National Commission for the Prevention of Torture (NCPT)

2016
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2016
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Chairman’s Foreword

In its dispatch of December 2015 on the so-called «Reparation Initiative», which called for recognition of the suffering of the victims of compulsory social measures and placements and demanded reparation, the Federal Council pointed out that prior to 1981 a large number of members of various groups had suffered severe injustice: These included contract children, children placed in institutions and persons who, under an administrative procedure, were committed to secure institutions, in some cases even prison, as well as women forced to undergo abortions, persons forced to undergo sterilisation or castration, and persons subjected to compulsory adoption, particularly within the minority nomadic community. Tens of thousands of children and young people were placed in institutions, on farms or in factories, or in secure institutions or prison, often without a court order. In the Federal Council’s view, there is proof that the persons concerned “often suffered physical and psychological violence and were exploited, ill-treated or abused.” Children and young people in institutions are also said to have been subjected to drug trials.

It is all the more astonishing, as the Federal Council also points out, that the matter received scant public attention for decades
and that the victims were largely left to themselves, their suffering ignored and their voices unheard.

What does the inquiry into the fate of these victims of State repression have to do with the National Commission for the Prevention of Torture? And what lessons can we learn? To answer the second question first: Throughout history, practices regarded as acceptable or normal by those in power and by a majority of society at a given time have subsequently been denounced as inhuman, disgraceful and incomprehensible by later generations. Therefore, another question that we need to ask ourselves is, which of our current practices are likely to be regarded as equally brutal and incomprehensible by future generations? What are our blind spots in our dealings with persons subjected to administrative or correctional measures? And that brings us back to the first question and the Commission’s role: A commission such as the NCPT cannot guarantee that today’s practices will withstand the judgement of history. The Commission’s mandate is to protect persons who have been deprived of their liberty from ill-treatment and to improve the way in which they are treated. In order to identify undesirable practices, the Commission needs to look closely at places where people are subjected to particularly severe suffering and to show the necessary sensitivity. As no society—not even our own—is immune to unnecessary cruelty, in our work we need to refer not only to national standards and regulations but also to universal human rights and the recommendations of human rights bodies: only that way can we minimise the risk of passing on the burden of reparation to future generations.

In recent years, the Commission has focused primarily on the most vulnerable individuals in institutions that enforce custodial measures or measures restricting personal liberty, for example young people and people suffering from mental illness, in clinics and in institutions where persons are deprived of their liberty. This work is not easy given that the institutions in question sometimes lack established, widely accepted standards. However, this fact does not exempt us from fulfilling our mandate of visiting such institutions and persons and reviewing treatment of the latter. And if the Commission succeeds in establishing a constructive
dialogue with the authorities and working together with them to identify appropriate solutions to difficult situations, that in itself is an achievement.

In its seventh year, the Commission has carried out a number of visits, particularly to psychiatric institutions—the findings of which are presented in this annual report—and has laid the groundwork for future visits to review the situation of people with disabilities, particularly in social institutions. Furthermore, the Commission will be increasingly reviewing the living conditions of asylum-seekers at federal asylum centres and systematically continuing its monitoring of return operations. This heavy workload would not be possible without the huge efforts of the Secretariat, to which I would like to extend special thanks. I would also like to thank all my colleagues in the Commission, who have invested a great deal of time, energy and effort and helped create a collegial atmosphere in which to carry out our challenging work. After seven years of engagement in the Commission, Stéphanie Heiz-Ledesma stepped down at the end of 2016, and I would like to take this opportunity to thank her for her commitment and contribution.

Alberto Achermann, Chairman of the NCPT

Alberto Achermann
The NCPT: an overview
1.1 Strategic priorities

This past year, for the first time, the Commission held two thematic round-table discussions in the presence of representatives of the cantonal authorities and the administrations of the detention facilities reviewed by the Commission. At the two round-table discussions, it presented its thematic reports on juvenile detention facilities and the execution of measures and put forward its findings and recommendations in this area to the authorities. The Commission intends to discuss issues regarding the deprivation of liberty, which are relevant across Switzerland and to establish a dialogue with the relevant stakeholders to develop possible solutions in the form of recommendations. These round-table discussions produced positive results, opening up a country-wide dialogue on fundamental rights issues in relation with the deprivation of liberty.

This reporting year, the thematic focus was on the review of psychiatric institutions. In these institutions the Commission examined the human rights conformity of measures of restraint. To this end, it conducted two visits to psychiatric institutions, accompanied by international experts. The Commission devoted particular attention to the implementation of the provisions of the law on the protection of adults with specific regard to care-related hospitalisation.

In the medium term, in accordance with its mandate under international law, the Commission also intends to visit public welfare facilities more frequently in order to conduct regular reviews of the circumstances of persons with disabilities, which are considered to be particularly vulnerable. Last year, therefore, in preparation for the regular monitoring of facilities accommodating people with disabilities, the Commission held various talks with the relevant stakeholders in this area, in particular with the Federal Office for the Equality of People with Disabilities (EBGB), the secretariat of the Conference of Cantonal Directors of Social Affairs (CCDSA/SODK), as well as civil society organisations Inclusion Handicap, Curaviva, Pro Mente Sana and the Alzheimer Foundation. The discussions revealed that there remained substantial differences between the cantons stemming from the principle of subsidiarity,
Despite a common federal law on adult protection, illustrating a clear need for harmonisation in this area.

Given the unresolved issue of funding of such monitoring activities in facilities for people with disabilities, the secretariat developed a concept for regular reviews as a possible means of implementing Article 33 of the Convention on the Rights of Persons with Disabilities\(^1\) and discussed with EBGB the possibility of funding such a pilot project. Unfortunately, however, in view of the options currently available, funding could not be secured, and so the project has had to be put on hold for the time being.

The Commission also addressed the issue of the arrest and detention of asylum seekers by border guards and requested that the State Secretariat for Migration (SEM), the Swiss Border Guard and the cantons concerned clarify various legal issues in connection with the ordering of measures that place restrictions on liberty.

The Commission held various talks with the SEM directorate and developed a concept for a regular review of the federal asylum centres. The Commission previously carried out these reviews sporadically, but from 2017 onwards it will perform them on a regular basis as part of its statutory mandate.

### 1.2 Organisation

#### 1.2.1 Members

The Commission is composed of 12 members, appointed by the Federal Council, who serve on a voluntary basis. They are chosen for their professional expertise in the field of human rights, justice, execution of sentences and measures, medicine, psychiatry and police work.

The Commission is composed of the following members:
- Prof. Dr. iur. Alberto Achermann, chairman
- Leo Näf, vice-chairman

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\(^1\) Convention on the Rights of Persons with Disabilities signed in New York on 13 December 2006 (CRPD), SR 0.109.
The Federal Council appointed Professor Adriano Previtali to replace outgoing member Stéphanie Heiz-Ledesma, who is stepped down at the end of 2016. Adriano Previtali is a professor of Public and Social Law at the University of Fribourg and will be supporting the Commission from 2017 onwards as an expert in the area of disability.

### 1.2.2 Monitors

The Commission employs external experts for the regular observation of police transfers and forced removals by air as part of its monitoring activities. The current pool consists of the following members:

- Prof. Dr. iur. Martina Caroni, professor of International Law, University of Lucerne
- Fred Hodel, integration officer, City of Thun
- Lea Juillerat, legal expert
- Barbara Yurkina-Zingg, asylum coordinator/special department BEST
- Thomas Maurer, former judge at the High Court of Bern
- Hans Studer, former director or the Wauwilermoos Correctional Facility
- Dr. med. Danielle Sierro, physician
- Dr. med. Joseph Germann, physician
1.2.3 Secretariat

The NCPT secretariat is responsible for overall planning and organisation of the Commission’s monitoring activities. It is in charge of advance preparations (in terms of concept development) and follow-up for the Commission’s monitoring activities and prepares all reports and position papers addressed to federal and cantonal authorities upon completion of said monitoring activities. It maintains regular contact with other human rights bodies at both UN and Council of Europe level and with its counterparts abroad. Within Switzerland it connects with federal and cantonal authorities as well as with civil society organisations.

Up until the end of July 2016, the secretariat employed four part-time employees for a total of 260%. The secretariat also benefits from the assistance of a trainee. As part of current cost-saving measures, in August 2016 a 50% post was not renewed. This loss forced the Commission to adjust its monitoring activities during the course of the year, as a result of which a number of visits to facilities where persons are deprived of their liberty had to be postponed or cancelled.

– Sandra Imhof, Head of Secretariat
– Alexandra Kossin, Scientific Collaborator
– Daniela Bill, Scientific Collaborator (up until 31.07.2016)
– Jlona von Büren, Administration and Coordination
– Kelly Bishop, Trainee

1.3 Budget

The NCPT has an overall annual budget of CHF 760’600. One-third of these funds are used for the remuneration of Commission members, observers and external experts employed for the performance of their monitoring tasks. Last year, external experts were increasingly employed to monitor inspection visits and to provide other scientific and/or linguistic services within the secretariat. Personnel costs for the secretariat account for just under two-thirds of the entire budget.
Detention monitoring

2
2.1 Overview of monitoring activities

Last year, the NCPT conducted a total of five visits to facilities where persons are deprived of their liberty or facilities where measures of restraint are executed. It also conducted five follow-up visits in order to review the progress with regard to implementation of its recommendations addressed to the authorities concerning a number of facilities.

