truth), it is possible to intrude upon parental rights after an appropriate weighing up of legal interests (NJW 2003, p. 2005).

Particularly after the police has gained first access to a suspect it is often very sensible, in order to safeguard an effective investigation of the truth, for him/her to be examined swiftly. The presence of legal representatives or parents/guardians cannot be required without restrictions being imposed, even taking into account the principle of the protection of juveniles and the basic rights of parents and other persons to bear parental responsibility within the meaning of Article 6 para. 2 of the Basic Law, (cf. also Decisions of the Federal Constitutional Court, *NJW* 1988, 1256).

In addition, the status of a young person as subject in criminal proceedings, as required by constitutional law, does not necessitate the compulsive involvement of other trusted persons of the juvenile if the legal representatives or parents/guardians are not present during the examination of the accused, or even if they do not wish to be present. Under Section 69 JGG (cf. also Section 149(3) StPO), the court may also provide the accused with assistance at any stage of the proceedings, that is from the preliminary proceedings (*Vorverfahren*) onwards. Whether the person assisting the juvenile is given permission to be present during the examination of the accused is a matter of discretion on the part of the decision-maker (Eisenberg, loc. cit., Section 69 JGG No. 7). Staff of the juvenile court assistance agency must be involved in proceedings against juveniles at an early stage (Section 38(3) JGG, Police Service Regulation *PDV* 382 No. 3.2.7); under Section 72a second sentence JGG staff of the juvenile court assistance agency must be notified of the temporary apprehension of a juvenile if, according to the stage of the investigations, it is to be anticipated that the juvenile will be brought before the judge in accordance with Section 128 StPO. Under Section 52(3) Social Code, Book VIII, the juvenile court assistance agency is then also responsible for looking after juveniles during the entire proceedings.

b) Presence of defence counsel

According to Section 163a(4) StPO, Section 136(1) second sentence 2 StPO and Section 2 JGG, an accused person has the right to consult defence counsel prior to questioning by the police. Juveniles must be informed of this right in a manner appropriate to the stage of their development (cf. Eisenberg, loc. cit., Section 2 JGG No. 12, 14 and No. 3.4.2 Police Service Regulation *PDV* 382). In contrast to the examination of an accused by the public prosecutor (Section 163a(3) StPO, Section 168c(2), (5) StPO), the defence counsel has no right to be present during questioning by the police in juvenile criminal proceedings and criminal proceedings involving adults. However, juveniles are quite free to make use of their right to refuse to make a statement generally and in particular when refusing the presence of their defence counsel (Section 163a(4) StPO, Section 136(1) second sentence StPO, Section 2 JGG). Once the juvenile - as required - has been informed of his/her rights in a manner appropriate to his/her stage of development, the decision he/she makes regarding whether to make a statement without defence counsel is to be respected.

2. Based on insights gained as regards accused juveniles' limited ability to defend themselves and willingness to make a confession, it is not to be excluded that the knowledge about the freedom to make a statement is not always converted at a psychological level into the ability to make use of the right to remain silent vis-à-vis examining officers (cf. Eisenberg, loc. cit., Section 67 No. 11 with further references). However, in the view of the Federal Ministry of Justice there is no need for the legislator to act and allow defence counsel to be present during questioning of the accused. In those cases in which questioning of the accused would be necessary without delay for the proper investigation of the criminal offence, the accused would like to make a statement but no legal representative or parent/guardian is available, the CPT's recommendation would lead to court-appointed counsel being involved for the purposes of the examination of the accused, irrespective of the preconditions set out in Section 68 JGG, Section 140 StPO. Such an obligation would also be difficult to justify sufficiently based on the legal consequences of a (signed) statement or confession by the juvenile (see above).

That said, requiring the presence of a legal representative, a parent/guardian or another trusted person and/or a lawyer during the hearing of a juvenile accused is not advisable. From a technical point of view, however, it would be possible to consider whether to exactly stipulate the conditions under which the legal representative's and parent/guardian's right to be present during examinations may be restricted in analogy with the planned changes to Section 51(2) JGG. Insofar as the applicable legal provisions and police regulations relating to the questioning of juveniles are not always complied with, it is primarily up to the *Länder* to take the necessary measures to remedy the situation.

3. The CPT's report and its recommendations have been passed on to the relevant ministries in the *Länder*. The responses submitted by the *Länder* show that safeguards are in place to ensure matters are dealt with in a manner appropriate to juveniles and the relevant legal provisions are being complied with. The CPT calls for children and juveniles to be treated in a manner appropriate to their age; this is already standard police practice. It is guaranteed by means of the training stipulated in Police Service Regulation *PDV* 382 for police officers, so-called juvenile officers, whose training and further training focuses on the special circumstances of young people, the fundamentals of the law on the protection of children and young people, possible legal measures, the fundamentals of psychology and education, as well as the specific requirements of handling reports pertaining to minors.

In addition to concrete procedures, many *Länder* have administrative regulations. Examples are: in Berlin the Land Office of Criminal Police Instructions - (LKA No. 2/1994) concerning questioning during the prosecution of criminal offences and administrative offences; in Hamburg Police Regulation *PDV* 350 Part 2 Appendix 4 (Minors and Adolescents); in Niedersachsen pursuant to the Decree of 28 July 2005 "Guidelines for Police Treatment of Juvenile Matters"; and in Sachsen the administrative provisions of the State Ministry of the Interior of Sachsen on Handling Juvenile Matters by the Police of the Free State of Sachsen of 1 September 1999. In addition, a special brochure entitled "What Now? When Children and Juveniles Come into Conflict With the Law - Information for Parents" was put together by Baden-Württemberg. It contains information both on the stages of juvenile criminal proceedings, the rights of children and juveniles and help available, and also aims to help parents react appropriately as regards how they are bringing up their children (http://www.polizei-bw.de/lka/download/was_nun_1004.pdf).

- *A specific version of the information form referred to in paragraph 33 setting out the particular position of juveniles detained by the police to be developed and given to all such persons in all police establishments, at the very outset of their deprivation of liberty. For this age group especially, the information form should be easy to understand and available in a variety of languages. Special care should be taken to ensure that the information provided is fully understood (paragraph 36).*

Even those *Länder* which have information forms available (cf. paragraph 33) adapt their oral information on the respective rights and duties of the affected juvenile. Against the background of the required feedback, it is deemed indispensable that an information form be available that is written in a manner appropriate to juveniles. In Baden-Württemberg, as well as providing the juveniles with this information in a manner appropriate to their age, the police also use the brochure "What Now?" referred to in the above. This informs children and juveniles of their rights and is written in simple language.

Comments

- *It would be desirable that the right of detained persons to be examined by a doctor of their own choice also be expressly guaranteed in all *Länder* (it being understood that an examination by a doctor of the detained person's own choice may be carried out at his/her own expense) (paragraph 27).*

A survey of the *Länder* has shown that this is not deemed practicable. The *Länder* have pointed out that the police consult a doctor to examine a detained person where there is doubt as to his/her ability to remain in detention.

A doctor is not called in to examine a detained person at the request of the affected person; rather the doctor renders administrative assistance to the police. Prior to any consultation the police and the doctor will have entered into a contractual relationship obliging the doctor to carry out such examinations and possibly other measures (e.g. blood sampling). The purpose of these examinations is primarily to check whether the affected person - where the other preconditions for their being taken into custody are fulfilled - may also remain in police custody for health reasons for the full, probable duration of the detention or whether they need to be transferred to a facility providing treatment if this is necessary.

According to statements by Bayern, Hessen, Mecklenburg-Vorpommern, Niedersachsen, Rheinland-Pfalz and Sachsen-Anhalt, the examining physician may also in principle be a private doctor. However, these *Länder* also pointed out that cases of doubt regarding the detained person's ability to remain in custody are to be classified as urgent. It is therefore only seldom possible to get a doctor of one's choice to carry out this examination, either for reasons of time or of geography (e.g. they are too far away). Because private doctors are usually not available at such short notice, the police forces in various big cities maintain a voluntary network of doctors who are available around the clock.

- *In principle, medical data (e.g. details of whether a detained person suffered from infectious diseases such as tuberculosis, hepatitis or HIV) should be available to police officers only on a need-to-know basis (paragraph 29).*

The Berlin Senate Department of the Interior and Sports, which is responsible for the Berlin-Wedekindstraße Police Station, informed us that in the decentralised detention centres and in the Tempelhof Central Police Detention Centre medical data are recorded on a form which documents the apprehended person's ability to remain in custody. Staff at the detention centres base their decisions on these data, since further details regarding where the apprehended person is to be accommodated must be co-ordinated with this information. In order to ensure their own safety, the decision may also have an impact on the behaviour of employees at Berlin police headquarters (e.g. upon suspicion of an infectious disease).

The other *Länder* have responded in a similar way, stating that the doctor's medical report on a person's ability to be kept in custody, which is included in police records, may also contain information on infectious diseases. This above all serves to ensure the safety of the officers in the detention centre and all those who come into contact with the detained person. Safeguards are in place to ensure that this sensitive information is only passed on to those who actually need to know it.

- *Steps should be taken to establish a comprehensive custody record at Frankfurt an der Oder Police Station (paragraph 37).*

According to information provided by Brandenburg, the units dealing with persons taken into custody at Frankfurt an der Oder Police Station keep a custody record on a form (Form BB Pol 1025) which supplements the form to be filed in a notice of arrest (Form BB Pol 1024) or that to be used when a person is taken into custody (Form BB Pol 1024) in accordance with the Brandenburg Police Custody Order (Directive issued by the Ministry of the Interior) of 5 April 1995. All the data and information required for the period in which a person is kept in custody can be recorded here, from the point at which they enter police premises, to the possibility of being brought before a judge, to meals provided and the point at which they are released or taken elsewhere. In the event that there is a change of detention location, a copy of the documents remain with the previous place of custody (Sections 29, 30, 40 Brandenburg Police Act – Data Recording, Data Comparison). These documents are retained for a minimum of five years.

Conditions of detention

Recommendations

- *The police authorities of Baden-Württemberg, Berlin and Hamburg, and, if appropriate, of other Länder to implement, without any further delay, the longstanding CPT recommendation that all persons detained overnight be provided with a clean mattress and clean blankets (paragraph 39).*

1. The standard of equipment provided in cells in detention centres in Baden-Württemberg varies. The Central Drying-Out Detention Unit at Stuttgart Police Headquarters (which has a medical official permanently in residence through the night) can, therefore, not be compared with rural police stations both in terms of equipment and the actual number of persons taken into custody. Key requirements pertaining to detention centres only refer to structural features (Land Guidelines LRL-P of May 1981, No. 6.3.0: Furnishings and Fittings in Detention Centres, Detention and Drying-Out Cells). The ministries of finance and state structural engineering authorities are responsible for guidelines on structural aspects; these are to be revised.

The equipping of detention centres with blankets, mattresses and personal hygiene products falls within the police's purview of the execution of detention. The Rules on Detention of the Land Police Headquarters contain relevant provisions. Woollen or disposable blankets are generally available in detention centres. The interior ministry will again look into providing blankets for those persons who remain in custody overnight. In the opinion of the *Land* authorities, if there is a risk of suicide, however, it may be necessary, in the interest of the person's safety, not to give them a blanket.

2. Berlin has responded to the CPT's objection to the lack of mattresses and blankets as follows:

In the event of longer period of stay in police custody - for example, admission to a specialist unit prior to being brought before a judge, prior to deportation or being taken to Köpenick Detention Centre for Immigration Detainees or prison - the person in question will always be taken to Tempelhof Central Police Detention Centre, also because of the need for them to be provided with food on a daily basis. Mattresses and bedding as well as disposable blankets are available in sufficient quantities there. No mattresses are provided in the decentralised centres for reasons of hygiene and averting danger, for example preventing malicious arson using hidden inflammable substances. Upon request, disposable blankets can be provided and are available in sufficient quantities.

Foam mattresses are generally not provided to persons who are taken there in a "helpless" state. Experience has shown that people in such a state tend to soil the cell with vomit, faeces or urine, in some cases even introducing vermin. Putting mattresses in the cells would, in the opinion of the *Land* of Berlin, lead to hygiene problems. On account of the temporary nature of the custody - generally until the detained person is again fit to drive or another criminal procedural measure is carried out, following which they are released from custody - this is reasonable. In those cases in which a person remains in a decentralised detention centre for longer than the normal short-term period (max. four to five hours), two mattresses are available per detention unit. Furthermore, it is possible at any time to ask for the use of the equipment available at Tempelhof Central Police Detention Centre.

3. The police in Hamburg have pointed out that the police's custody cells only serve the short-term detention of persons. In particular, under applicable law, persons taken into temporary arrest in a criminal procedure and those taken into custody based on police law must be brought before a judge at Hamburg District Court the day after they are deprived of their liberty, otherwise they must be released.

Persons taken into custody by Hamburg Land Office of Criminal Police are provided with blankets if required. However, according to information provided by the *Land*, there are no mattresses on the plank beds for reasons of hygiene and personal safety. Persons who remain in custody or detention for longer are transferred to a regular prison cell.

4. Based on the CPT's Report it was again expressly pointed out to all the *Länder* that all those who remain in custody overnight must be provided with a clean mattress and clean blankets.

- *Basic personal hygiene products to be made available as required to detained persons in all police establishments in Germany (paragraph 40).*

1. The *Länder* whose police establishments were visited have pointed out that the detention facilities are not intended for longer-term stays and are generally not used for that purpose. The police in Hamburg therefore believe it is sufficient for the concerned person to be provided with soap and water. According to the authorities in Niedersachsen apprehended persons are provided with basic personal hygiene products.

In Berlin, showers are available for use by detainees at Tempelhof Central Police Detention Centre and in the detention unit for those awaiting deportation. Hygiene products such as towels, soap, toothbrushes, toothpaste, sanitary towels and disposable razors are provided and available in appropriate quantities. The decentral detention centres have no showers, only water, soap, towels and sanitary towels. That is another reason why persons who are expected to remain in custody for a longer period are always transferred to Tempelhof Central Police Detention Centre.

2. Based on the CPT's Report the *Länder* have all been reminded that the CPT recommends that apprehended persons be provided with basic personal hygiene products where required.

Comments

- *Steps should be taken to improve lighting at Weimar Police Headquarters and to ensure that the call system functions in all cells at Berlin-Wedekindstrasse (paragraph 39).*

1. By the end of 2007 Weimar Police Headquarters will have moved into a new building, which is why no further structural changes will be being made to the detention cells - in particular to the rear facade - to increase the amount of light. In order to improve the lighting situation new lights have since been installed.

2. Berlin Senate Department for the Interior and Sports has had the call system in Berlin-Wedekindstraße checked to see whether it is in good working order. It was not found to be faulty; the system is in good working order.

- *Due to their specific design (cells with very limited or no access to natural light; lack of outdoor exercise facilities), most if not all of the police detention facilities visited are unsuitable for accommodating persons for prolonged periods (paragraph 41).*

The police establishments visited by the CPT generally only accommodate persons in detention cells for short periods - in accordance with their intended purpose. Should longer-term police custody be necessary, the persons in question are transferred to a prison. In the case of apprehensions in criminal proceedings, the person in question is brought before a judge one day after apprehension at the latest and, if an arrest warrant is issued, he/she is taken to a prison. The construction of the detention cells complies with construction law and police requirements. In principle it must be ensured that persons accommodated there will pose a threat neither to themselves nor to others, nor that they can escape.

Apart from Köpenick Detention Centre for Immigration Detainees, where prisoners are accommodated for longer periods and which has appropriate fittings and furnishings, detention facilities in Berlin are only intended to accommodate persons for short periods. Where the deprivation of liberty lasts more than 12 hours, Tempelhof Central Police Detention Centre has a courtyard which can be used, where required.

In Niedersachsen, long-term detention measures are possible up to a maximum of 10 days in accordance with the Law on the Protection of Public Security and Order (SOG) of Niedersachsen. Niedersachsen police have three such detention cells (two at Hanover Police Headquarters; one at Braunschweig Police Headquarters). Where, for example during large-scale events, there is a shortage of cell space, the police may also consider taking persons who need to be kept in custody for several days to a prison, which will render administrative assistance. The Law on the Protection of Public Security and Order (SOG) of Niedersachsen is currently being amended, creating the legal basis required for this.

Detention of foreign nationals under aliens legislation

Preliminary remarks

Recommendations

- *In all Länder in Germany, the detention of immigration detainees to be governed by specific rules reflecting their particular status (paragraph 44).*

The specific rules in the *Länder* governing the detention of immigration detainees recommended by the CPT refer to the detention of foreign nationals pending deportation outside of prisons by the competent department of the interior. For that reason some *Länder* (the CPT makes reference to Brandenburg) already have such special regulations governing the detention of foreign nationals pending deportation. For example, Berlin applies the Law on the Detention of Foreign Nationals Pending Deportation as last amended. The Detention Order specially drawn up in Berlin with reference to the detention of foreign nationals pending deportation contains further specifics. In Schleswig-Holstein the "Guidelines on the Detention in Schleswig-Holstein of Foreign Nationals Pending Deportation" of 15 November 2002 apply.

In Rheinland-Pfalz and pursuant to Section 62 Residence Act, foreign nationals are detained pending deportation in a special detention unit, the Detention Unit for Deportees in Ingelheim, for which the Ministry of the Interior and Sport is responsible. The intention is thereby to separate criminals subject to measures to deprive them of their liberty from foreign nationals awaiting deportation. Only in exceptional cases can detention prior to deportation also be carried out by a prison rendering administrative assistance to the police authorities. In accordance with Section 5 second sentence Rheinland-Pfalz Admission Act, Sections 3 to 108, 173 to 175 and 179 to 187 Prison Act apply to detention pending deportation in the detention centres for foreign nationals pending deportation as last amended insofar as no other legal provisions, in particular those of the Act on Benefits for Asylum Seekers, of Social Code, Book II, or Social Code, Book XII, provide otherwise or the nature and purpose of the detention pending deportation or the special circumstances of the detention centre pose no obstacle to this. Persons taken to detention centres pending deportation may, in accordance with Section 5 third sentence Rheinland-Pfalz Admission Act, only be subjected to restrictions for the purposes of the execution of detention pending deportation to maintain safety and order in the establishment. Joint accommodation is possible. Rheinland-Pfalz thus fulfils the requirements given the special status of deportation detainees.