During that same period, the Commission accompanied 52 forced removal flights and 63 transfers to the airport of persons from 18 cantons scheduled for repatriation. All of the flights accompanied by the Commission were level-3 or level-4 repatriations. Of those flights, 22 were in execution of deportation orders under the terms of the Dublin Association Agreement (DAA); 15 of the flights were joint EU flights. In six cases, the Commission requested from the authorities a written statement clarifying the observed police intervention. The Commission’s observations have been summarised in a report and submitted to the expert committee on repatriation and deportation for written statement.

2.2 Visits to detention facilities

The Commission’s monitoring visits may be carried out with or without advance notice and include a quality inspection, from a fundamental rights perspective, of the living conditions and conditions of detention in the facilities reviewed. As part of its audit, the delegation—featuring different members each time and composed of professionals with different areas of expertise—holds talks with individuals deprived of their liberty and meets with the facilities’ administration and staff. It also inspects all the files and docu-

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2 Placement in detention cells and the transport of one or more persons to the airport.
3 Art. 28 Para. 1 Federal ordinance on the use of constraint of 12 November 2008 (Verordnung über die Anwendung polizeilichen Zwangs- und polizeilicher Massnahmen im Zuständigkeitsbereich des Bundes (Zwangsanwendungsverordnung, ZAV)), SR 364.3.
4 Agreement of 26 October 2004 between the Swiss Confederation and the European Community concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland (with Final Act), SR 0.142.392.68. These repatriations are carried out based on Art. 64a of the Federal Act on Foreign Nationals (FNA) of 16 December 2005, SR 142.20.
ments considered relevant to its monitoring mandate from a fundamental rights perspective, in particular the internal regulations and directives, orders in respect of disciplinary and safety measures, medical records, sentence execution plans and treatment plans. After each visit, the delegation provides the facility’s administration with an oral account of its observations and clarifies any issues before proceeding with a final assessment. The findings are then set out in a report, and recommendations are formulated and submitted to the cantonal authorities for written statement.

The main observations and conclusions gathered by the Commission during its 2016 visits are summarized below. The facilities are presented by category.\(^6\)

a. Pre-trial detention facilities

La Tuilière Prison (Vaud)\(^7\)

This facility houses men being held in pre-trial detention and sentenced to short prison terms and women being held in pre-trial detention and serving prison sentences. It also includes a psychiatric unit for detainees and a mother/child unit that can house two women and their children up to three years of age. On the day of the visit, the rate of overcrowding at the facility was 120%. Despite good material conditions of detention, the Commission is concerned by the fact that various triple cells were housing up to five persons. While the Commission commends the commitment shown by the staff, it regrets the facility’s limited resources for increasing staff when needed. The Commission welcomes the vast range of recreational activities available to detainees in the different detention regimes, including advanced vocational training opportunities. Finally, it reminds the administration in its report that telephone conversations between detainees and their lawyers must not be recorded.

\(^6\) The reports on the institutions visited are available online at https://www.nkvf.admin.ch/nkvf/de/home/publiservice.html.

\(^7\) Report to the authorities of the canton of Vaud on the NCPT’s visit to the La Tuilière Prison of 27 and 28 June 2016 (notpublished yet).
b. Facility for the execution of sentences and measures

Closed facility of Curabilis (Geneva)

The conditions of detention at this facility for the execution of in-patient therapeutic measures in application of Article 59 ff. of the Swiss Criminal Code (SCC), have been qualified as correct by the Commission. Inaugurated in April 2014, the facility was commissioned over a period of three years (2014-2016) and has a capacity of 92. At the time of the Commission’s visit in March 2016, only two of the four units were open. The Commission welcomes the range and quality of therapeutic care available to persons sentenced to in-patient therapeutic measures but regrets the predominance of individual care over group therapy or social therapy and occupational therapy. The Commission believes that both elements should be an integral part of the treatment concept on in-patient therapeutic measures, which is aimed at the reintegration of detainees. Overall, the Commission identified that the dual organizational affiliation of Curabilis adversely impacts the level of care provided to detainees. It also points out that the provision of care to detainees sentenced to in-patient therapeutic measures requires the employment of experienced staff.

c. Psychiatric institutions

University Hospital of Psychiatry Bern

In November 2016, the Commission visited the psychiatric services in Bern. It focused on the units housing persons sentenced to custodial measures pursuant to Article 426 ff. of the Swiss Civil Code (CC), with a particular emphasis on involuntary placement. The Commission gained a positive impression of the infrastructure, the psychiatric care provided and the staff. The Commission reviewed the imposed restrictions on the liberty of movement and occasionally deemed them to be disproportionate in length. It also

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9 Report to the authorities of the canton of Bern on the NCPT’s visit of 14-15 November 2016 to UPD Bern (Waldau-Areal) and the forensic-psychiatric ward of Etoine (unpublished).
regretted the absence of treatment plans despite their legal prescription. As a result, the Commission was unable to verify in which cases the patients had been informed in advance of the intended medical treatment.

**Psychiatric hospital Marsens**

During its visit to the psychiatric hospital in Marsens in the canton of Fribourg in December 2016, the Commission reviewed the psychiatric units for adults and the elderly persons with respect to involuntary placement. In the Commission’s opinion, the facility’s infrastructure can be deemed correct. The Commission however found the restrictions imposed on the freedom of movement of voluntary placed patients to be unnecessarily restricted due to the sometimes closed-run units. It recommended that immediate measures be taken in that regard. The Commission further noted with concern the lack of adequate treatment plans for involuntarily placed persons and recommended immediate compliance with this legal requirement. With regard to measures of restraint, the Commission recalled the need to restrict their use to exceptional circumstances.

d. **Other institutions**

**Temporary reception centre in Rancate (Ticino)**

The Commission conducted an unannounced visit to the centre for temporarily retained persons in Rancate in September 2016. Opened in August 2016, the centre accommodates migrants retained by border guards at the Swiss/Italian border usually during one night. The visit raised a number of legal questions related to the partial deprivation of liberty to which these persons are subjected. Furthermore, the Commission noted with concern the presence of unaccompanied minors. It has addressed the authorities concerned, requesting their response.

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10 Report to the authorities of the canton of Fribourg on the NCPT’s visit of 5-6 December 2016 to the Marsens care centre (unpublished).
e. **Follow-up visits**

During the period under review, the Commission made five unannounced follow-up visits in order to assess the progress of implementation of its recommendations.

**Hindelbank facilities (Bern)**

In February 2016, the Commission carried out a second follow-up visit to the Hindelbank prison facilities for women, in particular to assess the progress of implementation of its recommendations concerning the high-security unit. During its previous visits in 2010 and 2012 the Commission had voiced criticism over the situation of detainees kept in solitary confinement for extended periods of time. When the Commission revisited the facilities, there were no detainees in solitary confinement. The Commission welcomes the fact that a person who had previously been kept in solitary confinement for 15 years was transferred to a unit within the facility with a more lenient detention regime in January 2015, allowing progressive social reintegration. The Commission examined the procedures for placement in the high-security unit and noted that the placement was reviewed every six months. In light of the relevant international standards the Commission recommended the placement to be reviewed on a three months basis.

**Zurich airport prison**

The Commission conducted a follow-up visit to the Zurich airport prison to review the conditions of detention of persons placed in administrative detention under the Foreign Nationals Act. The Commission noted with satisfaction that several of its recommendations addressed to the cantonal government of Zurich following its first two visits had been implemented. In particular, it noted

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11 Report to the authorities of the canton of Bern on the NCPT’s follow-up visit of 3 February 2016 to the high-security unit of the Hindelbank facilities, available online at: https://www.nkvf.admin.ch/nkvf/de/home/publiservice/berichte/nachfolgebesuche2016.html.

12 Report to the authorities of the canton of Zurich on the NCPT’s follow-up visit of 14 April 2016 to the foreign nationals administrative detention unit of the Zurich airport prison, available online at: https://www.nkvf.admin.ch/nkvf/de/home/publiservice/berichte/nachfolgebesuche2016.html.
more flexible hours in relation to outdoor exercise and the opening of cells. The Commission also welcomes the recent renovation of the exercise yard and increased access to sports activities. All these measures have allowed for an overall improvement of the conditions of detention of persons held in administrative detention. Nevertheless, when it examined the registers, the Commission noted with concern that two minors aged between 15 and 18 had been accommodated in the facility in 2015 without being separated from adult detainees as required by the applicable law. In this regard, it reiterates the principle of separation of minors and adults in detention facilities. Although the facility has an internal policy for the detention of minors, the Commission recommends the policy to be reviewed in light of the relevant international standards. Finally, it recommends that a clear distinction be drawn between disciplinary sanctions and security measures.

Bochuz prison (Vaud)\textsuperscript{13}

During its follow-up visit in August 2016, the Commission’s main focus was on assessing the progress of implementation of its recommendations concerning the high-security unit. During the Commission’s visit, there were no detainees in the high-security unit. The Commission also examined the conditions of detention of persons subject to in-patient therapeutic measures in accordance with Article 59 SCC. Given the shortcomings in terms of the level of therapeutic care provided, the Commission notes with surprise the consistently large number of persons sentenced to in-patient therapeutic measures placed at EPO.

Reception and processing centre Kreuzlingen\textsuperscript{14}

During the follow-up visit carried out in June 2016, the Commission noted with satisfaction the implementation of a number

\textsuperscript{13} Letter to the authorities of the canton of Vaud concerning the NCPT’s follow-up visit of 16 August 2016 to Bochuz prison (not published yet).

\textsuperscript{14} Letter to the State Secretariat for Migration concerning the NCPT’s follow-up visit of 15 June 2016 to the reception and processing centre in Kreuzlingen, available at https://www.nkvf.admin.ch/dam/data/nkvf/Berichte/2016/kreuzlingen/feedbackschreiben-sem.pdf.
of recommendations addressed during its previous visits in 2011 and 2012. For instance, the opportunities for sports and other activities offered to asylum-seekers had been increased, and a play area for children created. Despite these improvements, the Commission noted shortcomings related to the accommodation of families with children. The reception centre does not offer family rooms, forcing family members to be separated during their stay at the facility. The Commission further noted a large number of unaccompanied minors, placed in rooms together with adults, contrary to international standards. Given the vulnerability of unaccompanied minors, the Commission recommended to SEM to develop a policy ensuring children are taken appropriate care of.

With regard to the use of measures of restraint, the Commission expressed concern at the use of pepper spray by a security officer employed by Securitas SA and assigned to the reception and processing centre in Kreuzlingen. The Commission examined the incident and pointed out that the use of such measures of restraints be limited to last resort. It further noted that, in accordance with international standards, incapacitant sprays should never be used in closed rooms while persons on whom they have been used should be examined immediately afterwards by a health professional.

Airport transit zones in Geneva and Zurich

The Commission reviewed the Airport transit zones in Geneva and Zurich in March and April 2016 respectively.

The Commission deemed the infrastructure and the level of hygiene at both airport transit zones as correct. Nevertheless, it criticised the limited possibilities in terms of access to fresh air and recommended that asylum seekers be provided with adequate alternatives.

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15 Letter to SEM concerning the NCPT’s follow-up visit of 14 April 2016 to the asylum centres in the non-Schengen transit zones at the airports of Geneva and Zurich (not published).
2.3 Legislative work

The NCPT submitted a position paper concerning the overhaul of the law on execution of sentences and measures (SMVG) of the Canton of Bern, which it was invited to by authorities.¹⁶

Other activities

3
3.1 Dialogue with the federal and cantonal authorities

a. Federal Department of Justice and Police (FDJP)

In connection with the recruitment of new Commission members, the Commission held contacts with the competent representatives of the Federal Office of Justice (FOJ) and it also held occasional meetings with the Secretary-General of the FDJP, particularly to clarify issues related to its status as a decentralised administrative unit.

b. Federal Department of Foreign Affairs (FDFA)

In April 2016, a delegation of the Commission met the head of the Human Security Division (HSD) at the Directorate of Political Affairs to discuss the Commission’s role in building awareness among foreign delegations, in particular, representatives of various National Preventive Mechanisms (NPMs).

In this regard the NCPT participated in an exchange with a delegation from Bahrain in November 2016, during which it presented its mandate, its working methods and its activities. The meeting took place as part of the human rights dialogue between Switzerland and Bahrain.

c. Conference of Cantonal Justice and Police

At the meeting of the Committee of Nine of the Conference of Cantonal Justice and Police Department Heads (CCJPD), the Commission presented its findings on the monitoring of juvenile institutions and informed the government members present of the planned round-table discussion on the execution of in-patient therapeutic measures, which included the presentation of a study on the subject conducted by the University of Bern and of the Commission’s thematic report including its recommendations.
Other activities

d. **Expert dialogue with the Repatriation and Deportation Committee of the CCJP**

Last year, the Commission met twice with representatives of the Repatriation and Deportation Committee and discussed its observations and recommendations in relation to the monitoring of forced removals by air.\(^\text{17}\)

e. **Bilateral talks with cantonal authorities**

Following its follow-up visits to the facilities of Brigue, Granges, Martigny and Sion in 2015, the Commission requested a formal meeting with the authorities of the Canton of Valais to present its review of the implementation of the recommendations made during its first visits in 2012 and to discuss solutions envisaged by the cantonal authorities. The Commission presented its critical findings at a meeting in February 2016.

This past year, the Commission held bilateral talks with the State Councillor and head of the Department of Security and Institutions of Geneva. The meeting was held to discuss the Commission’s findings during its visit to the Curabilis facility, some of which have been classified as preoccupying. During the meeting, possible solutions and recommendations were discussed.

f. **Participation in police training as part of the monitoring of forced return**

At the invitation of the police departments of the Cantons of Geneva and Schwyz, the Commission participated in police training programmes, during which it presented its work methods and procedures in connection with the monitoring of forced removals by air. These exchanges provided an opportunity to discuss the Commission’s observations and recommendations with regard to

\(^\text{17}\) For more information see the NCPT report on the monitoring of forced repatriations of foreign nationals.
the use of coercive measures during the various stages of the deportation procedure.

3.2 Dialogue with civil society organisations

a. Forum on the monitoring of forced return

The NCPT organised a forum convened in June 2016 in the presence of representatives of the authorities and of civil society to discuss the findings and recommendations of the Commission’s annual report on the monitoring of deportations under the Foreign Nationals Act. A representative of the Conference of Cantonal Police Department Heads highlighted the challenges that the police faced in fulfilling its mandate whilst observing the fundamental principle of proportionality during transfers to the airport.

b. Swiss Centre of Expertise in Human Rights (SCHR)

In 2016, the Commission attended two meetings of the Advisory Board of the Swiss Centre of Expertise in Human Rights (SCHR), of which it is a member.

The Commission also renewed its mandate with the SCHR, concerning the preparation of a compilation of the national and international case law on deprivation of liberty relevant to the Commission’s work. In addition, the Commission mandated the SCHR for the provision of scientific support in the performance of various duties at the Secretariat for the first time last year.

c. Association for the Prevention of Torture (APT)

APT dedicated the third Jean-Jacques Gautier Symposium, held in Geneva on 6-7 September 2016, to the monitoring of psychiatric institutions. Attended by some 15 National Preventive Mechanisms (NPM) from around the world, including the Commission, and experts in the field, the symposium was intended as
a forum for sharing expertise and practices in connection with the monitoring of such institutions. The focus was particularly on the international standards relating to the use of restraints in psychiatric institutions.

d. Parliamentary campaign against the detention of child migrants

As part of the campaign of the Parliamentary Assembly of the Council of Europe (PACE) aimed at putting an end to the detention of child migrants, PACE organised a seminar entitled «Promoting alternatives to placement and detention of child migrants in Switzerland» in Bern on 16 June 2016. At the invitation of the organisers, the Commission presented its observations and findings on the detention of child migrants in Switzerland. The Commission took the opportunity to reiterate the international standards on the detention of minors and to urge the competent authorities to adopt alternatives to detention.

e. Conference of Swiss Prison Doctors

In January 2016, in its capacity as an observer member, the Commission participated at the Conference of Swiss Prison Doctors in Basel, attended by around one hundred participants from the field of prison medicine. The conference focused in particular on human rights issues related to access to medical care for elderly detainees.

f. Conference on Pre-trial detention in Zurich

At a symposium on pre-trial detention organised by the Paulus-Akademie in Zurich in September 2016, the Commission presented the findings of its thematic report on the fundamental rights conformity of pre-trial detention.
3.3 Contact with international stakeholders

a. UN Subcommittee on the Prevention of Torture (SPT)

At the invitation of the UN Subcommittee on the Prevention of Torture (SPT), the Commission presented its recent activities in a meeting in February 2016 and discussed with the Committee the challenges faced with respect to the implementation of its mandate. In particular, the Commission highlighted its limited resources for monitoring detention facilities in Switzerland and raised issues relating to its independence, in particular in relation to its administrative affiliation to the Federal Department of Justice and Police (FDJP).

In November 2016, the Commission also attended an event organised by the SPT in Geneva in celebration of the tenth anniversary of the adoption of the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT).

b. Contact with other National Preventive Mechanisms

At the invitation of the National Preventive Mechanism of the Netherlands, the Commission and its UK counterpart visited The Hague on 21-22 January 2016 to familiarise themselves with the work methods of the Dutch NPM and the country’s prison system. The three NPMs also took the opportunity to address various common issues, in particular relating to repatriation by air and the corresponding monitoring activities.

Within an informal network between the German, Austrian and Swiss NPMs, the Commission invited its partner institutions to a meeting held in Solothurn on 20-21 October 2016. The Commission organised a visit to a facility in the canton of Solothurn to inform about the enforcement of in-patient therapeutic measures in Switzerland. Discussions then allowed for a comparative analysis of the legal frameworks in the three countries and focussed on the work and visits carried out by the Commission in this area. Furthermore, the meeting allowed for a discussion on the chal-
lenges faced by all three NPMs in connection with the monitoring of psychiatric institutions. The visit to the facility in the canton of Solothurn was made possible thanks to excellent collaboration with the authorities of Solothurn and the administration of the facility.

The Commission welcomes these exchanges and considers them to be essential as they provide an opportunity to address common issues and to identify new priorities drawing on the experience of the other preventive mechanisms.

c. **Organization for Security and Co-operation in Europe (OSCE)**

On 13 and 14 October 2016, the Commission attended the first meeting of the National Preventive Mechanisms of the OSCE region in Vienna. Held in celebration of the tenth anniversary of the OP-CAT, the meeting was attended by around thirty NPMs, each with a distinctive legal status or structure. The main objective was to assess the implementation of the OP-CAT in the OSCE region, taking stock of the challenges and successes faced by NPMs.

d. **Ludwig Boltzmann Institute of Human Rights (BIM)**

The Commission participated in a workshop aimed at strengthening cooperation between the judiciary and the National Preventive Mechanisms in the European Union, organised by the Ludwig Boltzmann Institute in Vienna on 7-8 June 2016.

e. **Lyon Institute of Human Rights (IDHL)**

The Lyon Institute of Human Rights (IDHL) and the APT organised the first French-speaking summer university for National Preventive Mechanisms in Lyon on 18-22 July 2016. This training course, which the Commission attended, focused, in particular, on the issue of police detention.
f. **European Border and Coast Guard Agency (Frontex)**

In June 2016, the Commission participated in a workshop jointly organised by Frontex and the EU Agency for Fundamental Rights (FRA) on the monitoring of forced repatriations. Attended by a number of European monitoring mechanisms, police escorts and doctors, the meeting was intended as a forum for identifying good practices with regard to the monitoring of forced repatriations and for clarifying the role and responsibilities of observers. The Commission shared its expertise in the monitoring of forced repatriations and recalled the NPMs’ independence in the fulfilment of their duties.
Measures of restraint in psychiatric institutions and their human rights conformity

4
4.1 Introduction

Since the beginning of monitoring activities in 2010, the Commission has visited a number of psychiatric institutions in the cantons of Bern, Fribourg, Zurich and Thurgau. In accordance with its legal mandate, it has reviewed, in particular, the conditions of involuntary placements. During last year’s visits, it focused on the use of restraint measures, in particular measures restricting the freedom of movement and treatment without consent, and reviewed the appropriateness of such measures based in light of the relevant national legislation and human rights standards.