In many Länder (Hamburg, Sachsen, Baden-Württemberg, Bayern, Hessen, Mecklenburg-Vorpommern, Nordrhein-Westfalen and Sachsen-Anhalt) the detention of foreign nationals pending deportation is enforced by prisons, which thereby render administrative assistance to the ministries of the interior. Section 8(2) Act on Legal Procedures Governing Detention results in the applicability of provisions concerning the execution of confinement for contempt of court, of detention to enforce a deportation order, of coercive detention and of an arrest to enforce a court order, which thus forms the legal basis for this administrative assistance. This already in part represents a special regulation compared with the provisions contained in Section 171 in conjunction with Section 173 to 175 and Section 178(3) Prison Act and the deprivation of liberty, since it imposes less stringent conditions of detention. Furthermore, Section 171 Prison Act already stipulates that numerous provisions concerning prison sentences are applicable, although only where they do not pose an obstacle to the nature and purpose of the detention prior to deportation, so that this qualification also does justice to the special nature of detention prior to deportation and to the special status of those foreign nationals in detention pending deportation.

Immigration detainees held in prison

Recommendations

- *The staff of Hamburg Remand Prison and Fuhlsbüttel Prison to be reminded that disrespectful, scornful and/or racist behaviour is unacceptable and will be punished accordingly (paragraph 47).*

Hamburg judicial authorities regret such incidents. Employees in Hamburg Remand Prison and in Fuhlsbüttel Prison have since been sent instructions in this matter.

- *The authorities of Hamburg to take, without delay, the necessary measures to put an end to any placement – even temporary – of immigration detainees (including female) in Hamburg Remand Prison (paragraph 50).*

Since May 2006, following the building of an extension to the immigration detention unit in Fuhlsbüttel Prison, immigration detainees are taken to Remand Prison in only a few exceptional cases and only for a very limited period of time. Immigration detainees must pass through Hamburg Remand Prison because that is the only way the competent judge can issue the deportation order as swiftly as possible and it is only there that detainees can be taken in outside of regular office hours. In addition, it is the only unit which can provide medical care in emergencies 24 hours a day. After the issuing of the arrest warrant, prisoners are transferred to the competent prison at the earliest opportunity, generally the following day. Exceptions can only be made where immediate transferral is not possible for medical reasons, in particular on account of drug withdrawal (cf. response to paragraph 58).

- *The authorities of Hamburg and Niedersachsen, as well as of all other Länder in Germany, to take the necessary measures to ensure that immigration detainees are accommodated in centres specifically designed for that purpose, meeting the criteria set out by the Committee in its 7th General Report (cf. CPT/Inf (97) 10, paragraph 29). If members of the same family are detained under aliens legislation, every effort should be made to avoid splitting up the family (paragraph 56).*

1. On principle immigration detainees in Hamburg are accommodated in the competent prison in special units and kept separate from others in detention (ordinary prisoners, remand prisoners). Since May 2006 they have been detained in the Remand Prison only for a short transitional period following apprehension (cf. response to paragraph 50).

Following that, detained persons are transferred to the corresponding prison:

- Since May 2006 adult male immigration detainees are only accommodated in Fuhlsbüttel Prison. The prison has two units which can accommodate a total of 98 people and are used exclusively for this purpose. The immigration detainees do not, therefore, come into contact with ordinary prisoners.
- Since May 2006, female immigration detainees are only accommodated in the Women's House at Hahnöfersand Prison, which can accommodate up to 10 women.
- Male juvenile immigration detainees are accommodated in Hahnöfersand Prison's Juvenile Unit, which can accommodate up to 10 juveniles.

In the opinion of the authorities of Hamburg, it is not necessary to establish a special facility for immigration detainees in order to provide humane accommodation. Detention conditions in Fuhlsbüttel Prison are reasonable, they claim, since the immigration detainees are always kept separate from prisoners. In the case of female detainees and male juvenile detainees, it is not advisable to establish separate units in prisons or even separate facilities, because there are only a very small number of such detainees, who remain only for a short period. Hamburg is attempting to accommodate detainees belonging to members of one family together. In the opinion of the *Land* authorities, accommodating men and women as well as juveniles and adults together is, however, not possible on account of the legal principle which requires that these groups be kept separate; the principle also applies to immigration detainees.

2. In prisons in Niedersachsen, immigration detainees are now being accommodated exclusively in Hanover Prison's Langenhagen Unit. According to the authorities of Niedersachsen, this accommodation guarantees that male immigration detainees are kept separate from other prisoners (separate parts of the building, separate cells, separation in respect of organisational aspects). Two units in the house are reserved exclusively for female immigration detainees. However, on account of the small number of female immigration detainees and given that the unit also houses female remand prisoners, detainees may request to make contact with female remand detainees in order to take part in joint recreational activities.

3. Based on the CPT's Report, all the *Länder* were again informed of the CPT's recommendations pertaining to immigration detainees.

- *The necessary steps to be taken by the relevant authorities to ensure that:*
 - *the premises of the unit for immigration detainees at Hamburg-Fuhlsbüttel Prison are kept in a good state of repair and cleanliness;*
 - *the cells in the units for immigration detainees at Fuhlsbüttel Prison and Hameln Juvenile Prison are adequately furnished and decorated, in order to relieve as far as possible their prison-like appearance;*
 - *an open-door regime is introduced for most of the day in the units for immigration detainees at Fuhlsbüttel Prison and Hameln Juvenile Prison and that a range of purposeful activities is offered to such detainees (including reading material in most commonly used languages, radios, board games, etc.); the longer the period for which foreign nationals are detained, the more developed should be the activities which are offered to them; further, juveniles should be offered activities suitable for their age (paragraph 57).*

1. Improvements have been made to the order, cleanliness, furnishings and structural condition of the cells and communal rooms in Hamburg-Fuhlsbüttel Prison. Lock-in times have been shortened so that detainees are now free to go about the unit for 12 hours. The following facilities/articles are available to immigration detainees for recreational purposes: table tennis room, collection of board games, small library, TV (no radios as, according to information provided by the *Land*, this would create too much noise), football, volleyball, basketball. From early 2007 the immigration detainees will also be able to use a gym specially reserved for them.

2. Immigration detainees are no longer accommodated in Hameln Juvenile Prison. Competence for juvenile immigration detainees now also lies with Hanover Prison. The responsible Langenhagen Unit provides an all-day open-door indoor regime plus a variety of recreational activities, such as a library and various sports activities. The furnishings in the living areas and the cells are, in the opinion of the *Land* authorities, adequate. Staff monitor cleanliness and order and encourage the detainees to do the same.

- *Steps to be taken by the federal authorities and all relevant Länder authorities (including those of Hamburg) to ensure that all foreign nationals who have been the subject of an abortive deportation operation undergo a medical examination as soon as they are returned to detention (paragraph 59).*

Some of the *Länder*, for example Niedersachsen, Mecklenburg-Vorpommern, Sachsen-Anhalt and Thüringen, will in future meet the CPT's requirement by carrying out a medical examination following a failed deportation attempt.

In Schleswig-Holstein a detainee is again subjected to the entire admission procedure, including a medical examination if the deportation fails. In Hamburg (Fuhlsbüttel Prison) the immigration detainees are regularly examined following a failed deportation attempt, generally by nursing staff in the outpatient department. Where necessary - because the person in question is complaining of discomfort or it is obvious he/she is suffering some ailment - they are taken to see a doctor. Any injuries are also recorded.

Other *Länder*, for example Berlin, Baden-Württemberg, Bayern, Hessen and Nordrhein-Westfalen, do not see the need for a medical examination unless this is necessary on account of the detainee's medical condition. Since deportations often fail on account of circumstances which do not give rise to the concern that it may be detrimental to health, there is no need for a (further) medical examination in such cases. Medical examinations are, however, also carried out without delay in these *Länder* if there are indications that the deportation attempt has been detrimental to the detainee's health. This is to be feared, for example, when the person to be deported has offered active physical resistance.

For the aforementioned reasons, Brandenburg Ministry of the Interior is likewise not in favour of carrying out a general medical examination immediately following re-admission of a detainee. In Brandenburg, immigration detainees are examined by a contracted physician after being taken back to the detention centre. These physicians are in attendance on Tuesdays and Thursdays, unless there is occasion to carry out an examination at an earlier point. Safeguards are thus in place to ensure medical care is always available.

- *Special attention to be devoted to the training of the staff employed in the units for immigration detainees at Fuhlsbüttel Prison and Hameln Juvenile Prison. The staff concerned should possess well-developed interpersonal communication skills, and at least some of them should have relevant language skills (paragraph 60).*

1. Hamburg always employs staff in its deportation centres who have undergone specific prison training (general prison service staff). Staff at Fuhlsbüttel Prison are given special training in dealing with foreign detainees. For example, as well as issues regarding the subject-matter, social skills comprise one of the key components of these training courses. Specific issues of communication and conflict resolution are dealt with; there are special training courses to build up intercultural social skills. The use of various foreign consultants with experience of foreign cultures to supervise immigration detainees is, in the opinion of the *Land* authorities, entirely sufficient for dealing with the various problems arising in respect of this group of detainees. These foreign consultants cover requirements at least for oriental and African languages. Prison staff also have sufficient knowledge of English.

2. Staff in the intermediate, general prison service in Niedersachsen undergo two years of training in which they are also prepared for an assignment in an immigration detention centre. The training covers a total of seven months of theory, including in particular aliens legislation and detention pending deportation, psychology and communication skills. According to information provided by the *Land* authorities, particular attention is paid to applicants' foreign language skills during recruitment. Furthermore, immigration detainees are no longer accommodated at Hameln Juvenile Prison (cf. response to paragraph 57 above).

- *Steps to be taken by the authorities of Hamburg to ensure that all the principles and minimum safeguards concerning physical restraint (Fixierung) set out in paragraph 11 are applied at Fuhlsbüttel Prison and Hamburg Remand Prison (paragraph 62).*

The principles and minimum standards set by the CPT are applied at Fuhlsbüttel Prison and Hamburg Remand Prison. Detained persons are only subjected to physical restraint if the conditions set out in Section 88 Prison Act are met. Attention is meticulously paid to the fact that the measure is only applied when no less severe measure is available. It is only applied for as long as is necessary to serve its purpose. There are house rules governing the authority to order the physical restraint, its control by a doctor and time intervals for re-assessing the need for the measure. Two hours after a person has been restrained, at the latest, they are to be re-examined as to the need to keep up the measure.

Monitoring of an instance of physical restraint is based on Section 92 Prison Act. The prison doctor is informed without delay and visits the prisoner. Only when the doctor is absent (in the evening or during the night) will nurses or emergency medics be called in from outside the prison.

Steel cuffs which are attached to a bed are used to physically restrain a detainee. In addition, the individual may be secured by means of a leather strap around the chest. No injuries on account of the cuffs have been registered to date. Extra protection is provided in order to avoid the cuff coming into direct contact with the prisoner's skin. *Fixierung* is handled in such a way that the prisoner cannot harm himself/herself. Staff are trained in the use of the equipment. When *Fixierung* is necessary in a given case it is applied out of the line of vision of non-members of staff. Each instance of *Fixierung* is recorded in a special register. Each prisoner is given comprehensive information concerning the reason for the *Fixierung* prior to the measure being carried out. The aim is thereby to prevent the threatened measure being implemented.

Continuous, direct personal supervision by a member of staff (*Sitzwache*) is only carried out in one unit in the remand prison, where it is necessary because the cell is equipped neither with a two-way intercom nor with CCTV. The person responsible for supervising the detainee remains out of the prisoner's line of vision. In principle, it is believed that individualised staff supervision requiring the direct presence of a member of staff next to a prisoner is counterproductive. According to the *Land* authorities, the immediate presence of a member of staff would lead to the prisoner focussing on the symptoms which led to the measure being taken, which would prevent the causes being investigated and dealt with. All the *Länder* believe it is important that members of staff are available to speak to the prisoner if they so wish. Prisoners in the remand prison are checked on at very short intervals, ca. every 5 to 10 minutes, sometimes even at shorter intervals. It is also important that, on account of the aforementioned rights of disposal, a person with the authority to issue orders must check on the prisoner every two hours in order to review whether the physical restraint needs to be continued. In addition, the restrained person - depending on the individual case - is given the opportunity to talk to various members of staff, including psychologists, psychiatrists, doctors or managing staff of the prison .

- *Written information on the house rules and the legal status of and the procedure applicable to immigration detainees to be provided to all foreign nationals at Fuhlsbüttel Prison and Hameln Juvenile Prison, upon their admission to these establishments. Such information should be available in the most commonly used languages (paragraph 67).*

1. The CPT's recommendation is to be adopted at Fuhlsbüttel Prison. There are plans to provide immigration detainees, upon their admission, with information material detailing procedures and written in the most commonly used languages.

2. In the sections of Hanover Prison where immigration detainees are kept pending deportation, detainees are informed about their rights and duties during detention in the form of the applicable house rules in German. Excerpts of these house rules are available in several of the more commonly used languages. In addition, detainees are given information verbally, sometimes through an interpreter. It falls within the purview of the respective aliens authority to instruct detainees about their legal status and the applicable procedure. The aliens authority holds weekly office hours at the Langenhagen Unit of Hanover Prison.

Comments

- *In the unit for immigration detainees at Hamburg-Fuhlsbüttel Prison, the communal room – as well as the broad corridor referred to in paragraph 51 – could usefully be fitted out to provide communal living areas and a range of varied, purposeful activities (paragraph 52).*

Improvements have since been made to the rooms used by immigration detainees at Fuhlsbüttel Prison. The Prison is continuously undergoing renovation in order to maintain the rooms in good condition. Detainees have access to various purposeful activities; cf. details provided in response to paragraph 57.

- *Introducing an open-door regime for most of the day in the units for immigration detainees at Fuhlsbüttel Prison and Hameln Juvenile Prison and offering a greater range of purposeful activities to such detainees, as recommended in paragraph 57, will necessitate an increased number of staff (paragraph 60).*

1. For budgetary reasons, the Hamburg Department of Justice does not feel it is in a position to increase the number of staff in the units for immigration detainees at Fuhlsbüttel Prison. Moreover, since the number of detainees being held in Hamburg is decreasing, an increase in the number of staff cannot be justified at the present time.

2. The Ministry of Justice of Niedersachsen has informed us that the head of Hameln Juvenile Prison has been asked to compensate for any necessary changes in staff allocation by adapting the staff rota.

- *The authorities of Hamburg are invited to explore the possibility of deploying female staff to the unit for immigration detainees at Fuhlsbüttel Prison (paragraph 61).*

Female staff are employed in all units in Fuhlsbüttel Prison, thus also in the unit for immigration detainees. Along with female members of the general prison staff, other professionals, such as female psychologists and female doctors, are in charge of looking after the welfare of the immigration detainees.

No statements regarding the proportion of female staff employed in the unit for immigration detainees can be made, since such figures are only available in regard to the prison as a whole.

- *Steps should be taken at Fuhlsbüttel Prison to reduce the very oppressive design of the cell used for the physical restraint (Fixierung) of inmates (so-called "schwere Beruhigungszelle") and to improve access to natural light in that cell (paragraph 62).*

The situation in all the special cells in the prisons in Hamburg is being reviewed. In the opinion of the *Land* authorities, there is sufficient natural light in the cells. Reference is here also made to the response to paragraph 62 above.

- *Restrictions on immigration detainees' contacts with the outside world, as observed at Hamburg Remand Prison, are indefensible, taking into account that such persons are neither suspected nor convicted of a criminal offence (paragraph 64).*

The finding that the immigration detainees had restricted contacts with the outside world in the remand prison is correct. The situation has improved considerably, as the immigration detainees are now only detained in the remand prison for a very short period of time (cf. response to paragraph 50 above) and they are subsequently able to use the wide range of means of communication available in the Fuhlsbüttel and Hahnöfersand prisons.

Requests for information

- *The comments of the authorities of Hamburg on the complaints received from several immigration detainees at Fuhlsbüttel Prison that the meals, prepared in the prison kitchen, sometimes arrived cold (paragraph 51).*

According to a statement by Hamburg Department of Justice, the meals prepared in the prison kitchen are placed into insulated containers so that they can be kept at a temperature of 70°C. This measure is regularly reviewed by the competent health office. The *Land* authorities therefore cannot believe that the meals served in the unit for immigration detainees are served cold, as was claimed. No complaints from detainees in the prison about this matter have been received to date.

- *The comments of the authorities of Hamburg on the allegations received from some immigration detainees at Fuhlsbüttel Prison that correspondence from their lawyers had been opened by staff (paragraph 65).*

The Hamburg Department of Justice makes reference to the applicable legal provisions: In accordance with Section 8(2) Act on Legal Procedures Governing Detention, Sections 171 and 173 to 175 Prison Act apply where the detention pending deportation is enforced in the prison by way of administrative assistance. Section 171 Prison Act makes reference to Section 29 Prison Act, which contains provisions governing the monitoring of the correspondence of the detainee. Accordingly, lawyers are not listed in Subsections (1) and (2), and thus their correspondence with detainees is not exempt from monitoring. Such exemption only applies to a prisoner's defence counsel, not to lawyers involved in the immigration detainees' procedures under alien's law. Thus, Section 29(3) Prison Act applies and the correspondence of immigration detainees may also be monitored for grounds of the security and order of the detention facility.

According to a statement submitted by Hamburg authorities, such monitoring of correspondence is restricted to the opening of letters and the controlling of any unauthorised objects. The content of the letter is not monitored.

Eisenhüttenstadt Detention Centre for Foreigners

Recommendations

- *The authorities of Brandenburg to take steps to ensure the regular presence of a psychologist at Eisenhüttenstadt Detention Centre and to develop programmes for the provision of psychosocial care to foreign nationals held there (paragraph 71).*

Eisenhüttenstadt Detention Centre has access to a full-time psychologist, although he/she is not regularly in attendance. In addition, depending on the number of detainees present, the detention centre has one or several social workers at its disposal whose training and area of expertise also cover aspects of psychological counselling. In addition, pastoral care is also available. This work also involves an element of psychological counselling. Detainees who obviously require treatment are taken to the psychiatric unit at Eisenhüttenstadt hospital. The Ministry of the Interior of Brandenburg does not feel that the level of psychological care provided to detainees is inadequate.

Given the average number of detainees (48 in 2005), it is neither deemed necessary that a psychologist be constantly in attendance, nor is this justifiable from a financial point of view, particularly since the majority of the detainees (especially those accommodated by the Federal Police) remain in the detention centre for only a short period.

- *Steps to be taken at Eisenhüttenstadt Detention Centre to ensure that all medical examinations are conducted out of the hearing and – unless the doctor concerned expressly requests otherwise in a given case – out of the sight of security staff (paragraph 74).*

Medical examinations of immigration detainees upon their arrival as well as any further examinations deemed necessary are carried out at Eisenhüttestadt Prison by a contracted physician. According to the *Land* authorities, this physician is responsible for deciding whether the presence of other persons is required. For their own personal safety the doctors generally request the presence of a guard either in the treatment room or in front of the unlocked door into that room. The matter has since been discussed with the contracted physician and it has been agreed that the presence of third parties within sight and/or hearing range will remain the exception rather than the rule. In the end, though, it is for the doctor to take such decisions.

- *Steps to be taken by the authorities of Brandenburg to ensure that all the principles and minimum safeguards concerning physical restraint (Fixierung) set out in paragraph 11 are applied at Eisenhüttenstadt Detention Centre (paragraphs 78 and 79).*

According to the Ministry of the Interior of Brandenburg, an emergency medic is always called in at the same time as the order is given to physically restrain a detainee. This doctor examines the detainee's condition, including the *Fixierung*. A guard is posted in front of the cell for the duration of the *Fixierung*; the door of the cell is left slightly ajar. An additional guard employed by a private security company is also posted at the door. This guard is thus not involved in events leading up to the detainee being taken to the special cell. In addition, the cell is continually monitored via video camera or a monitor. The procedure has been amended since the CPT's visit such that the doctor is now also responsible for making decisions regarding further procedure (e.g. admission into the psychiatric unit at Eisenhüttenstadt hospital, duration of the *Fixierung*, need for further medical treatment). The doctor confirms these decisions in writing; the time during which he/she was present is also documented. This means that risks to the health of the immigration detainee can practically be excluded. Where a detainee is put into the special cell, a control report is written containing the information mentioned in the CPT Report. The doctor confirms in writing any decisions and findings made. The control report is added to the detainee's file.

Comments

- *Steps should be taken at Eisenhüttenstadt Detention Centre to ensure that, whenever the intervention of an external medical team is required, a report is provided to the medical service and is kept in the medical file of the foreign national concerned (paragraph 71).*

All medical measures and requirements - including those carried out by external medical staff - are noted in the medical register (*Krankenbuch*) as well as in the detainee's medical file. The nurse on duty in the immigration detention unit checks the medical register every day as regards further measures (e.g. visit to a doctor). The medical file is added to the prisoner's file. The CPT's suggestion is thus already being applied in practice.

- *Steps should be taken to overcome communication difficulties, due to language barriers, between the medical/nursing staff and foreign nationals (paragraph 73).*

The decision whether a medical examination requires the presence of an interpreter is, according to the Ministry of Justice of Brandenburg, made by the responsible doctor. There is no unjustifiable loss of time since an interpreter is generally available at short notice. In some cases, and in agreement with the detainee, other detainees can be used as interpreters.

It would be desirable that the anchorage points on the floor of cell no. 2008 be removed (paragraph 77).

As the CPT's Report states, the anchorage points were no longer present in the cell at the time of the visit. Only the holes were visible in the floor. These have since been filled using plastic material.

- *The authorities of all Länder are invited to establish free legal counselling in all establishments accommodating immigration detainees, as has already been done by the authorities of Brandenburg at Eisenhüttenstadt Detention Centre (paragraph 83).*

1. A survey has revealed that other *Länder* already provide free legal counselling to immigration detainees. This service has been available in immigration detention centres in Nordrhein-Westfalen since 1996, to which end the Ministry of Justice and the Nordrhein-Westfalen Group of the German Lawyers' Association drew up a sample contract on the establishment of legal counselling. Among other things, the contract provides that each lawyer registered in Nordrhein-Westfalen who has added his/her name to a list of lawyers which is available in the immigration detention centre, after being selected by an immigration detainee entitled to do so, is to be permitted to offer counselling services in his/her capacity as a lawyer in the counselling service and is to be paid the flat-rate fee agreed in the contract with the judicial authorities. The lawyer's fee is paid by the judicial authorities.,

In Baden-Württemberg staff at the regional administrative authorities regularly offer immigration detainees free counselling twice a week in prisons to clarify issues of aliens legislation (No. 3.6.6 Administration Regulation on Asylum/Repatriation). Staff of the social services and prison psychological services are available to provide advice on issues of a general nature. In addition, members of non-governmental organisations and the churches regularly visit the immigration detainees. In Schleswig-Holstein the *Diakonieverein Migration Rendsburg* regularly provides a free advisory service on procedural issues. In Berlin, too, each immigration detainee who lacks the means to pay for the service has free access to legal counsellors and may receive free legal counselling.

2. All the *Länder* have been reminded of the CPT's recommendation that immigration detainees be offered free legal counselling.

Requests for information

- *Detailed information on the training provided to members of the private security staff working at Eisenhüttenstadt Detention Centre, as well as information on whether any safeguards exist to guarantee adequate accountability and monitoring of the service provided by the staff of the private security company (paragraph 76).*

The training which staff of the private security company have undergone is outlined in Appendix 1. Where individual tasks are carried out by staff of a private security company, these are subject to constant supervision by staff of the authority, comprising the head of the shift and at least one other member of staff. Any incidents and measures applied are entered into the official shift book. The head of the detention centre regularly reads this book and assesses each entry, if necessary in the presence of the employee concerned. According to the *Land* authorities, this procedure has not yet been found to be inadequate.

Berlin-Tegel Prison

Special Security Unit (*Besondere Sicherungsstation B-1*)

Recommendations

- *Urgent steps to be taken to develop the regime for prisoners in Unit B-1, in the light of the remarks made in paragraph 88 (paragraph 88).*

Following the CPT's visit to Berlin-Tegel Prison, State Secretary Flügge paid an unannounced visit to the Prison accompanied by the Head of the Prison, Dr Meinen. The two had a close look at the accommodation provided in the special security unit. Possible solutions were discussed with those responsible in the prison.

As regards the detainees in the special security unit, it must be pointed out that this unit accommodates particularly violent detainees, who are willing to escape, under special circumstances and generally only temporarily. That means that detainees remain in this unit for a few days to a few months, except in extremely rare cases of permanent seclusion (*unausgesetzte Absonderung*). There can be no general justification for offering this group of persons recreational and group activities outside of their cells. In the light of the temporary nature of this detention, there are at present no plans to make any changes to the courtyard beyond those that have already been made to the physical surroundings (cf. response to paragraph 87 below) which would lead to better protection of the detainees against inclement weather. The courtyard in the special security unit is similar to the courtyards in other units. As in other units, provisions have been made so that each detainee in the special unit can clothe himself/herself as befits the weather and thus take own precautions against inclement weather.

According to the *Land* authorities, detainees may engage in all those recreational activities inside their cells which cannot pose a risk either to the detainee or to the prison staff. However, many recreational activities require the use of objects which can often be misused as weapons or as a means of escape. Restrictions on recreational activities are thus not an end in themselves, but rather a result of safety requirements and the need for order in such a sensitive prison unit.

The reason why detainees in cells in the special security unit fail to be provided with sensible, non-monotonous work is either because there is no demand on the labour market inside or outside the prison for it, or because it requires the use of dangerous tools. The prison management and the Senate Department for Justice very much regret this. However, they do not see that there are currently any other alternatives for remedying the situation without neglecting safety aspects.

- *Withdrawal of outdoor exercise to be abolished from the relevant legislation as a special security measure (in respect of both sentenced and remand prisoners) (paragraph 89).*

1. The applicable legal provisions, Section 88(2) No. 4 Prison Act and No. 63 para. 6 Remand Detention Execution Rules, provide for the possibility of at times withdrawing the right to daily outdoor exercise as a special security measure. The measure may be ordered where there is increased risk of escape or risk of violence against persons or property or the risk of suicide or self-inflicted harm. In the case of remand prisoners, the measure is imposed by a judge (No. 62 para. 3 Remand Detention Execution Rules), in the case of ordinary prisoners by the head of the institution.

The following must be stated in regard to the CPT's renewed recommendation that this prohibition be deleted from the relevant legislation: As a result of the amendment to the Basic Law, the competencies for legislation on prisons and remand detention (which were previously regulated under Article 74 para. 1 No. 1 Basic Law) have been deleted with effect from 1 September 2006 and thus these federal powers have devolved to the *Länder* (cf. Article 70 Basic Law). Although, in accordance with Article 125a para. 1 Basic Law and insofar as it has not been replaced by a law at *Land* level, the Prison Act still applies as federal law following the devolving of powers, the federal legislator can no longer make changes to its content which go beyond the mere (technical) adaptation to a change in circumstances, since it no longer has competence in the matter. The federal national legislator can, therefore, not make the recommended changes. Nevertheless, the Federal Ministry of Justice is of the opinion that the CPT's recommendation should be endorsed in principle, that is that in a given case, temporary withdrawal of outdoor activities can indeed be justified to prevent concrete risks, of escape for example, if the conditions set out in the above-mentioned provisions are met. Furthermore, there are no indications that this security measure is applied disproportionately in practice.

2. The *Länder* authorities, which are now competent in the matter, have been notified of the CPT's recommendation. Some have not as yet completely formed their opinion in regard to this matter.

- *Steps to be taken to ensure that every prisoner in respect of whom a special security measure is envisaged is given an opportunity to be heard on the matter before a formal decision is taken. Further, the prisoners concerned should always receive a copy of the decision, not only concerning the initial imposition of a measure but also the subsequent renewals thereof. They should also be required to sign an attestation that they have received it (paragraph 92).*

Where there is no danger in delaying the imposition of special security measures, the CPT's recommendations are being applied in practice in Berlin as far as possible. However, no attestation of receipt must be made in the form of a document signed by the detainee. The Senate Department for Justice does not believe this is necessary, since the prison officer handing the decision to the prisoner makes a note in the prisoner's file of the time at which this occurred. Where there is an imminent danger, it is generally not possible to hear the prisoner beforehand, because such decisions must be made under considerable pressure of time.

Comments

- *The yard used for outdoor exercise in Unit B-1 lacked any protection against inclement weather (paragraph 88).*

Please refer to the response to paragraph 88 under "Recommendations".

- *It would be desirable that prisoners in Unit B-1 also benefit from the regular presence of a psychologist (paragraph 90).*

Except in rare cases of permanent seclusion, prisoners remain in the special security unit for only a few days to a few months. During this time inmates are supervised by a social worker. In addition, they may also talk to staff of the general prison service. These have wide-ranging experience in dealing with prisoners in this stressful situation. The *Land* authorities therefore do not believe the regular presence of a psychologist is required. Inmates are in individual cases given medical or psychological care if this becomes necessary.

Requests for information

- *The concrete steps taken by the management of Tegel Prison to improve access to natural light in the cells in Unit B-1 (paragraph 87).*

After the visit by State Secretary Flügge, it was arranged that special metal grids with large window panes be installed in front of the cells so that considerably more natural light can enter the cells in the special security unit; they ensure the same level of ventilation. The building work this entails is expected to be completed by late June 2007.

Unit for Secure Placement (*Sicherungsverwahrung*)

Recommendations

- *Immediate steps to be taken to improve the psychological care and support for inmates subject to *Sicherungsverwahrung* at Tegel Prison, in the light of the remarks made in paragraph 99 (paragraph 99).*

On the occasion of the aforementioned visit by State Secretary Flügge, the situation of those individuals put in secure placement was discussed at length with those responsible at Tegel Prison. The units in question were looked at in detail.

A working group at Tegel Prison is currently looking into the nature of the secure placement and is developing a coherent treatment policy. It is already clear that the individuals in this heterogeneous group require different types of treatment, ranging from accommodating largely hospitalised, older inmates in secure placement appropriate to their age to energetic young inmates who still have good prospects for their life after release. Tegel Prison intends to have drawn up this treatment policy by mid-2007.

- *The German authorities to institute an immediate review of the approach to Sicherungsverwahrung at Tegel Prison and, if appropriate, in other establishments in Germany accommodating persons subject to Sicherungsverwahrung, in the light of the remarks made in paragraph 100 (paragraph 100).*

1. The treatment of persons in secure placement poses a particular challenge for prisons. The Federal Ministry of Justice also feels the *Länder* need to take action in the matter.
2. As already outlined in response to paragraph 99 above, a working group at Tegel Prison has been tasked with drawing up a treatment policy by mid-2007.
3. The other *Länder* have provided the following information:

In Bayern efforts are undertaken to prepare each individual in *Sicherungsverwahrung* for his/her release and to provide as much support as possible prior to release. Suitable sex offenders are transferred for treatment to a socio-therapeutic facility or unit. There are plans to extend social therapy to dangerous violent criminals. Furthermore, those held in secure placement take part in the same rehabilitation measures as ordinary prisoners.

According to the Prison Plan (*Vollstreckungsplan*) of Hessen, Schwalmstadt Prison is responsible for secure placement. However, this does not mean that individuals in secure placement are not, in given cases, accommodated in other prisons. Where special treatment is necessary and agreement can be reached in the matter, individuals in secure placement can also voluntarily be transferred to Butzbach Prison or Kassel II Prison (Socio-Therapeutic Unit).

A unit for sex and violent offenders has been established at Butzbach Prison; external therapies are also available there. It is therefore not possible to separate those in *Sicherungsverwahrung* and ordinary prisoners in this unit. Staff of the specialist services at Butzbach Prison hold information events in Schwalmstadt Prison whenever necessary.

Kassel II Prison Socio-Therapeutic Unit has a special range of therapeutic activities on offer, such as work, vocational training, group therapy, individual therapy and recreational activities. In order for individuals to be kept in *Sicherungsverwahrung* there, they must be able to interact in a group. This ability must already be in evidence, or must develop relatively quickly. Here too, it is only possible to separate those kept in secure placement from ordinary prisoners to a certain degree. However, on account of the numerous privileges afforded the ordinary prisoners in this unit, it can be guaranteed that the accommodation and supervision provided is considerably better than that in regular prisons.

In Schwalmstadt Prison, individuals in *Sicherungsverwahrung* are kept separate from ordinary prisoners in their own unit in an extension. External therapists provide individual therapy where this is indicated. Also, in given cases, further (group therapy) treatment is available in Butzbach Prison and in Kassel II Prison Socio-Therapeutic Unit. Low-threshold treatment is also given, such as accustoming inmates to a daily routine, group sessions to increase motivation, recreational activities, work etc. Less strict prison conditions apply and there are special furnishings in the cells. 32 inmates can currently be accommodated, although internal cell divisions in the form of a movable or removable grille can be installed. Apart from a very few multiple-occupancy cells ranging in size between 23.25 and 25.28 m², the single-occupancy cells range in size between 10.05 and 10.33 m².

The unit has a homely room in which detainees can pursue recreational activities. The room has sofas and armchairs, a TV and a separate area with a table and chairs. The equipment in the small kitchen, where inmates can bake, is of a very much higher standard than those kitchenettes to which ordinary prisoners generally have access. In addition, the unit has a shower, a washing machine and a dryer. Outside the unit, a separate gym has been set up for those individuals in secure placement. Individuals in secure placement are permitted to wear their own clothes and to do their own washing. Furthermore, in contrast to ordinary prisoners, they may receive seven parcels per year. In addition to what is available to ordinary prisoners, those in secure placement may use the sports room every day and may be outside in the yard daily (in summer between 11 a.m. and 3 p.m. and 5.25 p.m. to 6.45 p.m.; in winter between 11 a.m. and 3 p.m.). Finally, the cells of those in secure placement are open all day from the time they are unlocked for breakfast to when they are locked at night. Those in secure placement have access to the shower all day every day, except Sundays.

Those in secure placement have been provided with additional opportunities to make purchases. Additional socio-educational measures have been initiated in order to:

- promote sociability,
- create the atmosphere of a residential group,
- encourage sensible recreational activities and a daily routine,
- improve social and relationship skills,
- increase inmates' quality of life through acceptance of their current situation.

Offence-specific, individual psychotherapy is one such element. The size of the group ranges between eight and ten. Social services and the prison management allocate individuals to this group.

Residential group meetings are held on a weekly basis. In addition, one-to-one meetings can be held when required to improve integration in the group and joint recreational activities can be undertaken to encourage a group experience. The aim of this additional socio-educational work is to offer low-threshold incentives to help increase the motivation of those in secure placement to continue participating. At the same time they provide the opportunity for the prison management to observe what is going on. When drawing up prisons plans for those in secure placement (who are generally not suitable for day release and holiday), particular attention is paid to ensuring these individuals have sufficient supervised leave in order to counter the harmful effects of long-term imprisonment and detention.

In Hamburg the number of individuals kept in secure placement has previously been very small. 16 persons are currently in secure placement. Until recently, those in secure placement were accommodated as was befitting the treatment requirements of each individual. A separate unit for those in secure placement has now been established at Fuhlsbüttel Prison. However, those in secure placement will not mandatorily be transferred there. Some persons are also being accommodated in other units. Some are in the socio-therapeutic unit because this is absolutely essential for their treatment and to prepare them for release. They are not separated from ordinary prisoners in this unit, as this is not considered appropriate in respect of their treatment.

A detailed policy for the unit for secure placement has now been drawn up. First steps have been taken to implement the policy.