The first section contains a brief outline and summary of the human rights standards referred to by the Commission in relation to its monitoring visits; the second section presents an overview of the findings and a human rights assessment regarding the implementation of the standards in psychiatric institutions.

4.2 Human and fundamental rights standards with respect to involuntary placement

At an international level, different standards apply mainly in the form of general principles - with regard to the involuntary placement of persons and the use of restrictive measures in psychiatric institutions. The following section lists and summarises the most important fundamental and human rights standards.

a. General principles

In particular, as a general principle, the restrictions on freedom of movement of a patient admitted involuntarily should be limited only to those which are necessary because of his or her state of health and for the success of the treatment.\(^\text{18}\) In all circumstances, the patient’s dignity should be respected and adequate measures

\(^{18}\) Art. 6 Recommendation R(83)2 concerning the legal protection of persons suffering from mental disorder placed as involuntary patients, 22 February 1982.
taken to protect his or her health.\textsuperscript{19} Every patient in a mental health facility is entitled to full respect of his or her legal capacity, privacy, contact with the outside world (e.g. freedom to communicate with other patients, to send and receive correspondence, to receive unsupervised visits, and to access newspapers, radio and television) and freedom of religion and conscience.\textsuperscript{20} The living conditions should be as close as possible to those of people in the community, in accordance with the principle of normality, taking into account the patient’s state of health and the need to protect the safety of others.\textsuperscript{21}

A mental health facility shall have access to the same level of resources as any other health establishment\textsuperscript{22}, and voluntary and involuntary patients should have equitable access to medical treatment and care.\textsuperscript{23} The facility shall have sufficient qualified staff and diagnostic and therapeutic equipment, appropriate professional care, and adequate, comprehensive treatment, including supplies of medications.\textsuperscript{24}

A patient in a mental health facility shall be informed as soon as possible after admission, in a form and a language which the patient understands, of all his or her rights.\textsuperscript{25} If a patient is unable to understand such information, the rights of the patient shall be communicated to a personal representative or other person deemed appropriate.\textsuperscript{26} Whenever possible, a patient should be treated at a clinic near the home of his or her relatives or friends.\textsuperscript{27} Special arrangements should be made for particularly vulnerable patients: for

\begin{itemize}
  \item Art. 10 Recommendation R(83)2 (involuntary placement of persons suffering from mental disorder); cf. World Health Organization, Mental health care law: Ten basic principles, 1996, WHO/MNH/MND/96.9 (cited WHO mental health care principles), Point 2.
  \item The Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, Resolution 46/119 adopted by the General Assembly, 17 December 1991, A/RES/46/119 [MI Principles]) (cited UN Principles for the Protection of Persons with Mental Illness), No. 13 Point 1; cf. Art. 9.1 Recommendation R(83)2 (involuntary placement of persons suffering from mental disorder).
  \item CPT Standards, Involuntary placement in psychiatric establishments, Extract from the 8th General Report, CPT/Inf (98) 12, Point 33.
  \item UN Principles for the Protection of Persons with Mental Illness, No. 14 Point 1.
  \item UN Principles for the Protection of Persons with Mental Illness, No. 14 Point 1; cf. CPT/Inf (98) 12, Points 32 and 38.
  \item UN Principles for the Protection of Persons with Mental Illness, No. 12 Point 1; Art. 6 Recommendation Rec(2004)10 (mental disorders).
  \item UN Principles for the Protection of Persons with Mental Illness, No. 12 Point 2; cf. WHO mental health care principles, Point 6.
  \item UN Principles for the Protection of Persons with Mental Illness, No. 7 Point 2.
\end{itemize}
example, adolescents should not be accommodated together with adult patients.28

b. **Material living conditions**

Facilities should offer material living conditions which are conducive to the treatment and welfare of patients: in other words, the rooms should be designed and decorated in such a way as to create a positive therapeutic environment.29 Creating a positive therapeutic environment involves, first of all, providing sufficient living space per patient as well as adequate lighting, heating and ventilation, maintaining the establishment in a satisfactory state of repair and meeting hospital hygiene requirements.30 All rooms should be appropriately furnished31, and patients should be allowed to keep certain personal belongings (books, photographs etc).32 In order to protect their privacy, patients should have access and be able to return to their rooms at all times.33 Sanitary facilities should allow patients some privacy34, and the needs of elderly patients, patients with disabilities and bed-ridden patients with regard to personal hygiene should be given due consideration.35 Finally, patients should be allowed individual clothing so that they are not constantly forced to wear the facility’s internal clothing, pyjamas or nightgowns. Food must be adequate in terms of quantity and quality.36

It is common practice in modern psychiatry to avoid gender segregation in mental healthcare facilities, which also takes into account the principle of normality.37 Furthermore, the separation rule is not explicitly mentioned in relation to involuntary placement

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28 CPT/Inf (98) 12, Point 30.
29 CPT/Inf (98) 12, Point 32.
30 CPT/Inf (98) 12, Point 34.
31 CPT/Inf (98) 12, Point 34.
32 CPT/Inf (98) 12, Point 34.
33 CPT/Inf (98) 12, Point 35.
34 CPT/Inf (98) 12, Point 34.
35 CPT/Inf (98) 12, Point 34.
36 CPT/Inf (98) 12, Point 35.
in psychiatric institutions on an international level.\textsuperscript{38} However, since the persons concerned are under the full control of the State, the State has a special duty to protect them from abuse by other individuals. Therefore, the lack of segregation must not result in reduced safety for patients. All reasonably foreseeable measures need to be taken to minimise the risk of abuse.\textsuperscript{39}

c. **Psychiatric treatment**

Psychiatric treatment during involuntary placement in a psychiatric establishment should be based on an individualised approach, which implies the drawing up of a treatment plan for each patient.\textsuperscript{40} The treatment plan should be prepared in consultation with the person concerned, and his or her opinion or that of his or her authorised representative (trusted person) should be taken into account.\textsuperscript{41} Where the patient lacks capacity, account must be taken of any advance patient directive\textsuperscript{42}, and the patient and the authorised representative are to be informed of all matters relevant to the planned medical procedures, in particular the reasons therefor, their purpose, nature, modalities, risks and side effects, of the consequences of not undergoing treatment and of any alternative treatment options.\textsuperscript{43} The treatment plan is to be reviewed at regular intervals and adjusted as necessary.\textsuperscript{44}

Psychiatric treatment, of which medication often forms a necessary part, should additionally include appropriate rehabilitative and therapeutic activities. The treatment plan should include activities such as occupational therapy, group or individual psychotherapy, art, drama, music and sports. Patients should have regular access to suitably-equipped recreation rooms and have the

\textsuperscript{38} Künzli/Eugster/Spring, p. 29. See e.g. CPT/Inf (98) 12.

\textsuperscript{39} Künzli/Eugster/Spring, p. 31.

\textsuperscript{40} CPT/Inf (98) 12, Point 37; cf. Art. 12 Point 1 Recommendation Rec(2004)10 (mental disorders); cf. UN Principles for the Protection of Persons with Mental Illness, No. 9 Point 2; Art. 433 Para. 1 CC of 10 December 1907 (CC), SR 210.

\textsuperscript{41} Art. 12 Point 1 and Art. 19 Point 2 (i) Recommendation Rec(2004)10 (mental disorders); cf. UN Principles for the Protection of Persons with Mental Illness, No. 9 Point 2; Art. 433 Para. 1 CC.

\textsuperscript{42} Art. 433 Para. 3 CC.

\textsuperscript{43} Art. 433 Para. 2 CC.

\textsuperscript{44} Art. 12 Point 1 and Art. 19 Point 2 (ii) Recommendation Rec(2004)10 (mental disorders); cf. UN Principles for the Protection of Persons with Mental Illness, No. 9 Point 2; Art. 433 Para. 4 CC.
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possibility to take outdoor exercise on a daily basis; it is also desir-
able for them to be offered education and suitable work.\textsuperscript{45} The
patients’ treatment shall be directed towards preserving and en-
hancing personal autonomy.\textsuperscript{46} The patient’s state of health and
any medication prescribed are to be reviewed regularly with a
view to possible dehospitalisation or transfer of the patient.\textsuperscript{47}

d. Measures of restraint

i. General principles

As a general rule, where the patient has capacity, measures of
restraint in the form of measures restricting the freedom of move-
ment and/or treatment without consent may not be imposed. Ex-
ceptionally, they may be used in the case of an involuntary place-
ment order. Such measures must be prescribed by law and justified
by being in the public interest and must be proportionate.\textsuperscript{48} They
should be used as a last resort only\textsuperscript{49} in cases where patients pose
a risk to themselves or others.\textsuperscript{50} Preference should be given to the
most lenient, least intrusive measure\textsuperscript{51}, and the measures should
be used for the shortest possible time.\textsuperscript{52} Measures of restraint

\textsuperscript{45} CPT/Inf (98) 12, Point 37.
\textsuperscript{46} UN Principles for the Protection of Persons with Mental Illness, No. 9 Point 4.
\textsuperscript{47} CPT/Inf (98) 12, Point 40.
\textsuperscript{48} CPT Standards, Means of restraint in psychiatric establishments for adults (revised CPT standards), CPT/Inf(2017)6 (cited CPT/
Inf(2017)6), Point 1.4; Recommendation R(98) 7 of the Committee of Ministers to member states concerning the ethical and
organisational aspects of health care in prison, 8 April 1998 (cited Recommendation R(98)7 (health care)), Point 14
(exceptions to informed consent); cf. United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson
Mandela Rules), Resolution 70/175 adopted by the General Assembly, 17 December 2015, A/RES/70/175, Rule 47 Point 2
(Instruments of restraint).
\textsuperscript{49} CPT/Inf(2017)6, Point 1.4.
\textsuperscript{50} CPT/Inf(2017)6, Point 1.1. See also Art. 27 Point 1 Recommendation Rec(2004)10 (mental disorders) (segregation and restraint);
Approach of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
regarding the rights of persons institutionalized and treated medically without informed consent, 26 January 2016, CAT/
OP/27/2 (cited SPT, Approach informed consent), Point 9 (on safety grounds only); cf. also WHO mental health care principles,
Estonia, 66393/10 (2014), Point 81; European Court of Human Rights, Bures v. Czech Republic, 37679/08 (2012), Points 95-97
(instruments of physical restraint).
\textsuperscript{51} CPT/Inf(2017)6, Point 5; cf. Nelson Mandela Rules, Rule 48 Point 1 (c) (Instruments of restraint).
\textsuperscript{52} Art. 383 Para. 1 in connection with Art. 438 CC (measures restricting freedom of movement); CPT/Inf(2017)6, Point 1.4;
Art. 27 Point 1 (and cf. Art. 8) Recommendation Rec(2004)10 (mental disorders) (segregation and restraint); cf. Nelson
Mandela Rules, Rule 48 Point 1 (b) (Instruments of restraint); cf. UN Principles for the Protection of Persons with Mental
Illness, No. 9 Point 1.
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should never be used as punishment, to make work easier or for the convenience of staff, relatives or other persons.

From a human rights perspective, a decisive factor in determining the need for such measures is the right to self-determination, whereby the patient has the right to refuse a medical examination or treatment. This right follows from the entitlement to health, a private life and protection of physical and mental integrity, from the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, and from the provisions of the Convention on Human Rights and Biomedicine. These international standards also provide the basis for the fundamental principle of informed consent, whereby any examination or treatment may only be carried out after the person concerned has consented to it. In accordance with international standards, informed consent is consent obtained freely after appropriate disclosure to the patient of the diagnosis, the purpose and nature of the proposed treatment, the consequences and risks thereof, and alternative treatment. The person concerned may withdraw consent at any time, and exceptions to the rule of personal informed consent are only admitted in the case of incapacity to consent as a result of the person's condition, or in an emergency situation.

53 CPT/Inf(2017)6, Point 1.6; CPT/Inf (98) 12, Point 48 (instruments of physical restraint); cf. Nelson Mandela Rules, Rule 43 Point 2; cf. UN Principles for the Protection of Persons with Mental Illness, No. 10 Point 1 (Medication).

54 Swiss Academy of Medical Sciences (SAMS), Medical-ethical guidelines, Coercive measures in medicine, December 2015 (cited SAMW-RL Coercive measures), Point 3.3; Künzli Jörg/Frei Nula/Veerakatty-Fernandes Vijitha, Menschenrechtliche Standards bei unfreiwilliger Unterbringung von Menschen in Alters- und Pflegeheimen, dargestellt am Beispiel von Personen mit Altersdemenz (Human rights standards in the involuntary placement of patients in nursing homes and care homes based on the example of persons with senile dementia), Swiss Centre of Expertise in Human Rights (SCHR), Bern, March 2016, p. 24.

55 SPT, Approach informed consent, Point 9; SPT, Approach informed consent, Point 15 (medical treatment without consent); cf. UN Principles for the Protection of Persons with Mental Illness, No. 10 Point 1 (Medication).

56 Art. 12 International Covenant on Economic, Social and Cultural Rights (ICESCR), signed in New York on 16 December 1966 (UN Covenant I), SR 0.103.1; Art. 25 Para. 1 CRPD.

57 Art. 8 Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 (ECHR), SR 0.101; Art. 17 International Covenant on Civil and Political Rights (ICCPR), signed in New York on 16 December 1966 (UN Covenant II), SR 0.103.2.

58 Art. 17 CRPD.

59 Art. 3 ECHR; Art. 7 UN Covenant II; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 (CAT), SR 0.105; Art. 15 CRPD.

60 Art. 5 ff. The Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (Convention on Human Rights and Biomedicine) of 4 April 1997 (Biomedicine Convention), SR 0.810.2.

61 Art. 5 Para. 2 Biomedicine Convention; UN Principles for the Protection of Persons with Mental Illness, No. 11 Point 2; cf. Recommendation R(98)7 (healthcare), Point 14 f.; cf. SPT, Approach informed consent, Point 12.

62 Art. 5 Para. 3 Biomedicine Convention. Consent may also be withdrawn at any time by a representative or an authority or a person or body provided for by law in the best interests of the person concerned; Art. 6 Para. 5 Biomedicine Convention.

In order to prevent a treatment without consent from being regarded as inhuman or degrading treatment in accordance with Art. 3 ECHR, the medical necessity of the treatment must be confirmed by a qualified medical practitioner practising in accordance with the recognised rules of medical science. Furthermore, said treatment must be essential in order to preserve the physical and mental health of the patient.64

Psychiatric institutions use a range of different restraint measures.65 These may essentially be divided into two categories:

- Treatment without consent, typically involving the administration of drugs against the patient’s will or without the patient’s consent;
- Measures restricting freedom of movement in the form of seclusion (involuntary placement of a patient alone in a locked room), manual control (holding), mechanical restraints (e.g. instruments of restraint, bed straps, Zewi blankets, strait-jackets, pelvic harnesses or enclosed beds) or electronic measures (e.g. electronic wristbands, sensor strips or pads, induction loops in shoes).

Clear rules must be developed for the execution of these measures. Psychiatric institutions should draw up internal guidelines, together with their staff, in which they define the key principles. These guidelines should aim at limited use of such measures and should clearly set out the requirements for their imposition. In particular, they should define the means of application, the duration and the circumstances under which they are applied as well as the supervision required and the action to be taken once a measure is terminated.66 The guidelines should also contain precise information on staff training and on the internal and external possibilities for appeal.

Every resort to means of restraint shall be ordered by a doctor serving in the role of chief physician or may only be approved by

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64 Cf. also Deliberations of the European Court of Human Rights in Herczegfalvy v. Austria, 10533/83 (1992), Point 82.
65 CPT/Inf(2017)6, Point 1.7.
66 CPT/Inf(2017)6, Point 1.7.
such person. The requirement for medical necessity is thereby met. Furthermore, restraint measures must only be executed under medical supervision, and the need for such measures should be reviewed at regular intervals.

With a view to ensuring accountability for such measures, human rights standards prescribe that a register should be kept to record in detail all measures. In particular, the entries should include the times at which the measure began and ended, the circumstances of the case, the reasons for resorting to the measure, the name of the doctor who ordered or approved it, and an account of any injuries sustained. The persons concerned should be entitled to consult the register at all times and should receive a copy of the full entry. In addition, once the measure is terminated, it is important that a debriefing of the patient take place to explain to the patient the reasons for the restraint, and patients should have access to independent complaint mechanisms for a judicial review of the measures adopted. An appeal against the measures may be lodged by the patient or his or her legal representative.

ii. Treatment without consent

From a fundamental rights point of view, medical treatment without consent is a serious encroachment on personal liberty in terms of physical and mental integrity under Art. 10 Para. 2 of the
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Federal Constitution of the Swiss Confederation, directly affecting human dignity in accordance with Art. 7 of the Constitution. Where treatment without consent is necessary, there are stringent rules on fulfilling the requirements for intervention. The European Court of Human Rights, for example, regards medical treatment without consent as constituting inhuman and degrading treatment within the meaning of Art. 3 ECHR if the treatment was not medically necessary or was administered in a degrading manner. Art. 3 ECHR is further breached if the treatment is continued for hours on end, inflicting severe physical and mental pain and suffering or even injury. Moreover, a comprehensive balancing of interests is to be made between the affected fundamental rights of the patient (personal freedom and the protection of human dignity) and the public interest (duty to provide proper care or protection of the fundamental rights of others). Protection of the fundamental rights of others must be assured in cases of immediate serious danger to life or health of others or a severe, acute disruption to life in and around the institution.

If recourse is had to treatment without consent, only approved, well-established and fast-acting drugs should be used. The side-effects that medication may have on a particular patient need to be constantly borne in mind, particularly when medication is used in combination with mechanical restraint or seclusion.