The objective of the policy is to counteract the harmful consequences of the (long) deprivation of liberty and to give the individuals in secure placement the opportunity to take responsibility for their restricted living conditions. This increases the individual's responsibility for himself/herself and his/her ability to cope with life. Individuals in secure placement may take part in all recreational and educational activities available in the facility. In addition, staff members in the unit supervise and run recreational groups and other groups on specific topics. There are plans to introduce a nutritional and physical exercise counselling service. Members of the general prison staff run a cooking group in which those in secure placement have the opportunity to cook and eat together once per month. There is also a gardening group, which is responsible for designing and maintaining the courtyard, under instruction and in line with the prison's security requirements. A discussion group meets once a month to discuss how inmates are structuring their day and how they are experiencing their personal situation. The long-term objective of this group is to increase the level of motivation of those in secure placement. Special treatment measures help them to re-examine their own delinquency and thus to create the preconditions for their release. The unit for secure placement also offers individual psychotherapy. This treatment is given by internal or external psychotherapists where indicated and the person in secure placement is motivated to participate. The prison conditions of those in secure placement compared to those of prison inmates, furthermore, differ most especially on account of the fact that they are permitted more regular visits, are given additional free hours on Saturdays, Sundays and public holidays, and the rules on telephone calls have been relaxed. Separating those in secure placement from ordinary prisoners enables a considerable improvement to be made to their conditions of detention.

In Mecklenburg-Vorpommern one person is currently in secure placement in Bützow Prison. There has up until now been no need to develop a separate, humane and consistent treatment strategy for those in secure placement. Given that the number of persons in secure placement is expected to rise, Bützow Prison has been asked by the Ministry of Justice to draw up a policy by summer 2007.

The unit for secure placement at Celle Prison is responsible for housing inmates from across Niedersachsen; it already has a policy which is under constant review, as is the practical work of the prison. This is part of the ministry's monitoring in line with the decision of the Federal Constitutional Court of 5 February 2004 (ref.: 2 BvR 2029/02).

A cross-hierarchical working group in Nordrhein-Westfalen is currently working on producing a framework concept on secure placement for the *Land*. This is to be completed by early 2007 and will contain strategies for treating those in secure placement.

Rheinland-Pfalz currently has a provisional policy for dealing with those in secure placement. In the view of the Ministry of Justice, this is not satisfactory. However, it is a temporary solution, because the extension to Wittlich Prison (which is to be completed by late 2008/early 2009) will create suitable conditions for accommodating those in secure placement as well as appropriate strategies.

No one is as yet accommodated in secure placement in Thüringen. Over the next three years a total of three sentenced prisoners will have to be accommodated in secure placement. On account of this extremely small need for secure placement, there are plans to establish a secure placement unit in co-operation with other *Länder* so that the objectives of accommodating inmates in secure placement can be fulfilled properly and effectively.

There is no secure placement accommodation in Saarland; the *Land* has an administrative agreement with Nordrhein-Westfalen.

Requests for information

- *Within one month, detailed information on the action taken by the prison authorities of Berlin regarding the situation of the two inmates referred to in paragraph 98 (paragraph 98).*

The German Government's response was forwarded to the CPT in a letter dated 28 August 2006 (ref.: IV M -94 70/7- 3- 5-48 324/2006).

- *The German authorities' comments on the view expressed by both the management and staff of Tegel Prison that the strict separation of accommodation of inmates subject to Sicherungsverwahrung and ordinary prisoners had proved to be counter-productive (paragraph 101).*

1. The legal situation is as follows:

In accordance with Section 140(1) Prison Act, inmates subject to secure placement are accommodated in separate establishments or in separate units in a prison established for the purpose of enforcing prison sentences. The principle of separate accommodation is based on the different objectives pursued in subjecting inmates to secure placement compared to those sentenced to prison. The objective is - given the intended purpose of preventive detention under Section 66 Penal Code (StGB) - the protection of the general public (Section 129(1) Prison Act). The provision also obligates the prison authorities to offer the individuals integration assistance (second sentence). The nature and purpose of secure placement as preventive detention serving the protection of society requires that "the enforcement be privileged". That means that the justice administrations of the *Länder* must exhaust all available options to guarantee "better prison conditions" which are possible in prisons. The Federal Constitutional Court explicitly referred to this in its decision concerning the constitutionality of the duration of this form of detention (judgement of 5 Feb. 2004, *NJW* 2004, p. 744).

This has a real impact on prison conditions, which differ considerably. The secure placement units have the atmosphere of a residential group, that is they usually have communal rooms and cell doors are open during the day and in some cases in the evening. Inmates may remain outdoors for longer; in some prisons those in secure placement may be outside all day. The cells are all single-occupancy cells and often larger than those in which ordinary prisoners are accommodated. Inmates generally also have the right to buy their own furniture and keep a small pet. This inevitably means that they are separated from ordinary prisoners, whose prison conditions are more stringent. Nevertheless, the principle of separate accommodation may be abandoned where required for the purposes of treatment (Section 140(2) Prison Act). Among other things, this may be appropriate in view of the small number of persons in secure placement. However, on account of the legal right of those in secure placement to separate accommodation this is only possible with their consent. Nevertheless, accommodating these groups of persons together leads to restrictions which can only be demanded of inmates if the treatment measure can compensate for these restrictions.

The *Länder* are at liberty, when adopting their own laws on criminal procedure, to rescind the legal principle of separate accommodation as they now have jurisdiction in the matter. However, they are still bound by the case law of the Federal Constitutional Court, namely they must ensure that the conditions under which those in secure placement are accommodated are better than those of ordinary prisoners.

2. In the opinion of the Berlin authorities, the principle of separation in its current absolutist form as a legal right of the individual in secure placement creates problems, particularly in everyday life. It also restricts the prison's scope for action, even when the principle of separation set out in Section 140 Prison Act is abandoned. Individuals in secure placement in Tegel Prison are accommodated in residential groups. It is impossible to differentiate between residential groups on the one hand and normal prison conditions on the other on account of the relatively small number of individuals subject to secure placement. As a result, inmates in secure placement who are not capable of being accommodated in a residential group need to be accommodated there too. According to Berlin, this inevitably creates tension within the unit. The principle of separation, the authorities claim, takes away the prison's means of reacting to breaches of house rules by transferring an inmate to another unit. For example, even drug use and outbreaks of violence cannot lead to an inmate being moved out of the secure placement unit, a fact of which some of those accommodated there are perfectly well aware.

3. In the view of most *Länder*, the spatial separation of those in secure placement and other prisoners helps establishments to comply with the so-called "principle of dissociation" between the general penal system and secure placement. As a result, those in secure placement are given greater freedoms compared to other prisoners and can therefore be guaranteed better conditions.

However, Hamburg has pointed out that the restricted opportunities for contact on account of the small groups of affected inmates can have negative consequences. If they were accommodated together with ordinary prisoners, they would have more and varied contacts, but it would not be possible to ensure that they enjoy better prison conditions. On account of the case law of the Federal Constitutional Court, the disadvantages of the small size of the group have to be accepted in favour of providing better prison conditions.

The problem does not arise in Nordrhein-Westfalen, as the *Land* has separate units in closed-regime prisons in Aachen and Werl to accommodate those in secure placement. In addition, persons subject to secure placement can even be accommodated in an open regime at the Pavenstädt branch of Bielefeld-Senne Prison. In addition, they are accommodated in, for example social therapy, in care units or in the prison hospital, in special cases. Individuals in secure placement have access to the entire range of work, recreational and treatment options available in the prison to which their unit is attached. They thus do in fact come into contact with normal prisoners, in line with applicable regulations.

However, there are other *Länder* which have separate units for those in secure placement which do not completely separate those in secure placement from other prisoners. For example, in Baden-Württemberg those in secure placement and other prisoners take their daily exercise together and engage in joint recreational activities; nor are they separated during their work activities. In Bayern, Schleswig-Holstein and - as explained in detail in response to paragraph 100 - in Hessen, those in secure placement are not kept separate from normal prisoners if this is indicated for therapeutic reasons. If, for example, group therapy is deemed sensible, the individual in secure placement can take part in group sessions with other prisoners.

In those *Länder* which do not have separate units for those in secure placement, such as Brandenburg and Mecklenburg-Vorpommern, those in secure placement are integrated into the prison units, if they agree to this.

The draft of an amendment of the penal system in Niedersachsen still contains the right of an inmate subject to secure placement to be accommodated separately. However, the problems in everyday prison practice are here also recognised, since, in the opinion of the *Land* authorities, those in secure placement only constitute a homogeneous group in a legal sense. This group is extremely heterogeneous as regards personality deficits and treatment needs. The group can be divided into three sub-groups in respect of their secure placement: those in secure placement who initially need to be kept especially securely; those who are undergoing a rehabilitation process that promises success; and those who, after a long criminal career, have no prospect of being released and can only be accommodated in humane conditions and, in some cases, with geriatric supervision.

Over and above Section 120(3) Prison Act, those in secure placement in prisons in Niedersachsen have the right to be transferred to a prison specialising in the enforcement of prison sentences. Those in secure placement make use of this opportunity, for example in order to make it easier to maintain social contacts or by switching to another establishment to escape a daily routine.

- *Whether there are any specific rehabilitation programmes at Tegel Prison and, if appropriate, in other prisons in Germany for prisoners for whom a Sicherungsverwahrung has been pronounced in the court sentence, with a view to avoiding to the extent possible the implementation of a Sicherungsverwahrung immediately following the prison term (paragraph 102).*

1. In Tegel Prison there are no special rehabilitation programmes for ordinary prisoners who will face secure placement following their prison term. This group of persons, as well as all those already in secure placement, have access to the same treatment options which the penal system provides for all ordinary prisoners.

2. Apart from Schleswig-Holstein, where Lübeck Prison has been asked to draw up such a policy, none of the other *Länder* have special rehabilitation programmes. All prisoners - including those who will later be accommodated in secure placement - can take part in all the available treatment programmes. For those prisoners whose term is subject to secure placement, that includes programmes which promise the most success for those with personality deficits and criminal propensity. Such measures are planned and implemented on a case-by-case basis and are outlined in and based on drafted and reviewed prison plans. The *Länder* have pointed out that, on account of the heterogeneity within this group, it is not considered advisable to develop a uniform treatment programme. Each prison plan pursues the objective - that must be given concrete form in each given case - of avoiding secure placement if at all possible. If it bears fruit and the prison concludes before the end of the prison term that the secure placement is no longer necessary because the prisoner no longer represents a danger to the general public, the prison informs the penal chamber responsible for execution of sentences in a statement to that effect in accordance with Section 67c StGB.

Other prisons visited

Preliminary remarks

Recommendations

- *Steps are to be taken to put an end to the mixed accommodation of juveniles and adults at Halle Prison No. 1 (paragraph 107).*

The authorities of Sachsen-Anhalt are aware of the fact that the spatial circumstances at Halle Prison No. 1 do not comply with the standards of a modern prison and the pertaining general requirements. Due to the spatial constraints in the old facility, the recommendations of the CPT can only be implemented to a limited extent. It is intended to terminate the mixed accommodation of juveniles and adults at Halle Prison No. 1 once the future Burg Prison opens, planned for 2009.

Comments

- *The practice of holding juveniles and young adults together requires careful management to prevent the emergence of negative behaviours such as domination and exploitation, including violence (paragraph 106).*

1. Hameln Juvenile Prison accommodates juveniles and young adults together, provided they were sentenced to juvenile detention. Young adult prisoners who were sentenced to prison are accommodated in the juvenile prison only in exceptional cases and upon meticulous examination under Section 114 of the Youth Court Act (*Jugendgerichtsgesetz - JGG*). Apart from fostering the best possible development of the young prisoners, the conceptual approach of Hameln Juvenile Prison aims at maximum protection of the young prisoners against mutual subcultural influence, particularly acts of suppression. The essential elements of this conceptual model are a detailed admission diagnosis and subsequent allocation of accommodation differentiated by criteria relating to the willingness to change and the delinquency history. Subculturally orientated prisoners are accommodated in prison units with strictly limited unlock hours. The prisoners in this unit are separated from the other inmates as far as possible; the aim is to permit mixed accommodation only while under supervision during leisure time or while attending school or vocational programmes. Subculturally active prisoners thus have significantly fewer opportunities of meeting other prisoners outside of supervision. On the other hand, they are requested more often than other prisoners to reflect on their behaviour in discussions with the responsible unit managers and to work out possibilities of behavioural change. The situation of imprisonment and the willingness to change are reviewed at least once per month for such prisoners at a meeting.

A working group was formed at Hameln Juvenile Prison in 2003 to reduce acts of suppression and assaults among prisoners. This working group carried out a differentiated analysis of all inter-prisoner physical assaults and developed recommendations as to steps to be taken. In consequence, the working group proposed further differentiation of the prisoner groups even within the individual units, since most physical assaults occurred within the co-residing groups. A need for increased staff presence within the co-residing groups became evident in order to facilitate more supervised free time. Since 2003, detailed records are being kept and analysed on an ongoing basis regarding physical assaults between prisoners and other subcultural actions, if they give rise to a criminal charge or constitute a reportable incident. According to these records, the number of serious physical assaults and other acts of suppression has continually dropped since 2004. In the opinion of the *Land*, the reasons for this are the substantial drop in the number of prisoners held at Hameln

Juvenile Prison and the resolute implementation of the developed strategies. The number of prisoners held at Hameln Juvenile Prison dropped from an average of 660 in 2004 to 635 in 2005 and down to 600 prisoners in 2006 (as of end October). The total number of assaults dropped from 191 in 2004 to 180 in 2005, and down again to an average of 118 in 2006 (as of end October). The number of serious physical assaults and other acts of suppression dropped from 77 in 2004 to 36 in 2005, and again to 32 in 2006 (as of end October). In order to improve the possibilities of supervision and control in the co-residing groups, Hameln Juvenile Prison intends to alter the facilities accommodating the co-residing groups. By the end of 2006, the layout of two buildings in Hameln Juvenile Prison had been successfully altered to improve monitoring. It is now much easier for the Hameln Juvenile Prison staff to supervise and control the prisoners during their free time. Successive alterations to the co-residing groups are planned for additional prison buildings.

2. The Branch Unit in Weimar of Ichtershausen Juvenile Prison accommodates juvenile sentenced prisoners and juvenile and young adult remand prisoners. During rest hours, prisoners share cells, with a maximum of two prisoners per cell without any exception. In order to prevent the emergence of negative behaviours and subcultural phenomena such as domination, exploitation and violence in the mixed accommodation of juvenile and young adult prisoners, psychological and physical characteristics, previous convictions, seriousness of the criminal offence, and other personal characteristics are taken into consideration when determining the specific measures of the prison regime.

3. The female unit of Halle Juvenile Prison No. 1 accommodates juveniles and young adults together, provided that they were sentenced to juvenile detention. One of the essential aims of the conceptual model of Halle Juvenile Prison No. 1 is maximum protection of the young female prisoners against mutual subcultural influence, in particular acts of suppression.

III-treatment

Recommendations

- *At Weimar/Ichtershausen Juvenile Prison, the authorities of Thüringen to draw up and implement a comprehensive strategy to address the problem of intimidation and inter-prisoner violence, in the light of the remarks made in paragraphs 109 to 112; at Hameln Juvenile Prison and Halle Prison No. 1, the authorities of Niedersachsen and Sachsen-Anhalt to review their existing strategies to that same end and vigorously pursue the implementation of those strategies (paragraph 113).*

1. The authorities of Thüringen attach particular importance to the prevention of intimidation and inter-prisoner violence, which is a recurring problem in prisons. Apart from engaging the prisoners in regular work and purposeful spare time activities, these subcultural practices are addressed in particular by assigning prison staff with a high level of training and motivation. For this reason, staff assigned to work in juvenile prisons receive six months of additional training, and the participants of this practical and theoretical special training acquire appropriate knowledge and techniques to identify violence. This broad-based professional development programme includes training in and consolidation of skills in the following areas:

- Legal foundations of juvenile criminal law and the juvenile prison system
- Current trends in juvenile delinquency
- Basic principles of development psychology
- Communication and discussion skills
- Self-awareness training
- Personality structures of juvenile prisoners
- Identifying and combating subcultural tendencies in juvenile prisons
- Identifying and combating right-wing extremist structures in juvenile prisons
- Dealing with dangerous prisoners
- Combating drug abuse in juvenile prisons
- Coping with routine situations
- Individual supervision of prisoners

In an approach to prevent intimidation and inter-prisoner violence, aggression threshold training has moreover been carried out since April 2006 within the scope of the TTB programme (*Thüringen Training- and Education Programme*) funded by the *Drudel 11 e.V.* society. The training is delivered by a graduate social education worker and further educationalist staff and employees of the Branch Unit. The idea of the programme is to foster specific aggression thresholds in participants, and to carry out confrontational reflections of the violent crimes they committed. The aim is to motivate participants to leave their violent environment. Another step to prevent inter-prisoner violence is to decrease the maximum occupancy of the Branch Unit in Weimar from the current level of 97 to 80 prisoners and expand the opportunities to work.

The above measures are part of the treatment plan which is under continual development.

2. Regarding Niedersachsen, please refer to the remarks on paragraph 106 no. 1 (see above).

3. Regarding Sachsen-Anhalt, please refer to the remarks on paragraphs 106 no. 3 and 107 (see above). This circle of issues will be specifically considered in the Juvenile Prison Act of Sachsen-Anhalt (*Gesetz über den Vollzug der Jugendstrafe in Sachsen-Anhalt*), which is currently in preparation.

4. Additional remark on paragraph 109 et seqq.: The concerns and findings of the CPT regarding the level of inter-prisoner violence found concrete expression only a few months ago at Siegburg Prison, where initial investigations have revealed that a prisoner was tortured by fellow inmates and forced to hang himself.

The first results of a study by the criminological agency of Nordrhein-Westfalen on inter-prisoner violence (published on www.justiz.nrw.de/Presse/PresseJM/p_2006_12_22/index.php) have shown that nearly 2,500 acts of violence were reported in the prisons of the *Land* between 2003 and 2006. An evaluation limited to the year of 2005 has shown that 90% led to disciplinary sanctions, and 30% entailed criminal charges being filed. As a first response, the Ministry of Justice of Nordrhein-Westfalen announced an expansion of staff resources, an increase in prison capacities and the introduction of an ombudsman as an independent point of call in prison-related matters. The Federal Ministry of Justice assumes that this incident has also sharpened the view of the judicial authorities in the other *Länder* as regards the issue of violence and will more particularly influence the current legislative work on the Prison Acts and Juvenile Prison Acts of the *Länder*.

Comments

- *At Hameln and Weimar/Ichtershausen Juvenile Prisons, a few prisoners complained of rude behaviour and/or the use of insulting or disrespectful language against them by some staff (paragraph 108).*

1. The Niedersachsen Ministry of Justice indicates that the willingness to treat prisoners in a respectful and polite manner is an issue which is already considered when selecting staff for recruitment. Applicants are carefully screened for their suitability to work in the field of juvenile custody, inter alia by conducting a psychological aptitude test. Respectful treatment of inmates is a major aspect of training, as well as of the regular staff meetings which take place within the prison units. Moreover, professional development programmes are offered on dealing with prisoners. The prison management regularly emphasises the importance of respectful behaviour at staff meetings and other discussion opportunities, and it is required to use the polite *Sie* form of the German language when speaking to prisoners.

Following the visit of the CPT, the management of Hameln Juvenile Prison advised the staff that rude and impolite behaviour cannot be tolerated by any means.

2. In Thüringen, prison staff are also prepared for dealing with prisoners as part of their specialised training. They learn that developmental and resocialisation work can only achieve results if staff and prisoners treat each other in a human and respectful way. Any misconduct on behalf of the staff in dealing with prisoners is thoroughly investigated and prosecuted.

Following the CPT Report, the Weimar/Ichtershausen Juvenile Prison staff were once again advised of the unacceptability of disrespectful and contemptuous behaviour.

Conditions of detention at Hameln and Weimar/Ichtershausen Juvenile Prisons

Recommendations

- *Steps to be taken at Hameln and Weimar/Ichtershausen Juvenile Prisons to ensure that:*
 - *all cells have adequate access to daylight and good ventilation; any devices affixed to cell windows should allow adequate passage of natural light and fresh air;*
 - *general hygiene is kept at a consistently acceptable level (paragraph 117).*
- *At Hameln Juvenile Prison, sanitary facilities in cells accommodating more than one prisoner to be fully partitioned (paragraph 117).*
 - *for so long as Weimar/Ichtershausen Juvenile Prison continues to be in use, cells in this establishment measuring less than 8m² (excluding the toilet area) to accommodate no more than one prisoner (paragraph 117).*
 - *the allocation policy and practice to be reviewed at Hameln and Weimar/Ichtershausen Juvenile Prisons, taking into account the problem of passive smoking encountered (paragraph 117).*

1. The Ministry of Justice of Niedersachsen indicated that the prison cell windows in certain accommodation areas of Hameln Juvenile Prison require enhanced security to impede subcultural activities and deliberate dirtying of the prison premises. However, it was added that adequate daylight and ventilation were ensured in all accommodation areas, as confirmed by measurements that had been carried out.

Maintaining a constant, acceptable level of hygiene is a permanent challenge for the staff in dealing with the prisoners. According to the *Land*, this can only be reasonably expected to work if strict instructions are given and non-compliance with the hygiene standards is resolutely punished. This is achieved as follows at Hameln Juvenile Prison: All senior staff members personally carry out hygiene inspections within their areas of responsibility. The management of the Juvenile Prison continually monitors the condition of the premises by means of regular inspections, the results of which are recorded and analysed. At the main unit of Hameln Juvenile Prison, prisoners are accommodated in single cells only. Each cell is furnished with fully-partitioned sanitary facilities. If for urgent reasons, young prisoners are accommodated together for a limited period of time (maximum of two prisoners per cell), no special cells are used for this purpose. Only the furniture is adapted to the circumstances (bunk bed instead of single bed, plus an additional chair).

The prison management has reached an official agreement with the staff council regarding protection of non-smokers which covers prisoner accommodation, workshops and sports facilities. The problem of passive smoking has been regularly discussed with the inmates' shared responsibility body (*Gefangenenmitverantwortung -GMV*) of Hameln Juvenile Prison. Smoking is prohibited in all corridors within the accommodation areas. The inmates' shared responsibility body is involved when defining the smoking and non-smoking zones within the units. Given the small number of non-smokers among the prisoners, it is currently not planned to create non-smoking units or co-residential groups. During work and school hours, prisoners may only smoke in specifically designated rooms and at certain times.

2. The Ministry of Justice of Thüringen indicated that the installation of blinds, which were fitted to the cell windows only after the core refurbishment of Weimar/Ichtershausen Juvenile Prison and caused limited passage of daylight, was unfortunately unavoidable for reasons of security and order. It was necessary to carry out this restrictive constructional alteration due to constant complaints from local residents about disturbances due to noise and insults, and to prevent inmates from constantly taking up non-permitted contact with passers-by.

However, the measurements that had already been carried out as a precaution at the time of installation showed that the levels of both daylight and ventilation in the cells in question comply with the statutory building standards. To improve the conditions of accommodation, the blinds fitted to the windows of the common rooms, where prisoners may only stay in the presence of a staff member, have in the meantime been removed. The prison management attaches great importance to the maintenance of hygiene both in the common rooms and in the cells. The staff members make unrelenting efforts to remind prisoners of the importance of observing and complying with the hygiene standards. Cells with a floor area of less than 8 m² excluding toilet area are only used for single accommodation. When prisoners are allocated, non-smokers are on principle separated from smokers; hence, the problem of passive smoking is being adequately considered.

- *With regard to the educational measure of lock-up (Einschluss) at Hameln Juvenile Prison, steps to be taken to ensure that the prisoners concerned are heard in person concerning the application of the measure, receive a copy of the decision and are informed in writing of the modalities for appeals against that decision. Inmates concerned should also benefit from individual custody plans indicating clearly how they may progress out of the regime. More generally, the application of the educational measure of lock-up should be subject to frequent and regular review and the process be carefully overseen by senior managers to protect against the risk of arbitrariness and/or an excessive duration of the measure (paragraph 120).*

Building no. 2 of Hameln Juvenile Prison mentioned in the CPT Report is the unit accommodating prisoners who are not willing to co-operate. The unsupervised recreational opportunities in this unit are restricted to a variable degree, depending on the individual prisoner assessment. A “lock-up group” (*Einschlussgruppe*) only comprises prisoners whose conduct has shown that their integration into a co-residential group of inmates is not feasible (e.g. due to physical assaults, subcultural actions such as blackmailing, etc.), who have culpably lost their job or permanently refuse to take up a new occupation, or who are not suitable for joint accommodation during working hours. Physical activity, radios, newspapers and books are permitted, but no unsupervised communal recreational activities are scheduled. As indicated by the *Land*, each prisoner assigned to building no. 2 receives detailed information on the consequences of a breach of the rules on admission to the unit. Before a prisoner is transferred to the lock-up group, he or she is informed of the reasons for the transfer. At least once per month, or more often if necessary, the situation is discussed in detail with each prisoner, and the possibilities of release from the lock-up group are pointed out to the individual concerned. The question of whether a prisoner must remain in the lock-up group is decided on a weekly basis at the unit meetings. All restrictive decisions with regard to communal accommodation during working hours and leisure time are recorded in the prisoner’s personal file. In such cases, however, no written instructions about the right to appeal are given, since prisoners receive these instructions at the time of admission and are informed about the complaints procedure. The practice of differentiated accommodation with diverse possibilities of unsupervised leisure time without specific guidance is a key element of the strategy followed by Hameln Juvenile Prison to prevent subcultural acts of suppression.

At present, Hameln Juvenile Prison is developing a system for keeping records on all prisoners to whom any restrictions apply regarding shared accommodation. So far, such records have only been kept for prisoners excluded from shared accommodation for disciplinary reasons. This central recordkeeping facilitates continuous reviews of existing restrictions on shared accommodation for educational reasons (No. 12 Subsection 4 of the National Administrative Provisions on Juvenile Prisons (*VVJug*)). Hence, the risk of inadequate exercise of this educational measure is reduced.

- *At Weimar/Ichtershausen Juvenile Prison, pending the entry into service of more suitable premises, the authorities of Thüringen to take immediate steps to increase the programme of activities available for inmates, including greater opportunities for work, education and vocational training, as well as for sports and other recreational activities (paragraph 120)*

47 jobs are currently available at the Branch Unit of Ichtershausen Juvenile Prison in Weimar. Depending on the actual prison occupation, this capacity enables an employment rate of up to 60%. The possibilities of expanding the existing opportunities for work, education and vocational training are very limited due to lack of space. The creation of up to eight new jobs is planned in 2007 by forming an enterprise. The following activities have been added to the programme of available treatment and recreational activities since November 2005:

- Anti-aggression threshold training (3 x 3 weeks per year)
- Instructor-led recreational project “*Weggefährten*” (= fellow travellers) (LOKAST) with a therapeutic approach (1 x 120 minutes per week). This art therapy project is led by a volunteer assistant and was conceived to develop the creativity of the inmates and provide them with the experience of handling various materials.
- Weekly game-playing hour
- Prolonged unlock hours and a wider range of recreational activities on weekends.

The recommendations of the CPT were hence followed.

Requests for information

- *Precise information regarding the plans for the construction of a new juvenile prison to replace Weimar/Ichtershausen Juvenile Prison (which should be given a high priority) (paragraph 116).*

The Free State of Thüringen is planning to build a new juvenile prison in Arnstadt-Rudisleben. This facility will have a total capacity of 280 prisoners in closed sections and 20 prisoners in open sections. In addition, it is planned to build a juvenile detention centre on this site for 40 detainees. Construction work is planned to begin in 2008, and the prison will presumably take up operation in 2011. The vast majority of prisoners and persons placed in juvenile detention there will be accommodated in single cells. To enable education and vocational training, the required workplaces and educational establishments will be provided. Additional facilities will be created for therapeutic programmes and purposeful recreational activities. Once the new prison opens, the old juvenile prisons will be closed down or used for other purposes.

The Ministry of Justice of Thüringen shares the view that many cells of the Branch Unit in Weimar are too small to accommodate two prisoners. In the meantime, this issue has been at least partially resolved by reducing the maximum occupancy of the prison from 97 to 80.

Conditions of detention at Halle Prison No. 1

Recommendations

- *The refurbishment programme to be accelerated to ensure that all toilets are fully partitioned and properly ventilated and, pending such refurbishment, cells with toilets which are not fully partitioned not to be shared (paragraph 122).*

The *Land* has indicated that the measure recommended by the CPT, namely to accelerate the refurbishment programme for Halle Prison No. 1, has been instituted. Progress and completion of the measure will be verified within the scope of specialist control. A new hospital ward was opened on 1 January 2007.

- *Outside areas for exercise to be provided with shelter from inclement weather and all inmates, and in particular young inmates, to be encouraged to take daily exercise (paragraph 122).*

The refurbishment programme includes the provision of shelters to facilitate outdoor exercise during inclement weather. The Ministry of Justice of Sachsen-Anhalt indicated that in future, prisoners will be encouraged more often by the staff of Halle Prison No. 1 to take daily exercise.

- *With a view to providing inmates in all sections of Halle Prison No. 1 with purposeful activities and programmes for a reasonable part of each day, steps to be taken to ensure that*
 - *the existing facilities for work, education and training are used to their full potential;*
 - *the range of activities is increased;*
 - *individual custody plans are introduced (paragraph 124).*

The recommendations of the CPT will be followed in the future, as indicated by the *Land*. Their implementation will be verified within the scope of specialist control.

Comments

- *Steps should be taken to develop programmes to prepare inmates for release (paragraph 124).*

Please refer to the remarks made on paragraph 124 under “Recommendations” (see above).

Health care

Recommendations

- *The time spent by general practitioners in Halle Prison No. 1 and Hameln and Weimar/Ichtershausen Juvenile Prisons to be reviewed, in the light of the remarks made in paragraph 127 (paragraph 127).*

1. Medical care is now ensured at Halle Juvenile Prison No. 1, as indicated by the *Land*. The negative effects mentioned, which arise from the circumstance that medical attendance was being exclusively provided by panel doctors have been eliminated by recruiting a physician who works at the prison on a full-time basis. As mentioned in paragraph 122, a new hospital ward was opened on 1 January 2007.

2. As regards Niedersachsen, the Ministry of Justice has indicated that the calculation of medical staffing levels in the prisons of this *Land* is based on uniform standards of service. The medical staff must ensure provision of basic standard services and - depending on the individual qualification - additional service levels.

The following services are required to be provided in line with the basic standard:

- general medical care, granting each inmate access to the regular general medical consulting hour at least once per week,
- standard emergency care, and
- medical standards as defined in Book 5 of the Social Code (*SGB V*) and in the recommendations of the CPT.

The doctor/inmate ratio for the provision of basic care in the medical units is one physician's post per 600 inmates.

Hameln Juvenile Prison (with a capacity of 660 prisoners) has been allocated 1.5 posts for medical service, and these are actually staffed. In the opinion of the *Land*, this is the adequate number of posts and employees to fulfil all healthcare tasks, including medical care and supportive psychiatric care.

3. Provision of medical care is ensured at the Branch Unit of Ichtershausen Juvenile Prison in Weimar, as indicated by the Ministry of Justice of Thüringen. The full-time resident physician holds consulting hours there twice a week. The alleged negative effects or long waiting times for inmates were not confirmed by the *Land*.

- *The number of nursing staff at Hameln Juvenile Prison to be increased in due course to the equivalent of twelve full-time nursing posts. A staffing level of this kind would also make it possible to ensure that a nurse is on duty in the establishment round the clock, including nights and weekends (paragraph 128).*

Hameln Juvenile Prison is currently staffed with six medical officers. Based on the staff requirements calculated for 2007, it is planned to increase the number of staff by one. The *Land* considers that adequate care of the prisoners is ensured with a staff of seven.

While permanent staff presence would ensure immediate and comprehensive medical attendance in the event of an emergency, the low incidence rate of medical emergencies does not justify such a staffing level, especially during the late hours of the night. This is why reinforced medical staffing is not considered necessary by the *Land*. Another reason for dismissing staff reinforcement is the fact that all night-duty officers-in-charge are trained in first aid, thus ensuring that first aid can basically be provided around the clock and on weekends. In addition, all staff members of Hameln Juvenile Prison receive regular first-aid training. Since Hameln Juvenile Prison is located near other emergency service establishments, qualified assistance from rescue services and medical emergency services can be summoned at very short notice. What is more, the resident physicians may also be consulted even while off duty should prisoners suffer from acute medical problems. The need for 24-hour medical care arises only very seldom at Hameln Juvenile Prison. In such rare cases, it is preferable that patients be transferred to Niedersachsen Prison Hospital or to local hospitals. For the above reasons, it is not planned to add medical officers to the night-duty staff. However, in the long run it is envisaged that at least one night-duty officer should have an additional medical qualification.

- *Immediate steps to be taken at Weimar/Ichtershausen Juvenile Prison (and in any other prisons in Germany in which staff members perform both health-care and security duties) to preserve the principle of independence of health-care staff, in the light of the remarks made in paragraph 129 (paragraph 129).*

1. The medical officer employed at the Branch Unit of Ichtershausen Juvenile Prison in Weimar is in charge of medical tasks only, as indicated by the *Land*. No other duties are assigned to her (e.g. she is not put on duty in the unit). The principle of the independence of the employees in charge of medical care is therefore safeguarded.

2. As recommended in the CPT Report, all *Länder* were advised to take immediate steps to safeguard the principle of independence of medical staff. The statements given by the *Länder* actually reveal differences in the range of tasks performed by medical staff: Whilst in some *Länder* the nursing staff work exclusively in the medical field (this is true for Brandenburg, Hamburg, Sachsen, Sachsen-Anhalt and the Saarland) or mainly carry out medical duties (in Schleswig-Holstein and Rheinland-Pfalz), nursing staff in other *Länder* additionally assume general prison-service duties. These duties may serve security purposes while taking prisoners to special medical centres, as for instance in the case of Berlin and Bayern. In the opinion of these *Länder*, the independence of medical staff is therefore not at risk, since the obligation to professional secrecy laid down in Section 182 Subsection 2 of the Prison Act (*StVollzG*) is considered a sufficient safeguard for the independence of medical staff. Moreover, the *Länder* have learned by experience that a mix of duties in this field is not perceived as problematic by the inmates. They consider this to be an indication of the fact that the officers make a responsible distinction between their medical and prison-service tasks.

Mecklenburg-Vorpommern reports that in view of the patient clientele concerned, the nursing staff in the prisons of this *Land* are entrusted both with medical and regular prison-service tasks. For example, the nursing staff at Bützow Prison are also in charge of supervising the free hour on the patient ward, making inspections during the night hours, checking postal correspondence and telephone calls and watching over the patients while undergoing medical treatment outside of the prison. In the opinion of the local Ministry of Justice, this “double function” does not place the prisoners at any disadvantage as long as the legal obligations of the medical professions (for instance the obligation of confidentiality) are being met. The Ministry stated that due to the special circumstances of imprisonment it was actually necessary for medical staff to be involved in the issues and conventions of the prison service, and to become familiar with the individual background of each inmate (e.g. crime committed, conduct in prison, dangerousness and any risks). Strict separation of the duties and rights of nursing and prison administration is actually considered detrimental for the patients by the *Land*: Each medical or nursing procedure which a prisoner undergoes would have to be administered in the presence of one (or even more) officers assigned with state functions in order to guarantee the required security. If, in contrast, the necessary supervision is performed by nursing staff to whom prison-administration duties and powers are assigned, both general security and the rights of the patient are safeguarded in the opinion of the Ministry.

- *Immediate steps to be taken at Halle Prison No. 1 to substantially increase the time spent in the establishment by the psychiatrist(s). The time spent there by the drug addiction specialist should also be increased (paragraph 131).*

The Ministry of Justice of Sachsen-Anhalt indicated that action was taken without delay following the visit of the CPT to ensure that the inmate mentioned in paragraph 131 was able to receive therapy. She is still receiving regular psychiatric treatment.

What is more, the recommended substantial increase in the time spent in Halle Prison No. 1 by the psychiatrist(s) was implemented directly upon the visit of the CPT. The same holds true for the recommendation that the addiction specialist also spend more time there. Implementation of these measures will be verified in the scope of specialist control.