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75 BGE 130 I 16 E. 3 p. 18. Cf. also BGE 126 I 112; BGE 127 I 6; BGE 134 I 221; BGer 6B 824/2015 of 22 September 2015.
76 In order to ensure proportionality, it is essential, for example, that medical treatment without consent be ordered and supervised by a doctor; European Court of Human Rights, Jalloh v. Germany, 54810/00 (2006), Point 73. See also SAMW-RL Coercive measures, Point 3.2.
77 European Court of Human Rights, Herczegfalvy v. Austria, 10533/83 (1992), in particular Point 82 f.; European Court of Human Rights, Keenan v. the United Kingdom, 27229/95 (2001); European Court of Human Rights, Jalloh v. Germany, 54810/00 (2006).
78 European Court of Human Rights, Keenan v. the United Kingdom, 27229/95 (2001), Point 116: “The lack of effective monitoring of a person’s condition and the lack of informed psychiatric input into the assessment and treatment disclose significant defects in the medical care provided to a mentally ill person known to be a suicide risk. A belated imposition in those circumstances of a serious disciplinary punishment may well threaten the physical and moral resistance and is not compatible with the standard of treatment required in respect of a mentally ill person. It must be regarded as constituting inhuman and degrading treatment and punishment within the meaning of Article 3 of the Convention.” In this respect, see also European Court of Human Rights, Jalloh v. Germany, 54810/00 (2006).
80 BGE 130 I 16 E. 5.2 p. 20 f.
81 BGE 130 I 16 E. 5.2 p. 20 f.
82 CPT/Inf(2017)6, Ziff. 3.7.
iii. Measures restricting freedom of movement

The restraint of psychiatric patients who represent a significant danger to themselves or others may exceptionally be necessary. However, patients should only be restrained as a measure of last resort. All types of restraint should be regulated by law and applied in accordance with the principles of necessity, proportionality and accountability. Measures restricting freedom of movement are security measures only and have no therapeutic justification. They should never be used as punishment, for the mere convenience of staff or because of staff shortages.

• The use of mechanical restraints

From a human rights perspective, five- or seven-point restraints are, without doubt, among the most restrictive measures falling within the scope of the ban on torture or inhuman or degrading treatment within the meaning of Art. 3 ECHR, inter alia, if carried out unlawfully or if they result in physical injuries to the person concerned. Therefore, a patient should only be restrained as a measure of last resort to prevent imminent injury and/or violence. Due regard must be paid to the principle of proportionality: in the view of the Federal Court, self-defence and emergency, for example, may not be invoked as ongoing justification for the use of mechanical restraints over an extended period.

Mechanical restraints should be used in such a way as to minimise the risk of causing unnecessary pain to the patient. In particu-
lar, staff should be properly trained in the application of mechanical restraint and in holding techniques that do not obstruct the patient’s airways. Handcuffs or chains should never be used to immobilise a patient. Instead, padded cloth straps should be used. Straps must not be too tight and should be applied in a manner that allows for the maximum safe movement of the arms and legs.

Restraints should be applied in a safe room set aside for this purpose in such a way as to protect the privacy of the person concerned, out of the view of other patients, unless the patient explicitly expresses a wish to remain in the company of fellow patients. Every patient who is subjected to mechanical restraint should be continuously supervised by a member of staff permanently present in the room. Video surveillance is not sufficient.

The duration of the use of means of mechanical restraint should be for the shortest possible time, and the use of restraints should be terminated at the earliest opportunity. Applying mechanical restraint for days on end cannot have any justification and could amount to ill-treatment. If, for compelling reasons, recourse is had to a mechanical restraint measure for a number of hours, the measure should be reviewed by a doctor at regular intervals. Where there is repetitive use of restraint, a second doctor should be involved.

In rare cases, mechanical restraints may be used in combination with other measures, for example treatment without consent. Such a practice may only be justified and considered appropriate if it is likely to reduce the overall duration of the application of restraint.

Voluntary patients should only be restrained with their consent. If the application of restraint to a voluntary patient is deemed necessary, and the patient disagrees, the legal status of the patient

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92 CPT/Inf(2017)6, Point 3.2.
93 CPT/Inf(2017)6, Point 3.3.
94 CPT/Inf(2017)6, Point 3.5.
95 CPT/Inf(2017)6, Point 7.
96 CPT/Inf(2017)6, Point 4.1.
97 CPT/Inf(2017)6, Point 4.2.
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should be reviewed; the patient’s capacity is to be reviewed, and, if necessary, involuntary care-related hospitalisation is to be ordered.99

- **Seclusion**

Seclusion can also fall within the scope of Art. 3 ECHR, particularly if combined with complete sensory or social isolation. Such a measure may, depending on the degree of isolation, constitute inhuman treatment within the meaning of Art. 3 ECHR, which may not be justified on the grounds of safety or other reasons.100

It is typically used to calm patients or for sensory deprivation. Seclusion is typically executed in rooms specially equipped for that purpose. The room should ensure the safety of the patient and provide a calming environment for the patient concerned.101 In principle, when seclusion is ordered, the same requirements apply in terms of documenting and recording the measures as apply for other measures restricting freedom of movement. Therefore, by analogy, it can be assumed that a formal order is to be issued for seclusion.102 The longer the measure is continued, the stronger must be the reason for it, and the reason must be reviewed on a regular basis.

For patients spending time in seclusion, the day should be mandatorily structured, taking into account the patient’s individual needs, and offer a certain routine. In particular, patients should have daily access to fresh air and should be offered the opportunity to pursue activities compatible with their therapy.

### 4.3 Legal framework related to involuntary placement in psychiatric institutions

In Switzerland, involuntary placement is ordered in form of involuntary care-related hospitalisation for treatment or care of a mental disorder or mental disability.103 Doctors104 and the adult

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100 BGer 5A_335/2010 of 6 July 2010, E. 3.4.
101 CPT/Inf(2017)6, Point 1.7.
102 See e.g. Art. 438 CC.
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protection authority\textsuperscript{105} are authorised to order care-related hospitalisation for a period of up to six weeks. The adult protection authority is responsible for ordering hospitalisation and discharge.\textsuperscript{106} Hospitalisation may not continue beyond six weeks at the latest unless an enforceable hospitalisation order from the adult protection authority applies\textsuperscript{107}, and the adult protection authority shall conduct a review of the legality of the placement within six months at the latest.\textsuperscript{108} If the requirements for hospitalisation are no longer met, the patient must be discharged. The patient may request his or her discharge at any time, and the competent authority shall decide immediately. All decisions of the adult protection authority, the hospitalisation order itself and detention on medical grounds are subject to a right of appeal to the competent court.\textsuperscript{109}

In accordance with Art. 433 CC, if a person is hospitalised involuntarily, the attending doctor shall draw up a written treatment plan in consultation with the patient and, if applicable, his or her authorised representative.\textsuperscript{110} Treatment plans also serve as a basis for therapeutic treatment and for any treatment without consent that may be required (Art. 434 CC) as the treatment plan must always include the medical procedures planned.\textsuperscript{111}

\begin{enumerate}
\item \textbf{a. Treatment without consent}
\end{enumerate}

Art. 434 CC sets out the necessary conditions for providing treatment without consent. Such treatment may only be ordered by a chief physician. This takes into account the requirement of Art. 3 ECHR, according to which the therapeutic necessity must be proven by a doctor.\textsuperscript{112} Treatment without consent is permitted in

\begin{itemize}
\item Art. 426 ff. CC.
\item Art. 429 f. CC.
\item Art. 428 CC.
\item Art. 428 Para. 1 CC.
\item Art. 429 Para. 2 CC.
\item Art. 431 Para. 1 CC.
\item Art. 439 CC.
\end{itemize}

\textsuperscript{103} Art. 426 ff. CC.
\textsuperscript{104} Art. 429 f. CC.
\textsuperscript{105} Art. 428 CC.
\textsuperscript{106} Art. 428 Para. 1 CC.
\textsuperscript{107} Art. 429 Para. 2 CC.
\textsuperscript{108} Art. 431 Para. 1 CC.
\textsuperscript{109} Art. 439 CC.
\textsuperscript{111} Cf. Art. 434 Para. 1 CC; BSK ZGB-Geiser/ Etzensberger on Art. 434 CC, no. 16.
the following cases:
- if failure to carry out the treatment could lead to serious damage to the patient’s health or seriously endanger the life or the physical integrity of others;
- if the patient is unable to exercise judgement\(^\text{113}\) in relation to his or her need for treatment; and
- no appropriate measure is available that is less invasive.

Written notice of the order shall be given to the patient and his or her authorised representative together with instructions on rights of appeal.\(^\text{114}\) The foregoing does not apply to essential emergency medical procedures that need to be carried out immediately.\(^\text{115}\) An appeal may be made to the court against the medical procedures ordered. The deadline for appealing to the court is ten days from the date on which notice of the decision is given. In the case of measures restricting freedom of movement, an appeal may be made to the court at any time.\(^\text{116}\)

b. Treatment without consent for voluntary patients

As a matter of principle, a patient who is admitted voluntarily may not be treated without consent. However, if the circumstances dictate the need for such treatment, the patient may be detained by the institution’s medical management for a maximum of three days.\(^\text{117}\) However, whether or not treatment without consent is permissible based on such a decision to detain the patient is a matter of controversy, although, if the requirements are met, said treatment is at least considered possible.\(^\text{118}\) In practice, medical procedures and treatment without consent are often deemed

\(^{112}\) Cf. p. 36 above.

\(^{113}\) SAMW-RL Coercive measures, Point 2.4: «The core element of capacity is the ability to comprehend a given situation and make a reasonable decision in accordance with one’s own values.» Capacity is always to be determined in relation to a specific matter. Capacity is generally presumed to be present, meaning that what requires justification is incapacity. On no account is incapacity to be presumed merely on the basis of a diagnosis such as schizophrenia or Alzheimer’s disease, or a congenital cognitive impairment. Likewise, incapacity must not be automatically inferred from failure to consent.

\(^{114}\) Art. 434 Para. 2 CC.

\(^{115}\) Art. 435 CC.

\(^{116}\) Art. 439 Para. 1 CC.