- *Immediate steps to be taken at Halle Prison No. 1 to remedy the deficiencies identified concerning prisoners' access to the health-care service (paragraph 136).*

The *Land* has indicated that the deficiencies described by the CPT with regard to prisoners' access to medical service have now been eliminated. Reference is made to the recruitment of a physician working full-time at the prison, as mentioned in the comment on paragraph 127.

- *The current practice concerning the hand-footcuffing of prisoners during their transfer to outside hospitals as well as during medical consultations/examinations or accommodation in these hospitals to be reviewed, in the light of the remarks made in paragraph 137 (paragraph 137).*

The *Land* has indicated that, contrary to the assumption of the CPT, Halle Prison No. 1 does not follow a general practice of cuffing prisoners during transfers or medical consultations. The decision as to whether particular security measures are necessary during the transfer of a prisoner to an outside hospital or during an examination is made by the establishment on the basis of an individual risk assessment.

Comments

- *The German authorities are invited to bring the system for computerised recording of injuries on admission, as observed at Hameln Juvenile Prison, into general use in German prisons (paragraph 135).*

The comment of the CPT has been communicated to the *Länder*. The responses revealed that an electronic health record similar to the one used in Niedersachsen is already at an advanced stage of development in Nordrhein-Westfalen, and is being applied in pilot projects. The system will be rolled out across the *Land* within the next one to two years. Some prisons in Rheinland-Pfalz are also already documenting injuries with a digital camera. As soon as the new BASIS WEB software has been deployed, its rollout is planned in all prisons.

Prisons in Hamburg and the Saarland use a system that basically corresponds to the one used at Hameln Prison. However, no digital photos of injuries are taken there. Instead, the injuries are described in detail and the records are filed with the health records. Access to documents and files containing medical information about prisoners is strictly limited and only permitted to medical staff acting within the scope of their specific duties.

While computerised injury recording during admission examinations is currently not feasible in Thüringen for technical reasons, the launch of a computerised system is envisaged for the near future. In Schleswig-Holstein, this topic will also be discussed with the prison physicians.

Some *Länder* do not consider computerised recording necessary because they regard it to be adequate that injuries are identified by the physician during the admission examination and described in a written report which is filed with the health records.

- *The filling in of personal details forms (Personenbeschreibung) – for the benefit of the prison administration – has nothing to do with medical tasks and should be assigned to prison administration units (paragraph 135).*

Separation of the tasks of the general prison staff and of the specialised medical staff has meanwhile been implemented at Halle Prison No. 1, as indicated by the *Land*.

- *No written information on health care or the prevention of transmissible diseases was available at Halle Prison No. 1 (paragraph 135).*

The recommendation of the CPT to make available written information material about health issues and the prevention of transmissible diseases to the inmates at Halle Prison No. 1 will be implemented in future, as indicated by the Ministry of Justice of Sachsen-Anhalt. Compliance will be verified in the scope of specialist control.

- *Delays were reported in gaining access to the doctor at Weimar/Ichtershausen Juvenile Prison (paragraph 136).*

At Weimar/Ichtershausen Juvenile Prison, the procedures of the admission examination are conducted by the resident physician during the regular consulting hours. When the resident physician is off duty, general medical care is provided by the medical staff on duty (nurses). Should symptoms of an illness appear, the medical stand-by service can be called to administer the required medical treatment. The *Land* found no foundation supporting the allegations contained in the CPT Report regarding delays in gaining access to the doctor, inter alia because the report contained only very general statements.

- *The authorities of all Länder are invited to consider the introduction of a special suicide prevention programme, as was observed at Hameln Juvenile Prison, in all German prisons (paragraph 138).*

1. All *Länder* are aware of the problem that suicide rates are higher among imprisoned individuals than among free citizens. Suicide prevention is always a topical issue in schools for the education of prison staff, internal further training programmes and prison hospitals. All the *Länder* have therefore contributed data or filled in a questionnaire about the suicides committed from 2000-2005 in response to a survey conducted by the criminological department of the Niedersachsen Prison Service Educational Institute about suicides in prisons of the Federal Republic of Germany. Moreover, all *Länder* supported the proposal to continue compiling data on the basis of an extended questionnaire until 2009. In addition, two working groups were launched in March 2006, in which judicial officers from all *Länder* (national-level working group on suicide) and from prisons in Niedersachsen (*Land*-level working group) draw up a conceptual model for suicide prevention in prisons.

2. Some *Länder* have already launched programmes for suicide prophylaxis (similar to the Hameln model). For example, the prison system in Berlin has developed a close-meshed network of monitoring and guidance. The *Land* indicated that the procedure comprises the following steps: Every newly-admitted prisoner first enters a separate admission area where an admission interview is carried out and the risk of suicide is assessed. The information recorded in this process is communicated to the section to which the prisoner is assigned. If any indications of an acute suicidal risk emerge from the admission interview, the medical examination or the prisoner's personal file, the necessary steps for suicide prevention are taken at once (e.g. accommodation in a high-security cell, direct observation by a prison officer, consultation of the medical service, cell-sharing, possibly transfer to a hospital). Records are kept on all conversations held and all measures taken. The physician is consulted before lifting any measures.

In Nordrhein-Westfalen, the measures to be implemented by prisons with regard to suicide prophylaxis were reformulated in 2004 (Governmental Decree by the Ministry of Justice of October 28, 2004 - 4518 - IV. 3). Similar to Niedersachsen, special emphasis is attached to interdisciplinary co-operation among the various specialist services. Prisoners who are at an acute risk of suicide receive treatment in the psychiatric ward of the *Land's* dedicated prison hospital in Fröndenberg.

The prison service in Nordrhein-Westfalen co-operates closely with the criminological department of the Niedersachsen Prison Service Educational Institute, located in Celle, in the framework of the "National suicide prevention programme – suicide prevention in prisons".

In Hamburg, a working group ("Quality circle for suicide prevention") has been commissioned with advancing the existing conceptual programmes for suicide prevention. The current practice is to assess the risk of suicide at the time of admission, using a multi-level approach. Prisoners who display no obvious risk factors are not examined more closely for suicidality. Given that the risk of suicide is especially high shortly after imprisonment, it is currently being investigated whether it might be useful in future to provide a prognosis about the risk of suicide with regard to all new inmates.

If there are indications of an acute risk of suicide, the current practice of deciding, on a case-by-case basis, either to transfer the prisoner to a high-security cell, or to take other less incisive precautions against suicide, will be retained according to the *Land*. Introducing as a standard the transfer to a high-security cell and camera surveillance is not considered necessary, owing inter alia to the fact that the suicide rate in Hamburg prisons has been on a low level for years.

Sachsen, the Saarland and Bayern use a suicide prophylaxis questionnaire developed in collaboration with psychologists, theologians and practitioners from the prison service, which is completed by the prison staff for all prisoners admitted. Whenever new findings are made or new needs arise, the questionnaire is refined, and staff are regularly trained in the procedure.

All *Länder* closely follow the activities of the cross-*Länder* working group, and will consider the implementation of the group's recommendations, refining them as necessary.

Requests for information

- *The German authorities' comments on the issues raised in paragraph 133 concerning the difficulties observed at Hameln Juvenile Prison in transferring prisoners suffering from mental disorders to specialist hospitals (paragraph 133).*

1. In the opinion of the Federal Ministry of Justice, prisoners suffering from mental disorders should not be accommodated in prisons on principle because they cannot receive treatment there. Prison staff are not trained to deal with mentally ill individuals, and specialist staff are not available. Therefore, mental disorders often cannot even be diagnosed or identified as such. However, and here lies the crux of the matter, prisoners with mental disorders usually remain in prison, since outside establishments refuse to admit prisoners or because the prisons cannot take the responsibility for transfers for security reasons.

How the problem could be solved:

- long-term accommodation of prisoners under surveillance in a hospital outside prison is not feasible for staffing and organisational reasons,
- establishment or expansion of psychiatric units within prisons is not feasible for financial reasons,
- it would be desirable to admit a greater number of prisoners in need of psychiatric in-patient treatment to closed areas of coercive treatment centres or general psychiatric establishments and/or to draw more strongly on the forensic psychiatric establishments of universities; however, such measures can only be implemented by the federal *Länder* who are competent in the matter.

All in all, the alternative mentioned by the CPT appears preferable whereby the prison term of individuals with mental disorders would be suspended according to Section 455 of the Code of Criminal Procedure (*Strafprozessordnung - StPO*), and such individuals admitted to closed psychiatric units in compliance with the legal requirements of the respective *Land*. However, these decisions fall within the remit of the public prosecution office and the courts.

2. In most federal *Länder* involved, no problems have so far arisen from the application of Section 455 of the Code of Criminal Procedure (*StPO*). Some *Länder* (e.g. Berlin, Bayern and Nordrhein-Westfalen) maintain their own psychiatric wards in the prison hospitals, in which prisoners suffering from mental disorders can receive in-patient treatment from specialised staff, so that no necessity of suspending the prison term arises in these *Länder*.

Schleswig-Holstein, however, mentions individual cases of patients with mental disorders being refused admission to specialist hospitals or being admitted only after having waited for several weeks. Rheinland-Pfalz also experiences occasional problems in the transfer of prisoners to in-patient psychiatric treatment. Since 2006, a partnership has existed between the *Land* and the Forensic Psychiatric Unit, in the scope of which two prisoners have so far received temporary psychiatric treatment. It is planned to launch a unit for “Crisis intervention for criminal offenders with signs of mental illness” at the prison hospital in Wittlich in 2009.

Other issues

Recommendations

- *Steps to be taken by the authorities of Sachsen-Anhalt to significantly increase the number of custodial staff at Halle Prison No. 1 (paragraph 141).*

The Ministry of Justice of Sachsen-Anhalt is eager to ensure adequate staff resources for the entire *Land* prison service.

The incidents mentioned by the CPT were dealt with in the scope of an analysis of the strengths and weaknesses of Halle Prison No. 1. The evaluation has not yet been completed. The substitution in the prison management has already shown first positive effects regarding efficiency, sick leave rates and motivation, as indicated by the *Land*.

- *The prohibition of access to reading material for prisoners subject to the sanction of cellular confinement to be abolished without further delay (paragraph 144).*

1. As mentioned in the comments on paragraph 89 (see above), the Federal Government is no longer authorised to amend the Prison Act (*Strafvollzugsgesetz*), and thus Section 103 Subsection 1 No. 3 thereof, which lays down such disciplinary measures. In the opinion of the Federal Ministry of Justice, however, the recommendation of the CPT should be followed and the disciplinary measure of limiting or denying access to reading material should not be included in the future Prison Acts of the *Länder*. However, this decision will be made at the discretion of each *Land*.

2. Prohibition of access to reading material as a disciplinary measure in its own right is not ordered in some *Länder* at all (e.g. in Baden-Württemberg, Bayern, Mecklenburg-Vorpommern, Sachsen-Anhalt, Hamburg and Thüringen). The theoretical combination of disciplinary confinement and limiting or denying access to reading material is used rather seldom in practice. Berlin, Nordrhein-Westfalen, Rheinland-Pfalz and the Saarland make occasional use of this measure; they consider it helpful to exert an influence on prisoners. In the opinion of these *Länder*, this model has proven useful in practice and should be preserved as a last resort in order to maintain a clear distinction between disciplinary confinement and the regular imprisonment situation. Rheinland-Pfalz holds the view that the punitive nature of disciplinary confinement would be markedly watered down if prisoners had general access to reading material while in confinement. However, inmates are given a Bible or other religious writings even in these *Länder*. In addition, prisoners who are enrolled in a vocational and/or educational development programme also have access to study resources.

Hence, the recommendation of the CPT will presumably find varying expression in the draft Prison Acts of the *Länder*.

- *Steps to be taken by the authorities of Sachsen-Anhalt, Niedersachsen and Thüringen to ensure that all the principles and minimum safeguards concerning physical restraint (Fixierung) set out in paragraph 11 are applied at Halle Prison No. 1, as well as at Hameln and Weimar/Ichtershausen Juvenile Prisons (paragraph 148).*

1. In Sachsen-Anhalt, orders relating to enhanced security measures may even include the order to restrain a prisoner (*Fixierung*) if no other options are feasible. It is planned to implement the principles and procedures requested by the CPT with regard to restraining by way of an administrative regulation, and to verify compliance with its provisions in the scope of regular specialist control. The administrative regulation will in particular contain safeguards and provisions on protection against ill-treatment or humiliation, on physical restraints in a non-medical context, on the duration of such measures, on the involvement of medical staff and on the level of surveillance of restrained prisoners.

2. The requested principles and procedures regarding physical restraint have been implemented by way of a decree issued by the Ministry of Justice of Niedersachsen. Provided that a security measure of this kind is in compliance with the principle of proportionality, Niedersachsen also considers physical restraint a last resort to prevent self-inflicted injuries and injury to others.

Accommodation in high-security cells with physical restraint of prisoners is regulated in writing at Hameln Juvenile Prison by a prison decree. The decree complies with the guidelines on the use of restraints in the prisons of Niedersachsen - 4437 - 303.3 - of 4 January 2006. Permanent direct personal surveillance (*Sitzwache*) is ensured, but is not always provided by medical staff. When a prisoner is restrained in a high-security cell, the resident physician is informed, if possible in advance, but in any case without delay. Medical surveillance and precise documentation of the restraint method and the duration are ensured.

Paragraph 147 mentions an event in which a prisoner at Hameln Juvenile Prison was restrained for 6 days. Regarding this case, the Ministry of Justice of Niedersachsen has indicated that the prisoner awaiting deportation concerned was imprisoned at Hameln Juvenile Prison from 26 January 2005 to 1 March 2005. This individual was a very difficult, impulsive and extremely violent prisoner who repeatedly had to be accommodated in a high-security cell, since there was a risk of violent assaults against persons or property (No. 79 of the National Administrative Provisions on Juvenile Prisons). The Juvenile Prison reported this to the Ministry of Justice for the first time on 7 February 2005. The prisoner had to be transferred to a high-security cell for the second time on 23 February 2005, using direct coercion and an irritant spray. The reason for this was an assault on the prison staff. Hameln Juvenile Prison reported to the Ministry of Justice for the second time on 28 February 2005. The exact periods for which the prisoner was restrained were not recorded to the minute as prescribed by the guidelines on the use of restraints in the prisons of Niedersachsen, which were adopted on 4 January 2006. The prisoner was not permanently confined to a restraint bed and was temporarily moved to another high-security cell. It can be assumed that the restraints were at times loosened or temporarily removed, as indicated by the *Land*.

3. In Thüringen, orders relating to enhanced security measures may even include the order to restrain a prisoner under No. 79 of the National Administrative Provisions on Juvenile Prisons. This provision is only exercised if necessary and in compliance with the principle of proportionality. It is ensured that the resident physician, or at least a member of the medical staff, is immediately informed when a prisoner is placed in restraints, as indicated by the *Land*. The medical officer calls on the prisoner forthwith, at least once per day, if the measure is continued. In addition to permanent camera surveillance, the restrained prisoner is supervised by a staff member who makes personal calls on the prisoner at regular, short intervals. Records are kept about each call, including the point in time and any observations made, and added to the prisoner's personal file upon discontinuation of the measure. Moreover, any special security measures being taken are documented on a separate history list of special security measures, identifying the duration and type of measure taken and the reason why it was ordered.

- *The authorities of all Länder in Germany to take steps to ensure that the general visit entitlement for both sentenced and remand prisoners is increased to a total of at least two hours per month. The entitlement for juvenile prisoners should be even more favourable. Prisoners should also be allowed to accumulate visit entitlements for periods during which no visits have been received (paragraph 149).*

1. Convicted prisoners held in closed detention are entitled by law to a monthly visiting time of at least one hour, in accordance with Section 24 Subsection 1 of the Prison Act. The same applies to juvenile detention (No. 19 para. 1 of the National Administrative Provisions on Juvenile Prisons). Prisoners held in remand custody are entitled to a visiting time of at least 30 minutes every two weeks (No. 24 para. 1 No. 25 of the Remand Detention Execution Rules (*UVollzO*)). The established routines in the prisons of the *Länder* comply with these guidelines, and yet the visiting times granted beyond the required minimum entitlement vary among the *Länder* and depend on the individual spatial, organisational and staffing circumstances.

2. The majority of the *Länder* already grant visits on a level exceeding the current legal minimum entitlement. However, most *Länder* rejected a statutory minimum entitlement of two hours per month since this could not be guaranteed across the board, given the diverse capacities and staff resources of the individual establishments.

3. For a large part, prisoners in juvenile detention are allowed to receive visitors for more than one hour per month even today, in some cases already up to four hours. Most of the draft Juvenile Prison Acts of the *Länder* currently being elaborated provide for an extended visiting regime of four hours per month.

4. Visiting entitlements cannot currently be accumulated at present, and the *Länder* have in fact come out against such a mechanism. Firstly, successful organisational implementation cannot be ensured and, secondly, great importance is attached to consistency and regularity of the prisoners' social contacts with outside persons.

- *Steps to be taken by the authorities of Thüringen and, if appropriate, of other Länder to ensure that remand prisoners (juveniles and adults) are granted regular access to a telephone (paragraph 150).*

The sole relevant piece of legislation with regard to telephone conversations involving prisoners held on remand are the Remand Detention Execution Rules No. 38 Section 1 of which stipulates that telephone conversations between the prisoner and persons outside the establishment require prior consent by the judge or public prosecutor. If consent is given, remand prisoners in Thüringen and in the other *Länder* are granted regular access to a telephone subject to the defined requirements. Therefore, the individual prisoner's access to a telephone is dependent upon the consent of the custodial judge with jurisdiction.

- *Steps to be taken by the authorities of Sachsen-Anhalt to ensure that all newly arrived prisoners at Halle Prison No. 1 receive written information describing in a straightforward manner the main features of the prison regime, prisoners' rights and duties, complaints procedures, basic legal information, etc. This leaflet should be translated into an appropriate range of foreign languages (paragraph 153).*

According to the *Land*, the recommendations of the CPT will be followed in the future. An appropriate leaflet describing in a straightforward manner the main rights and duties, the internal regulations and other important information on everyday life in prison is already available. The issue of providing foreign translations is currently under review.

Comments

- *All the outstanding issues related to the incident referred to in paragraph 141 should be concluded as a matter of urgency, for the benefit of all (paragraph 141).*

Concerning paragraph 141, the evaluation of the analysis has not yet been completed, as already mentioned under "Recommendations".

- *The CPT trusts that the recent staff reinforcement at Hameln Juvenile Prison will allow, inter alia, for increased staff cover at night (paragraph 142).*

The *Land* has indicated that the improvement of the staffing situation at Hameln Juvenile Prison will be utilised in particular to expand the attendance and treatment activities offered during the day. For the reasons stated in paragraph 128 (see above), increased staff cover at night is not considered necessary because sufficient staff are assigned to perform the night tasks.

- *The CPT trusts that the disciplinary sanction of deprivation of outdoor exercise for remand prisoners will be formally abolished in the context of the elaboration of draft legislation on remand detention (paragraph 144).*

The suggestion of the CPT was communicated to the *Länder*, given that remand detention now also falls under the responsibility of the *Länder*. No final opinion has yet been formed regarding the issue of whether the disciplinary sanction of deprivation of the daily time spent in the open air will be formally abolished in the elaboration of the individual draft acts. To date, only Bayern and Nordrhein-Westfalen have indicated that a measure of this kind will no longer be included in their draft acts.

- *The CPT encourages the German authorities to take the necessary steps to ensure that in respect of juvenile prisoners, the sanctions of limitations of contact with the outside world (including relatives) to urgent matters for a period not exceeding three months, as well as of deprivation of reading material for a period not exceeding two weeks, are abolished in all Länder (paragraph 145).*

The draft Juvenile Prison Acts of the *Länder* currently being elaborated no longer contain the disciplinary measure of limiting or denying access to reading material.

While most *Länder* also intend to abolish the measure of limiting contacts with persons outside the establishment to urgent matters, Baden-Württemberg, Bayern, Hamburg and possibly Sachsen are still planning to include such a sanction. These *Länder* still consider necessary the possibility of limiting contacts with outside persons. However, they indicated that the greater vulnerability of juvenile prisoners being largely deprived of outside contacts will be taken into consideration when determining the scope and level of disciplinary measures. However, these *Länder* consider such sanctions to be required for educational reasons, for instance in cases where young prisoners unduly make repeated and massive attempts to establish letter contact with victims or with accomplices from former offences.

Hamburg is considering establishing a distinction between privileged contacts with family members and contacts with other persons.

- *Steps should be taken by the authorities of Thüringen to ensure that prisoners at Weimar/Ichtershausen Juvenile Prison can also receive visits at weekends (paragraph 149).*

The opinion of the CPT that prisoners should also be able to receive visitors on weekends is shared by the Thüringen Ministry of Justice. However, at Weimar/ Ichtershausen Juvenile Prison, visiting is currently possible only on weekdays for reasons of staffing. The prisoners are currently entitled to see visitors for three hours per month. The draft Juvenile Prison Act of Thüringen provides for a minimum visiting entitlement of four hours per month. Once the visit entitlement is duly increased, opportunities for weekend visits will be created as well.

- *Steps should be taken at Weimar/Ichtershausen Juvenile Prison to introduce a formalised system which allows prisoners to address complaints in a confidential manner to the Prison Governor (paragraph 151).*

A formalised complaints procedure is in place at Weimar/Ichtershausen Juvenile Prison, as indicated by the *Land*. The prisoners may address the Governor of the Detached Unit in Weimar or the Governor of Ichtershausen Juvenile Prison on a confidential basis at all times. Personal letters addressed to the Governor may be placed in a mailbox provided for this purpose or handed over to the unit officer to pass on. In either case it is ensured that the letter will reach the addressee unopened. The complaint will also be documented.

- *Steps should be taken at Weimar/Ichtershausen Juvenile Prison to update the existing information sheets (paragraph 153).*

It is true that the information leaflets currently being handed over to foreign prisoners date back to 1985. The information sheets have been updated as recommended by the CPT.

Requests for information

- *The comments of the authorities of Niedersachsen on the allegations received from some prisoners that letters addressed to the Prison Governor or the Ministry of Justice had been opened by prison staff (paragraph 152).*

The allegation that letters to the prison management or to the Ministry of Justice had been opened by prison staff, thus denying the opportunity to make a confidential complaint, has been followed up by the *Land*. Neither the prison management nor the Ministry of Justice are aware of any such complaints. On some occasions, young prisoners make a request to talk to the prison management, but do not place their request in a sealed envelope. At Hameln Juvenile Prison, every officer knows that letters to the prison management or to the Ministry of Justice may not be opened and must remain sealed when they are forwarded. Any complaints made by prisoners in this regard are carefully investigated.

- *A copy of the draft legislation governing the imprisonment of young offenders (paragraph 154).*

Most of the federal *Länder* have not yet finished elaborating the drafts of their respective Juvenile Prison Acts. At present, it is therefore only possible to forward the draft Juvenile Prison Act of Niedersachsen. The draft acts of the other *Länder* will be forwarded to the Committee as soon as possible, and without prior request.

Psychiatric establishments

Ill-treatment

Recommendations

- *A clear message to be delivered to the staff of Neustadt Psychiatric Centre that the force used when restraining a violent/agitated patient should be no more than is strictly necessary and that, once the patients concerned have been brought under control, there can be no justification for striking them. More generally, they should be reminded that any form of ill-treatment – including verbal abuse – of patients is not acceptable and will be dealt with accordingly (paragraph 156).*

1. In December 2005, the director of the Clinic for Forensic Psychiatry and Psychotherapy of *Psychatrium GRUPPE* in Neustadt commissioned the clinic's quality manager with a project aimed at developing wards FM 1 and FM 2. Its object was to draft proposals to improve the circumstances of treatment on these wards of the high-security section. In this context, the quality manager was temporarily integrated into the treatment team on ward FM 1 from January to August 2006 to form an impression of the precise circumstances of treatment and in order to work out proposals in collaboration with the other staff members of the clinic. The results of this project are to be input into the statements given by the *Land*.

2. As indicated by the *Land*, the clinic management, supported by the board of administration represented by the legal office, has been delivering for a long time and regularly to all staff members the message that the force used when restraining a violent or agitated patient should be no more than is strictly necessary, and that there is no justification for striking patients or any other forms of ill-treatment. Any cases of suspicion nevertheless arising are carefully investigated and if any breaches of duty are identified, punishment will ensue. Particularly when enhanced security measures are applied within the meaning of Section 7 of the Coercive Treatment Act (*Maßregelvollzugsgesetz*) and direct coercion is used (Section 8 of the Coercive Treatment Act), strict compliance with the legal framework requirements is repeatedly emphasised by the clinic management. To rule out any uncertainties on the part of the treatment teams, the clinic management, in collaboration with the legal office, has drawn up forms laying down the steps to be followed when imposing solitary confinement, physical restraint and coercive drug treatment on the basis of the applicable legal requirements.

- *Urgent steps to be taken at Neustadt and Nordbaden Psychiatric Centres to develop strategies with a view to addressing the problem of inter-patient violence, in the light of the remarks made in paragraph 157 (paragraph 157).*

1. At Neustadt Psychiatric Centre, as indicated by the Ministry of Social Affairs of Schleswig-Holstein, violent assaults among patients are explored within the relevant treatment setting, therapy provided and, if necessary, prosecution enacted. Moreover, precautions are taken to prevent risk situations from arising in the first place, or, should they occur, to defuse them, for instance by routinely making individual decisions regarding ward allocation and room occupancy, or by providing patients with a space into which they can withdraw. A large part of such inter-patient violence stems from chronic, massive overcrowding in too few, cramped rooms. This situation will be noticeably relieved once the foreseeable building and refurbishment works have been completed in 2009, providing for up-to-date accommodation conditions in single and double rooms within much smaller ward units comprising 20 beds each. Marked relief can moreover be expected to ensue from treatment concepts which are adapted to individual disturbances, as outlined in the development plan.

2. The occupancy situation at Nordbaden Psychiatric Centre has in the meantime been relieved by transferring forensic patients from the catchment area of Heilbronn Regional Court to the new coercive-treatment facility of Weinsberg Psychiatric Centre. A new internal differentiation regime has been implemented at the Wiesloch location, providing for more homogenous patient allocation. The new occupancy strategy focuses more closely on allocating patients with comparable disorders to the same ward units and enabling even more specifically-adapted concepts in the treatment of individual disorders. What is more, technical measures (opening of the barred doors) were taken on the ward mentioned in the report (ward 14) to provide for closer staff proximity, allowing patients better access to the nurses. As regards the specific incident, criminal proceedings have been instituted against the patient concerned.

Further actions launched included a staff training course on “Dealing with patients with personality disturbances” and restructuring the primary nursing regime on ward 14. Groups of four staff members each were formed to ensure the availability of one contact person for the respective patients. This new conceptual model has already led to a substantial drop in the number of assaults, as indicated by the *Land*.

Living conditions

Recommendations

- *Living conditions at Neustadt Psychiatric Centre to be improved as a matter of priority, in the light of the remarks made in paragraph 158 (paragraph 158).*

Two steps are being taken to reduce overcrowding: first, building a high-security unit (building no. 8) with 40 beds which is expected to be ready for use in July 2007, second, commencing construction of an additional 60-bed building in 2007 to add additional capacities to the lower-security and open sections. On the mixed acute ward, a protected area is available for females only, into which women may withdraw as necessary.

Requests for information

- *Updated information on plans to move Unit 12 at Nordbaden Psychiatric Centre to new premises (paragraph 159).*
- *Clarification as to whether the current plans to reduce the capacity of units in the security perimeter of Nordbaden Psychiatric Centre are fully compatible with the likely needs of forensic psychiatric treatment under high security in the Land of Baden-Württemberg in the coming years (paragraph 159).*

Early in July 2006, a new building accommodating 30 persons under coercive treatment orders was opened at Nordbaden Psychiatric Centre in Wiesloch. In combination with the new facilities built at Weinsberg Psychiatric Centre accommodating 50 persons under coercive treatment orders, the previous state of overcrowding has been reduced and the accommodation conditions substantially improved. The current care supply meets the demand, as indicated by the *Land*. The maximum bedspace of Nordbaden Psychiatric Centre has been increased to 258. No increases in occupancy are predicted for the Forensic Unit, so that overcrowding is no longer to be expected.

- *Detailed information on the measures envisaged to resolve the persistent problem of overcrowding in the civil psychiatric clinic of Nordbaden Psychiatric Centre (paragraph 160).*

Temporary peak occupancies occurred in the civil psychiatric units, AP I and AP II of the Nordbaden Psychiatric Centre visited by the CPT owing to the fact that at certain times, the Nordbaden Psychiatric Centre additionally had to accommodate emergency patients from the cities of Heidelberg, Mannheim and Karlsruhe. As indicated by the *Land*, it will not be possible to avoid such peak occupancies altogether. All in all, however, occupancy of the Nordbaden Psychiatric Centre was virtually balanced on average over 2005. To better compensate for peak occupancies (in part also caused by patients with highly acute disorders), it is planned to establish an additional closed civil psychiatric ward at Nordbaden Psychiatric Centre. It is expected to open in early 2007.

Treatment

Recommendations

- *steps to be taken at Neustadt Psychiatric Centre to ensure that individualised written treatment plans are established for all patients and that written running records (Verlaufsberichte) are kept of the treatment provided (paragraph 161).*

As indicated by the *Land*, new individual treatment plans are established in the Forensic Clinic at least once per year, and adapted to the course of the illness, as required by the Coercive Treatment Act (*Maßregelvollzugsgesetz*). Concerning the running records on the course of the illness in the patient files, the Director of the Clinic of Forensic Psychiatry and Psychotherapy ordered that progress notes must be taken at least twice per month for each case treated. Sample inspections are carried out. In the Acute Psychiatric Unit, it is also required to establish an individual treatment plan for each patient.

- *All patients, whose state of health so permits, to be offered at least one hour of outdoor exercise per day at Neustadt Psychiatric Centre, in conditions that enable them to benefit fully from it (paragraph 161).*

This recommendation applies first and foremost to geriatric patients, and is in line with the procedure followed as a matter of principle by *Psychiatrium GRUPPE*, as indicated by the *Land*. The patients of the Forensic Clinic are usually offered much more than one hour of outdoor exercise per day.

- *Steps to be taken at Neustadt Psychiatric Centre to develop a multidisciplinary treatment programme for patients in Unit FM1, including greater opportunities for psychological and occupational therapy (paragraph 162).*

Ever since the annex building (building 7) was completed in spring 2006, ward FM 1 has been equipped with its own ergotherapy section providing both for industrial manufacturing and creative activities. Experience in the past months has shown that it is possible to motivate an average of 10 to 15 patients from ward FM 1 who are capable of integration to take part in the ergotherapy programme.

Further activities of the ergotherapy programme include a garden project which is open to 4-5 patients and is well accepted. The nursing staff offer a cooking and baking group, as well as a bowling group, and provide the opportunity of taking guitar lessons, should there be an interest. Depending on the degree of the disorder, efforts are made to integrate patients into the existing cross-ward group therapies and educational guidance.

Medical care is currently provided by three physicians on ward FM 1. The head of the ward is a senior physician with considerable experience in psychotherapy. He is supported by one specialist in psychiatry and psychotherapy and one additional physician who is also very experienced. As regards the nursing regime, the concept of primary nursing has been introduced. As a result, treatment can be provided on an enhanced level and more accurately assigned to various specialists. Recruitment of an additional social education worker is planned for the high-security section of the Clinic of Forensic Psychiatry and Psychotherapy at the beginning of 2007. This is expected to further expand the range of available treatments, especially for ward FM 1. In summary, it is evident that sustained and multidisciplinary approaches are being taken at the present time to improve the treatment situation on ward FM 1, as indicated by the *Land*.

- *Steps to be taken at Neustadt Psychiatric Centre to progressively reduce lock-up periods at night in the forensic psychiatric clinic (paragraph 162).*

The Ministry of Social Affairs of Schleswig-Holstein has indicated that the extension of the nightly lock-up hours does not result from staff reductions, contrary to the assumption of the CPT. Longer lock-up hours had been introduced as early as 2003, mainly due to the fact that the previous staffing regime that had enabled shorter lock-up hours had not complied with the requirements of the Working Time Act (*Arbeitszeitgesetz*). While the number of nurses has since been increased, the present staffing level is not sufficient to effect lasting change to the situation.

However, the issue of nightly lock-up hours cannot be solved solely by a change in the staffing level. It rather requires forming smaller treatment units, enabling more specific risk prognoses. The related conceptual model will be implemented in the context of the current and future building projects. The present situation of overcrowding in the high-security units, which in themselves are much too large, causes a high level of aggressive tension with manifold interactions among the patients that are difficult for the staff to manage. This leads to barely calculable risks and dangers both for patients and staff members.

- *At Nordbaden Psychiatric Centre, the administration of medication without the patient's consent in case of emergency to be subject to a specific order, countersigned within 24 hours by a senior doctor (paragraph 165).*

As indicated by the *Land*, the routine at Nordbaden Psychiatric Centre complies with the recommendations of the CPT, i.e. administration of medication without the consent of the patient is subject to a specific medical order, countersigned by a senior doctor (specialist physician, head of functional unit or chief physician) within 24 hours.

Comments

- *Steps should be taken at Neustadt Psychiatric Centre to extend the provision of work therapies and other activities to all those patients capable of participating (paragraph 163).*

(Please note: While Neustadt Psychiatric Centre is mentioned in Annex II, the text in paragraph 163 refers to Nordbaden Psychiatric Centre. Therefore, our response refers to the latter.)

As indicated by the *Land*, Nordbaden Psychiatric Centre ensures that all eligible patients can participate in the work therapy programme. At the time of admission to the unit, the patients are encouraged to participate in all therapeutic activities, explicitly in work therapy. Sufficient capacities are available. What is more, work therapy activities and other activities provided by the General Psychiatric Unit are also available for all patients, provided that participation is indicated in the opinion of the treating physician or psychologist.

Staff

Recommendations

- *The authorities of Schleswig-Holstein to review the overall staffing levels at Neustadt Psychiatric Centre, in the light of the remarks made in paragraph 166 (paragraph 166).*

The *Land* indicated that it is not true that any staff reductions were made in the context of the privatisation of Neustadt Psychiatric Centre, at least as regards the forensic section. The number of employees at the Clinic of Forensic Psychiatry and Psychotherapy is determined by the specialist control authority, which regularly monitors actual staffing levels. Occasional staffing deficiencies are being continually remedied within the scope of the available budgetary resources. As a result, staffing levels were improved from 250 full-time positions in 2004 to 272 in 2006. Further increases of 8 full-time positions per year are planned for 2007 and 2008.

- *Steps to be taken at Neustadt Psychiatric Centre to enhance the training of nursing staff in dealing with agitated/violent patients (e.g. de-escalation techniques, safe methods of control and restraint, etc.) (paragraph 167).*

The members of the treatment teams have been requested to discuss and co-ordinate any unavoidable coercive measures within the team, if possible in advance, to explore alternatives and thus achieve enhanced control and professionalism. To improve the qualifications of the staff members in this field, a professional development programme was commenced some two-and-a-half years ago, and the training which it envisioned focussed closely on de-escalation and controlled aggression management. A wide number of employees of the Forensic Clinic have now attended the courses of the Northern Region Institute of Training and Development of *AMEOS Psychatrium GmbH Neustadt* and courses held by external institutes, and have participated in training courses and seminars such as

- Gordon's conflict-resolution training,
- aggression management,
- crisis intervention,
- violence in the context of nursing,
- patient assaults in the context of nursing and guidance,
- anxiety and violence: "How to deal with it",
- de-escalation, and
- violence prevention as a nursing task in psychiatric treatment.

These training courses are complemented by courses in holding and defence techniques in order to improve the manual skills needed for controlled violence and aggression management. Moreover, supplemental social-psychiatric training is available for nursing staff. A specific development programme will be launched in spring 2007, offering qualification as a skilled nurse in forensic psychiatric care. This development programme will also be extensively used to eliminate identified qualification deficits in individual employees.