\(^{117}\) Art. 427 CC.
medically necessary or considered essential in an emergency situation. Such emergency procedures typically result in the patient being retained on doctor’s orders.

c. Measures restricting freedom of movement

Measures restricting freedom of movement may be ordered based on Articles 438 and 383 CC. Such measures include manual control, mechanical restraint (e.g. with straps) or seclusion, in other words forced placement of a patient alone in a locked room. Here, too, the law lays down the requirements for such a measure. These measures may be employed by a facility if they serve to:

– prevent serious danger to the life or physical integrity of the person concerned or others; or
– remedy serious disruption to life in and around the institution.

The law enshrines the principle of «informed consent», as prescribed by international standards, in Art. 383 Para. 2 CC and draws particular attention to the institutions’ obligation to provide information. Before the person’s freedom of movement is restricted, it shall be explained to the person concerned why the measure has been ordered, how long it is expected to last and who will be responsible for the person concerned during this period. The measure shall be used only for as long as absolutely necessary and, in every case, shall be reviewed regularly to ascertain whether it is still required.

In accordance with international standards, the law requires that a detailed record be kept of such measures including the name of the person ordering the measure, the purpose, the nature and the duration of the measure. Patients and their authorised representatives should be entitled to inspect the patient’s case file at any time. They may also submit a written request at any time.

119 Art. 384 Para. 1 CC.
120 Art. 384 Para. 2 CC.
to the adult protection authority at the location of the institution to intervene.\textsuperscript{121}

4.4 Commission’s findings and recommendations

a. Material conditions

Overall, in the facilities that it reviewed, the Commission observed properly equipped spaces and, in most cases, plenty of outdoor space. The multiple-bed rooms were generally found to be adequately furnished and equipped but appeared sterile and impersonal. In individual cases, the Commission regrets the insufficient orientation aids (e.g. pictograms), particularly for the cognitively impaired, and the lack of opportunities to personalise the rooms and keep personal items. However, these findings are offset by the relatively short average stay of three weeks. Also in terms of meals, hygiene and sanitary conditions, the Commission noted no major shortcomings in the facilities that it reviewed.

One unsatisfactory aspect which it encountered repeatedly was limited access to courtyards or gardens for people with impaired mobility. As a result, patients are only able to access these areas with staff assistance, and access is limited when there are staff shortages.

As noted earlier, in accordance with the principles of modern psychiatry, the facilities’ units are generally not segregated by sex. Although the Commission understands the reasons from a therapeutic point of view, some of the facilities reviewed raised the question as to the appropriateness, for example, of young women sharing quarters with older, depraved men.

b. Psychiatric treatment

In general, the Commission noted with satisfaction that pa-

\textsuperscript{121} Art. 385 Para. 1 CC.
tients’ psychiatric needs were addressed appropriately through personalised medication and therapeutic treatment. Although the main focus was often on medication, the latter was used in combination with suitable therapy, usually in the form of individual therapy or group therapy or other activities such as art or music therapy.

The Commission also performed spot-checks of medications administered. It found the type of medication, dosage and administration method to be generally appropriate. However, the Commission deplores the regularly observed practice of prescribing and combining medication with reserve medication. This allows psychiatric care staff some leeway in administering medication, which can lead to undesirable side-effects for patients.

The Commission also verified the existence and the content of treatment plans as required by law for involuntarily placed persons. In this regard, it found them to be systematically missing at the facilities that it reviewed. It concluded that, in practice, the implementation of adult protection standards is clearly fraught with difficulty and urged the facilities to eliminate this shortcomings promptly and to draft treatment plans after admission in consultation with the person admitted without any delay.

c. Measures restricting liberty

i. Closed units

In psychiatric institutions, patients are often not allocated to separate areas of the facility based on their reason for admission. Therefore, it is not uncommon for voluntary patients to be accommodated in the same units as patients hospitalised involuntarily. However, while the policy of psychiatric institutions of purposely mixing patients is to be welcomed from a therapeutic point of view, it leads, contradictorily, to the locking of individual units. This practice inevitably leads to restrictions on the freedom of movement of patients admitted voluntarily. If voluntary patients wish to go outdoors for some fresh air, they must first ask the staff to open the door for them, which, in practice, can represent a
significant psychological barrier for many patients. The Commission is of the view that the freedom of movement of patients, including patients admitted by order of the authorities, should be restricted as little as possible. The systematic locking of doors due to the presence of a number of «difficult» patients results in a de facto restriction of liberty for all patients within the institution. In the Commission’s view, this practice seems inappropriate, constituting an infringement of the freedom of movement of the persons concerned, particularly those admitted voluntarily. Therefore, the Commission recommended that the visited institutions consider measures to ensure freedom of movement for all patients who are not formally banned from leaving their unit.

ii. Treatment without consent

In particular, the Commission also reviewed compliance with the legal requirements for treatment without consent carried out during involuntary hospitalisation and in cases where the patient is detained on medical grounds. In the first case, this consists of medical procedures that are part of a treatment plan authorised in advance by the chief physician and that are ordered in writing; in the second case, treatment without consent may also be considered in an emergency situation requiring immediate action, after which the patient is ordered to be detained.

The Commission verified compliance with the legally prescribed conditions for the issuing of orders, the quality of the existing documentation and of record-keeping, and the procedural aspects with particular regard to the possibilities for appeal available to patients. In this regard, the Commission noted that such measures were often recorded in writing in the patient’s electronic file but did not exist, as required by law, in the form of an order - against which the patient could appeal - specifying the legal provisions justifying the measure. It also noted various shortcomings with re-
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gard to record-keeping in respect of measures ordered. For a large number of treatments, the signature of the chief physician authorising the procedure was missing, which the Commission considers a major problem. Furthermore, the records of the measures taken were incomplete, making it virtually impossible to reconstruct the beginning and end, the circumstances, the reasons and any injuries sustained based on the electronic documentation. As a result of these formal deficiencies, patients are unable to avail themselves fully of the possibilities for appeal available to them in theory.

iii. Measures restricting the freedom of movement

In accordance with the legal provisions (see above), the Commission verified, among other things, the appropriateness and observance of the formal requirements with regard to the measures used in psychiatric institutions to restrict freedom of movement. It noted, in this regard, that restrictive measures, particularly in the form of mechanical restraint and seclusion, were used regularly, mostly to protect patients and rarely to prevent danger to others.

- Mechanical restraints

Given the serious infringement on the freedom of movement that they entail, mechanical restraints should only be used in strict compliance with the necessary conditions for their use. In the facilities reviewed, five- or seven-point restraints were used in combination with treatment without consent, specifically for forced medication. On rare occasions, they were used to protect the patient or staff over extended periods of time. Occasionally, however, the existing documentation referred to mechanical restraints being used over several days. The Commission noted some cases where such measures were applied with regular interruption, in some cases repeatedly, over a period of several weeks.

The quality of the available documentation was found lacking in terms of compliance with the formal requirements, and record-

\[125\] Zewi blankets, bed straps, low-entry beds, acoustic mats, soft straps and five- and seven-point restraints.
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keeping was deemed unsatisfactory. In particular, it could not be determined from the documentation available, how the measures were communicated to patients and how regularly the patients’ cases were reviewed to ascertain whether the measures were still required. Often, the name of the person ordering the measure and the purpose and duration of the measure were missing altogether.

In that respect, the Commission reiterated that the use of restraints over periods of several days should be avoided as far as possible and that even in critical cases it was imperative to consider alternative, less restrictive measures. If mechanical restraints prove unavoidable, they must be formally ordered (cf. above), and debriefing with the patient must take place. In the Commission’s view, seven-point restraints should be avoided altogether.

On occasion, the Commission observed the use of security staff and, in some cases, instruments of restraint such as handcuffs to immobilise patients. Such instruments of restraint should never be used in the light of international standards. Furthermore, the application of manual control (holding) should only be administered by security staff properly trained in the psychiatric field.

- **Seclusion**

Another measure frequently used for agitated patients, to remove them from stimuli, is seclusion, which involves accommodating the patient in a specially equipped seclusion room for a few hours, days or weeks. Although these measures were generally recorded as measures restricting the freedom of movement, no detailed record was kept of the time spent in the seclusion room,

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126 BGer SA 335/2010 of 6 July 2010; Intermediate report of the UN Special Rapporteur on torture, 2008, Point 55; Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, 1 February 2013, A/HRC/22/53, Point 63.


128 CPT/Inf(2017)6, Point 3.3.
which made it difficult to assess the appropriateness thereof.\textsuperscript{129} This was rendered more difficult by the fact that the use of such measures was not clearly regulated, resulting in the absence of a formal daily routine. As a result, the nursing staff would decide on an individual basis, for example, whether and when the patients were allowed access to fresh air or leisure activities.

In this regard, human rights standards specify that patients placed in the seclusion room should be allowed to exercise in the open air at least once a day for one hour.\textsuperscript{130} In addition, extended periods of seclusion should be accompanied by gradual relaxation of the confinement regime.\textsuperscript{131} Access to sports and leisure activities as well as human contact, particularly with family members, should be allowed and facilitated.\textsuperscript{132}

- **Further measures**

In facilities housing elderly patients suffering from dementia, among others, the Commission observed the relatively frequent use of restrictive measures such as bed straps, Zewi blankets and acoustic mats. Ordered by a doctor, these measures are typically used to ensure patient safety, and their use is justifiable in that they help to prevent falls. Therefore, it is all the more important that the legal requirements be observed when such measures are used and that the measures be used no longer than absolutely necessary.