Comments

- *More could be done to provide a calmer atmosphere and to improve communication between staff and patients in Unit 13 at Nordbaden Psychiatric Centre (paragraph 168).*

Unit 13 has been undergoing a continual team-development process involving external consultancy for three years, which is to be continued. In addition, there are regular case-related further-training courses in communication skills. As indicated by the *Land*, the unit further makes continual use of external consultancy services provided by a specialist from the Kork Epilepsy Centre with regard to the individual complexes of problems present in patients with specific disorders.

Seclusion and means of restraint

Recommendations

- *The crisis intervention room in the forensic psychiatric clinic (Unit FM1) at Neustadt Psychiatric Centre to be painted and equipped with foam furniture, as was observed at Nordbaden Psychiatric Centre. Consideration should be given to the usage of protective clothing. Patients placed in that room should, in principle, be provided with reading material (paragraph 170).*

In spring 2006, the crisis intervention rooms were equipped with plastic-covered foam furniture which also serves as a screen for the toilet. The crisis intervention rooms have been painted several times in the past months, and it is intended to repaint them as soon as necessary when they become dirtied again. The patients placed there have access to reading material. Both newspapers and magazines are available, and books can be requested from the clinic's own library. The nursing management takes care that protective clothing is used while administering intensive medical care in the crisis intervention room.

- *The occasional practice of handcuffing patients during showers or outdoor exercise to cease immediately at Nordbaden Psychiatric Centre (paragraph 171).*

As indicated by the Ministry of Labour and Social Affairs of Baden-Württemberg, these steps – which at the time appeared to be unavoidable emergency measures – were no longer necessary shortly thereafter in the case of the patient concerned. Handcuffing was basically only necessary on the way to the bathroom or the courtyard.

At present, even these measures are no longer necessary thanks to the (hard-earned) progress in treatment.

However, handcuffing has temporarily become necessary again in recent days on the way to the courtyard due to massive worsening of the symptoms combined with highly aggressive manifestations. In cases where this measure is indicated, the heads of the functional unit continually review and supervise the actual level of dangerousness, the progress being achieved in therapy, and the responsiveness of the individual patient, thus in fact ensuring continual adaptation of the required exceptional measures to the current dangerousness against the background of the symptoms of the disorder.

- *Steps to be taken by the authorities of Schleswig-Holstein and Baden-Württemberg to ensure that all the principles and minimum safeguards concerning physical restraint (Fixierung) set out in paragraph 11 are applied at Neustadt and Nordbaden Psychiatric Centres (paragraph 176).*

1. Physical restraint is a measure taken seldom at the Clinic of Forensic Psychiatry and Psychotherapy of Neustadt Psychiatric Centre. Its actual applications are statistically recorded and reported to the supervisory authority in connection with the monthly statistics. When patients are restrained, strict compliance with the standard requirements is ensured. Seclusion and physical restraint are subject to a medical order issued by a responsible ward doctor or the physician on duty, and are documented in detail. The physician issuing the order must provide accurate documentation on the method and duration of *Fixierung* the announcement of and the reasons given for restraining, the method of restraint, the actual implementation of the measure and approval by a superior physician. These details are recorded on dedicated documentation forms which were developed in collaboration with the legal office.

While patients are restrained they are, without exception, under the permanent supervision of nursing staff. This means that the nursing staff are present in person without interruption. The crisis intervention rooms where *Fixierung* might take place are not within the field of vision of other patients. When exercising seclusion, physical restraint or coercive administration of medication, this is done in strict compliance with the legal framework conditions laid down in the Coercive Treatment Act, as indicated by the *Land*. Any measures taken with regard to provisionally accommodated individuals are co-ordinated with the judge who has jurisdiction. The documentation sheets mentioned above are kept on the ward and later filed with the patient record, and additionally forwarded to the medical director of the clinic, where they are compiled to keep track of the various measures taken.

2. In 2007, the Nordbaden Psychiatric Centre is scheduled to review its nursing standards on "Restraint of patients" and its "Regulations for implementing coercive measures at Nordbaden Psychiatric Centre", and to revise them as necessary, taking into consideration new medical and scientific findings, legal requirements and organisational and staffing circumstances. The comments and recommendations provided in paragraphs 176 and 11 of the CPT Report will also be discussed in this context. The general personal supervision (*Sitzwache*) of restrained patients requested by the Committee will hardly be manageable given the present staffing level, and will occasionally have to be exercised at the expense of other patients on the ward. This applies equally to General Psychiatric Unit and to the Geronto-Psychiatric Centre, the Addiction Treatment Unit and the Forensic Unit.

- *Steps to be taken at Nordbaden Psychiatric Centre so that the use of special measures (seclusion, Fixierung, medication without consent) can be observed over different periods (paragraph 177).*

The electronic health record contains continually updated documentation on any coercive measures taken, such as seclusion, restraint and coercive medication. With reference to individual or several treatment episodes, the frequency of such measures can be traced back at any time. The health record also contains information on the method, time of commencement and maximum duration of the measure, the reasons, a description of the situation, the type and intervals of attendance and the legal foundation of the coercive measure defined. All identical circumstances that led to a coercive measure are summarised, including the time of commencement, termination, duration and details of any complications. Any different treatment episodes occurring will be taken into consideration in the context of the review of the Rules on Coercive Measures at Nordbaden Psychiatric Centre, due in 2007. At the CPT's suggestion, the Centre will check whether the electronic health record can be further developed to make it possible to display the cumulation (frequency, duration) of coercive measures with regard to treatment episodes.

Comments

- *Steps should be taken to adopt alternative strategies with a view to reducing the resort to seclusion in Unit 13 at Nordbaden Psychiatric Centre (paragraph 169).*

Nordbaden Psychiatric Centre strives to improve the situation on this ward by introducing a new internal distinction. Seclusions - if absolutely unavoidable - are only exercised upon careful consideration of alternatives in consultation with the heads of the functional units and the chief physician.

Safeguards:

Recommendations

- *At Neustadt and Nordbaden Psychiatric Centres, the legal status of the patients referred to in paragraph 180 to be reviewed, in accordance with the applicable legislation (paragraph 180).*

1. The comments of the CPT have been reviewed. As indicated by the *Land*, Neustadt Psychiatric Centre ensures that the legal position of accommodated persons is acknowledged and that the applicable legal requirements are met.

2. The Ministry of Labour and Social Affairs of Baden-Württemberg has indicated the possible therapeutic benefit of agreeing on limitations of leave within the scope of an individual treatment plan, for instance to protect patients against overstimulation, exposure to addictive substances, etc. The same applies to individuals voluntarily admitted to a closed ward, which is only possible with the patient's consent. At Nordbaden Psychiatric Centre, the patient's consent to a measure of this kind must, as a rule, be given in writing and can be revoked at any time by the patient.

If a patient has consented to any limitation of leave on therapeutic grounds, this consent does not justify per se taking measures against the will of the patient. However, if a measure is considered to be indicated that would have to be taken against the will of the patient, the legal foundation for taking such a measure would have to be verified in advance. A straightforward rule in this regard will be included in the “Instructions on coercive measures”.

- *Steps to be taken at Neustadt and Nordbaden Psychiatric Centres to ensure that an introductory brochure is issued to all newly-arrived patients (and, if appropriate, their legal representatives) (paragraph 184).*
- *At Neustadt and Nordbaden Psychiatric Centres, patients to be systematically informed in the introductory brochure issued upon admission about their right to lodge complaints as well as about the modalities for doing so (paragraph 185).*

Combined responses regarding paragraphs 184 and 185:

1. The recommendations of the CPT are already being implemented at Neustadt Psychiatric Centre. In addition to a full oral introduction, all newly-admitted patients receive an information sheet about the legal requirements and provisions laid down in the Coercive Treatment Act, including an attachment dealing with the various complaint procedures. Receipt of this information is acknowledged by the patient’s signature. Additional laminated copies of the information sheet have been posted on the notice board of ward FM 1. At the time of their admission, patients further receive a copy of the house regulations and ward rules in force. Every newly-admitted patient receives an information sheet on the patient and occupant services from the clinic administration. In the further course of accommodation, information on the legal status of the individual concerned and the complaints procedure is orally repeated by the attending primary therapist, and any related questions are answered expertly.

2. Information brochures are available at Nordbaden Psychiatric Centre for the patients and their legal representatives. As recommended by the CPT, various ways are being explored to ensure that all newly-admitted patients actually receive this introductory brochure. Furthermore, in the regular brochure revisions, the information sheet about the complaints procedure is added to the unit-specific information brochure, if this has not already taken place.

There are further ways in which patients have direct access to information, e.g. ward list, notice board, treatment plan and weekly plan. Integration (first contact, familiarisation with the premises, staff members and fellow patients) is considered an essential aspect of the treatment process, and is laid down and safeguarded by guidelines (e.g. Nursing Guideline (*Pflegeleitlinie*) 19.1 Design of the ward environment, 19.2 Admission of patients, 19.3 Transfer management, 19.6 Relational work in nursing/primary nursing concept).

- *Steps to be taken by the competent authorities in Baden-Württemberg and other Länder to ensure that all psychiatric establishments in Germany are visited on a regular basis by a visiting commission or another independent outside body. This body should be authorised, in particular, to talk privately with patients, receive directly any complaints which they might have and make any necessary recommendations (paragraph 187).*

1. All Psychiatric Centres in Baden-Württemberg have their own patient advocate whose status is legally protected and who, as a member of the supervisory board of the centre, is in a position to put forward criticism and suggestions for improvement to the “top level”. The patient advocate is continuously available as an independent contact person for all patients, including for those receiving coercive treatment.

In addition, all psychiatric centres of the *Land* are subject to legal supervision and, when carrying out coercive treatment, additional specialist control by the Ministry of Labour and Social Affairs of Baden-Württemberg. Hence, patients also have the possibility to make complaints to the supervisory authority, which is actually done quite frequently. The *Landtag* has already dealt with a number of petition proceedings filed by psychiatric patients. Against this background, additional establishment of an independent commission is not considered necessary by the *Land*.

2. The recommendation in the CPT Report that care should be taken that all psychiatric establishments are visited on a regular basis by a visiting commission or another independent outside body has been communicated to all *Länder*. Reference is made to the fact that the different *Länder* have diverse control mechanisms in place, with visiting commissions forming one possibility. In addition, the Federal Government and the *Länder* are currently discussing the introduction of a further national independent control mechanism with a view to implementing the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

Comments

- *At Nordbaden and Neustadt Psychiatric Centres, some patients who were considered voluntary had not signed a written declaration that they consented to their placement (paragraph 179).*

1. At Neustadt Psychiatric Centre, patients who are admitted on a voluntary basis enter into a treatment agreement upon admission. No other written declarations are requested from them nor considered necessary by the *Land*.

2. In the General Psychiatric Unit of Nordbaden Psychiatric Centre, the electronic health record contains a form for the declaration of voluntary admission to a closed unit which is accessible from all workplaces. The applicable organisational regulations require documentation of a voluntary patient’s declaration as a prerequisite for this patient’s admission to a closed ward. If it is found that such consent to voluntary treatment is not included in the paper file of a voluntary patient on a closed ward, the declaration was either not filed correctly or the organisational regulations mentioned above were not duly followed. The comment by the CPT will be used as an opportunity to underline once more the binding rules that exist with regard to obtaining and documenting declarations of voluntary treatment.

- *Steps should be taken at Neustadt and Nordbaden Psychiatric Centres to ensure that, as a rule, all involuntary patients are provided with a copy of the placement decision and are asked to sign a statement attesting that they have received it (paragraph 179).*

1. As indicated by the *Land*, it is ensured that all patients at Neustadt Psychiatric Centre receive a copy of the placement decision and are asked to sign a statement attesting that they have received it.

2. Nordbaden Psychiatric Centre will take up the suggestion of the CPT and develop a special form to acknowledge receipt of court orders. In this context, it is also being explored whether the procedures and instructions that exist to ensure postal deliveries require any adjustments.

- *The authorities of Baden-Württemberg as well as of other Länder are invited to explore the possibility of introducing in their mental health legislation a provision that requires the placement of forensic patients to be reviewed at least every three years by a forensic psychiatrist who is independent from the institution accommodating the person concerned, as was observed in Schleswig-Holstein (paragraph 183).*

1. The Ministry of Labour and Social Affairs of Baden-Württemberg has emphasised that the forensic patient is first and foremost a mentally ill patient and is treated on a ward. Therefore, such a patient is under permanent observation by a physician and his/her condition is regularly re-assessed and examined on a weekly basis.

The Act amending the Mental Health Law (*Unterbringungsgesetz - UBG*) of Baden-Württemberg of 7 March 2006 provides that the public prosecution office can seek an external second expert opinion when relaxation of regime is considered.

2. The CPT's request for review was communicated to the other *Länder* with the request to comply.

- *It would be desirable that, at Neustadt Psychiatric Centre, the visiting commission (Besuchskommission) carries out visits more frequently (i.e. at least once a year) and makes unannounced as well as announced visits. Steps should also be taken to encourage members of the commission to communicate directly with patients so as to invite their comments (paragraph 186).*

A visiting commission was appointed on 11 November 2005 on the basis of the Coercive Treatment Act of Schleswig-Holstein. Pursuant to the Coercive Treatment Act, the visiting commission is to visit the establishment at least twice per year. The visiting commission has now taken up its work and has repeatedly entered into direct communication with the patients during its three visits since. Some cases led to the result that direct suggestions were made to the clinic. Additional visits, including unannounced ones, may be made at any time.

Requests for information

- *The German authorities' comments on the information provided by staff at Nordbaden Psychiatric Centre that some courts were particularly slow to take a decision in the case of criminal suspects subject to provisional placement (paragraph 181).*

1. No foundation was found to support these allegations as they were rather unspecific. Therefore, it was not possible for the Ministry of Justice of Baden-Württemberg to make more specific inquiries to any courts which might be concerned.

2. A draft “Act of the Federal Government on Securing Placement in a Psychiatric Hospital and in a Detoxification Centre” (*Gesetz zur Sicherung der Unterbringung in einem psychiatrischen Krankenhaus und in einer Entziehungsanstalt*) has been submitted to the German Parliament (*Deutscher Bundestag*) (*Bundestag* printed paper 16/1110). The revision of the coercive treatment law provided thereby is expected to help make better and more goal-directed use of the existing and newly-created capacities for coercive treatment. Article 2 No. 1 of the draft provides for amendments to Section 126a of the Code of Criminal Procedure (*Strafprozessordnung - StPO*) which on the one hand are expected to help avoid provisional placement as far as possible. For this reason, it allows for enforcement to be suspended if its purpose can also be achieved by less incisive measures (for instance admitting the individual concerned to a therapeutic accommodation group) (cf. Section 126a Subsection 2 Sentence 1 of the Draft to Amend the Code of Criminal Procedure (*Entwurf zur Änderung der StPO [StPO-E]*). To keep provisional placement as short as possible and to provide for stringent, regular reviews, the draft also provides for reviews of the continuation of provisional placement with concomitant application of the procedure applicable to remand detention pursuant to Sections 121 and 122 of the Code of Criminal Procedure (cf. Section 126a Subsection 2 Sentence 2 of the Draft to Amend the Code of Criminal Procedure). Review of the continuation of provisional placement upon lapse of six months is in compliance with the principle of proportionality and the requirement of acceleration.

- *Detailed information from the authorities of Schleswig-Holstein on how they ensure appropriate oversight of the placement process (including the review of placement) and the level of health care provided in the forensic clinic of Neustadt Psychiatric Centre, given the potential conflict of interest (paragraph 189).*

In addition to the Clinic of Forensic Psychiatry and Psychotherapy in Neustadt, Schleswig-Holstein maintains a Clinic for Forensic Psychiatry for 64 patients in Schleswig. 46 places are reserved for patients sentenced under Section 64 of the Penal Code (*StGB*). 18 places are available for women sentenced under Sections 63 or 64 of the Penal Code. Placement is effected on the basis of the enforcement schedule of the Ministry of Justice of Schleswig-Holstein.

Specialist control authority has been furnished with a variety of instruments by way of a granting act (for instance the right to issue directives to staff, the right of access and control for all premises of the establishment, executive fiat) which ensure due supervision, as indicated by the *Land*.

Appendix 1

All staff in the operating company (B.O.S.S.)		Staff training on the following topics, among others: (some repetition)	2000-2006
		<ul style="list-style-type: none"> • Dealing with foreign nationals • Co-ordination between and co-operation among staff members • Information event on "Traumatised Refugees", dealing with reactions, cultural differences, possibilities and limits of work with traumatised individuals • Legal and psychological aspects of work in an immigration detention centre, rights to necessary defence, Sections 32-35 Penal Code (StGB), fundamentals of and training in searching individuals • Communication with foreign nationals, fundamentals of communication, conduct in conflicts, including prohibition of discrimination • First aid training and further training 	In 2007 eight members of staff from B.O.S.S. plus staff from the immigration detention centre are to take part in an "Intercultural Training" course
T. H.	BOSS shift supervisor	Intercultural Training in ZAB	01/11 - 03/11/2005
		Intercultural Training in ZAB	21/11 - 23/11/2005
		Intercultural Training in ZAB	03/07 - 04/07/2006
T. B.	BOSS shift supervisor	Intercultural Training in ZAB	01/11 - 03/11/2005
		Intercultural Training in ZAB	21/11 - 23/11/2005
		Intercultural Training in ZAB	03/07 - 04/07/2006
R. S.	BOSS shift supervisor	Intercultural Training in ZAB	01/11 - 03/11/2005
		Intercultural Training in ZAB	21/11 - 23/11/2005
		Intercultural Training in ZAB	03/07 - 04/07/2006
M. H.	BOSS employee	Intercultural Training in ZAB	05/12 - 06/12/2005
		Intercultural Training in ZAB	29/05 - 31/05/2006
M. M.	BOSS employee	Intercultural Training in ZAB	05/12 - 06/12/2005
		Intercultural Training in ZAB	29/05 - 31/05/2006