The documentation examined by the Commission was regularly found to be incomplete. As a result, the Commission was unable to establish the way in which the persons concerned had been informed of the measures. Furthermore, in some cases, orders complete with instructions on the patients’ rights of appeal were missing. Transparency in respect of the measures was hampered by inadequate record-keeping. Based on the legal requirements, the Commission urged the institutions to issue a formal

\textsuperscript{129} Cf. Recommendations GEF/ALBA-BE, p. 6.

\textsuperscript{130} Cf. CPT/Inf(98)12, Point 37.

\textsuperscript{131} Cf. e.g. CPT, Report to the Finnish Government on the visit to Finland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 22 September to 2 October 2014, CPT/Inf (2015) 25, 20 August 2015.

\textsuperscript{132} Cf. CPT/Inf(98)12, Point 37.
order for all measures which restrict the freedom of movement (if necessary, a posteriori), complete with written instructions on rights of appeal, and to ensure complete record-keeping including the purpose, the nature and the duration of the measures.

d. **Therapeutic and leisure activities**

The therapeutic and leisure activities available in the facilities reviewed were considered limited. Particularly conspicuous in some establishments, especially in wards for persons with cognitive impairments, was the fact that various patients were spending time in communal areas without any meaningful therapeutic activities. Given the relatively short length of time that patients typically spend at the facilities, a comprehensive range of therapeutic activities is clearly difficult to implement. Nevertheless, patients should have access to rehabilitative, therapeutically meaningful activities, tailored to their individual needs, in the form of art or music therapy, sports, education and leisure activities.\(^{133}\)

e. **Conclusions**

Overall, the Commission noted that the implementation of the recently introduced legal instruments still required further efforts. The Commission is of the opinion that further optimisation work is required in connection with the newly introduced instrument of the treatment plan for involuntary patients and for the ordering of restrictive measures and record-keeping thereof. In practice, these newly introduced legal instruments pose major challenges to psychiatric institutions which need to be discussed and carefully considered in order to balance the protection of patients’ rights against practicality of use. The Commission will continue to address these issues during its next inspections. With its recommendations, it aims to contribute to the implementation of the legal prescriptions related to the involuntary placement in compliance with fundamental rights.

\(^{133}\) Cf. CPT/Inf(98)12, Point 37.
Overview of the recommendations submitted by the Commission in 2016
a. In general
   – In the Commission’s view, the system of parallel powers stemming from two different institutional approaches hinders the proper functioning of a therapeutic institution such as Curabilis and requires urgent clarification.
   – The Commission calls on the competent authorities of Curabilis to increase the number of experienced prison officers in its team and to promote training on the management of detainees with physical health problems. It also recommends that health-care workers job-shadow in a prison environment.

b. Strip searches
   – The Commission recommends that strip searches be conducted in two steps at the Zurich airport prison.

c. Infrastructure and living quarters
   – The Commission considers the placement of families in civil defence shelters at the reception and processing centre (RPC) in Kreuzlingen entirely inappropriate and recommends that these be used only as a temporary emergency solution. It ultimately recommends installing family rooms.
   – The Commission also calls on the administration of the reception and processing centre in Kreuzlingen to take appropriate measures to protect the privacy of female applicants in the showers.
   – The Commission recommends to review and adjust the times for outside walks at the Airport transit zone in Zurich. Otherwise, in the Commission’s view, alternative ways of ensuring adequate access to fresh air must be considered.

d. Accommodation of unaccompanied minors seeking asylum
   – The Commission recommends that the particular vulnerability of unaccompanied minors be taken into account and that unaccompanied minors seeking asylum (UMA) be accommodated separately from adults. In addition, UMAs are
entitled to special protection and assistance. Therefore, the Commission recommends that a framework be developed for providing assistance at the reception and processing centre in Kreuzlingen.

e. The use of restraint measures
   – The Commission recommends that the reception and processing centre in Kreuzlingen refrains from using chemical irritants against applicants. Instead, de-escalation communication techniques should be engaged to protect applicants and staff. However, if the use of such means ought to be necessary in exceptional circumstances, it is important to ensure at least that they are not used in closed spaces, that the applicant undergoes a thorough medical check-up by a healthcare professional immediately as soon as possible thereafter and that the measure be ordered and registered as soon as possible.
   – The Commission recommends that SEM issue specific rules, based on the relevant provisions, on the use of coercive measures which take due account of international standards and requests that SEM grant it access to the framework agreement between the Swiss Confederation and Securitas AG.
   – The Commission recommends that the administration of the Hindelbank facilities avoid, as far as possible, the use of additional restraints when moving detainees within the facility.

f. Administrative detention under the Foreign Nationals Act
   – The Commission encourages further efforts be taken at the Zurich airport prison to improve the freedom of movement of detainees.
   – The Commission recommends adjusting the internal guidelines on dealing with the placement of minors at the Zurich airport prison and recommends stringent implementation thereof.
g. Execution of measures
   - The Commission considers unacceptable the delays in drafting sentence execution plans and recommends that the prison authorities of Curabilis ensure such plans are being drafted together with the detainee and entail specific and concrete goals in order for the plans to become a useful tool for all parties concerned, particularly for the detainees themselves.
   - The Commission noted a major discrepancy between the concept of care and its implementation at the institutional level. It recommends that the authorities of Curabilis conduct a review of the care provided to persons sentenced to in-patient therapeutic measures and give higher priority to developing vocational activities.

h. High-security detention
   - The Commission noted that in the rules of the Bochuz facility, a particularly high risk of escape was considered legitimate grounds for ordering solitary confinement. In this respect, the Commission points out that such grounds are not expressly foreseen by Article 78b SCC. It also considers that the measure be reviewed on a three months basis. The Commission recommends that the competent authorities amend the rules accordingly.
   - The Commission calls on the referring authority to ensure that placement in the SV A high-security section at the Hindelbank facilities be reviewed every three months and that a decision to extend the placement be duly justified.

i. Disciplinary regimes and sanctions
   - As a matter of principle, the Commission believes that the maximum period during which a person may be placed in an arrest cell should be limited to 14 days and again recommends that the legislative authorities of the Cantons of Bern, Vaud and Zurich prescribe shorter periods of confinement.
– The Commission recommends that the administration of the Hindelbank facilities standardize the terminology used for arrest and amend the internal regulations accordingly.
– The Commission recommends that the management of the Zurich airport prison order disciplinary sanctions from the first day of arrest and, in this regard, ensure a clear distinction between disciplinary measures and protection and security measures. To this end, it suggests keeping separate registers for recording the date, reason, duration and nature of the sanctions imposed.
– The Commission considers that the practices of restricting reading to religious literature during disciplinary arrest at the Zurich airport prison and the EPO facility and imposing a strict smoking ban at the Zurich airport prison are overly restrictive and recommends their relaxation.
– The Commission recommends that sanctions be recorded at the reception and processing centre in Kreuzlingen in a register, indicating the reason, duration and nature of the measure and the names of the persons concerned. It also recommends keeping a record for the use of the ‘isolation room’ indicating the date, reason and duration.
– The Commission recommends that the confinement cells at the Zurich airport prison be equipped with a mattress and a pillow.

j. Protection and security measures
– The Commission recommends that the Hindelbank facilities keep a record of the duration of protection and security measures.
– The Commission recommends that, in line with statutory requirements, orders be issued in all cases where security or protection measures are issued at the Zurich airport prison.
– In general, it recommends that the management of the EPO, La Tuilière and the Zurich airport prison facilities transfer detainees who are at risk of self-harm to a place where they have access to adequate psychiatric care.
**k. Medical care**

– The Commission recommends that therapeutic sessions at the Hindelbank facilities should be conducted without the use of glass partitions for medical and ethical reasons. It welcomes the partial implementation of its recommendation but encourages further efforts in this respect.
– The Commission reminds the competent authorities of the canton of Vaud that from a fundamental rights perspective, treatment without consent is permissible only as a means of preventing serious harm to the person’s health or serious endangerment of the life or physical integrity of others, and only if there are no suitable measures that are less intrusive. Furthermore, each case of medical treatment without consent must be carefully recorded, entered in a register and a formal decision issued, including a post- or in the case of a psychiatric emergency. The Commission further urges the authorities that if medical treatment without consent is carried out in a prison facility, hospitalisation for medical monitoring must take place immediately after prescription of the treatment.

**l. Information for detainees**

– The Commission recommends that the administration of the Hindelbank facilities provide written information to detainees about their rights and obligations at HSI.
– The Commission calls on the administration of the Zurich airport prison and the La Tuilière facility to translate into the most commonly spoken foreign languages all forms and general information on the facility and the disciplinary procedure. All relevant forms should be systematically handed out to detainees upon arrival.

**m. Opportunities for exercise and vocational activities**

– The Commission recommends that the administration of Curabilis set up additional work places and increase the range of vocational training opportunities available.
– The Commission welcomes the efforts made to improve the range of vocational and recreational activities on offer and supports the management of the reception and processing centre in Kreuzlingen in its efforts to continue to offer such opportunities as far as possible even with a high occupancy rate.

n. **Contact with the outside world**

– The Commission recommends to the administration of the Hindelbank facilities that visits should, as far as possible, be made without the use of a glass partition.

– The Commission recommends that the administration of the Zurich airport prison examine the possibility of allowing detainees to receive visits during the weekend, too.

– The Commission reminds the administration of the La Tuilière facility that detainees must be allowed to communicate freely with their legal counsel, without the content of communications being inspected, and calls on the competent authorities to take the necessary measures to remedy the situation with regard to the systematic recording of telephone conversations.

– The Commission believes that applicants at the reception and processing centre in Kreuzlingen should be allowed unrestricted contact with their family and recommends that SEM urgently review and increase the opportunities for telephone contact.