



**NATIONAL
AGENCY
FOR THE
PREVENTION
OF
TORTURE**

ANNUAL REPORT 2019

Period under review
1 January 2019 – 31 December 2019

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National Agency for the Prevention of Torture
Adolfsallee 59
65185 Wiesbaden
Tel.: +49 (0)611-160 222 8-18
Fax: +49 (0)611-160 222 8-29
e-mail: info@nationale-stelle.de
www.nationale-stelle.de

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FOREWORD

The National Agency for the Prevention of Torture is the body responsible in Germany for ensuring humane detention conditions and treatment of prisoners. The Agency hereby presents an annual report of its activities to the Federal Government, the German *Bundestag*, the *Länder* governments and the *Länder* parliaments. The Report covers the period from 1 January to 31 December 2019.

In 2019, the National Agency celebrated its 10th anniversary. Much to its regret, it lost its Director of the Federal Agency, Klaus Lange-Lehngut, *Leitender Regierungsdirektor* (retd) and holder of the Cross of the Order of Merit of the Federal Republic of Germany. Mr Lange-Lehngut founded and led the Federal Agency for the Prevention of Torture with a great deal of voluntary commitment. Right until the end, he played an active role in the further development of the National Agency. His death on 19 October 2019 was a great loss. His memory and his achievements will always be remembered with respect.

This Annual Report provides a summary of the National Agency's activities in the period under review, as well as background information on the Agency itself, followed by a section on the standards it has developed. These concern the main aspects of humane detention conditions and treatment of persons detained in the facilities visited. The standards are derived in particular from recurring recommendations made by the Agency, and are continually developed and adapted. They can also be found on the National Agency's website.

In 2019, at federal-state level the National Agency particularly focussed on visits to psychiatric facilities, and at federal level it

particularly focussed on visits to customs authorities. In order for the impressions in these areas to be described in more detail, they will be set out in separate chapters, preceding the other results of the visits in 2019.

The practices of some of the highest supervisory authorities once again proved problematic this year. These supervisory authorities did not always comply with their obligation under Article 22 of the OPCAT to examine the recommendations of the National Agency and enter into a dialogue with it on possible implementation measures. This reduced the **effectiveness of the National Agency's work**.

Furthermore, there is still no adequate legal basis for the National Agency to publish individual names in its reports on visits to privately owned facilities. The public often does not understand the reasons for this, and it is something that was pointed out by the UN Committee against Torture in its concluding observations on the sixth periodic report of Germany. The National Agency still believes that an adequate legal basis should be created so that it can publish the names of all the facilities visited as well as the associated visit reports and opinions. It is the only way to ensure it can effectively fulfil its preventive duty, as provided for in the OPCAT.

Since it had become clear in 2018 that the **National Agency's budget would no longer be** sufficient for it to fulfil its mandate in line with **the Federal Republic of Germany's obligations** under international law, the Ministers of Justice of the *Länder* unanimously agreed to increase the **National Agency's budget by EUR 100,000** from the financial year 2020 with the financial participation of the Federation.

Rainer Dopp
State Secretary (retd)

Chair of the Joint Commission

Ralph-Günther Adam
Former senior civil servant and prison director
(*Leitender Sozialdirektor*, retd)
Deputy Director of the Federal Agency

LIST OF ABBREVIATIONS

CAT	Committee against Torture
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
ECHR	European Court of Human Rights
EU	European Union
NPM	National Preventive Mechanism
OPCAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
SPT	Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
UN	United Nations

I SUMMARY

The following provides a brief summary of the **National Agency's most important activities**. Detailed information on each topic can be found in the individual chapters of this report.

In 2019, the National Agency visited a total of 58 facilities and accompanied seven deportation procedures. The members of the National Agency met four times, in working meetings, to discuss standards, recommendations and current developments.

In order to be able to make more visits to all the various types of facilities that fall within its remit, the National Agency decided not to focus on a particular issue this year. However, it did place a particular focus on psychiatric facilities throughout its visits. It also visited a greater number of customs facilities, and was therefore able to ensure that more recommendations in these areas were implemented.

Some visits resulted in findings that have already been the subject of the **National Agency's recommendations in the past**. Reference should therefore also be made to the main topics addressed in the previous annual reports of the National Agency, which contain detailed information on the individual topics. At the same time, there was visible progress in certain areas. The improvements made in regard to detention conditions and treatment, for **instance, show that the National Agency's work** is having a lasting effect. Positive examples of this will be outlined in the following chapters on the individual types of facilities. Finally, during the course of its visits the National Agency also encountered new issues and problem areas, which it will address in detail.

The year 2019 gave cause for celebration, as it **marked the National Agency's 10th anniversary**. In May 2019, the Agency celebrated the occasion by hosting a reception in Berlin, where it also officially published its 2018 Annual Report. Welcoming remarks by the Federal Minister of Justice, Dr Katharina Barley, the Justice Minister of the *Land* of Schleswig-Holstein, Dr Sabine Sütterlin-Waack, the Chair of the *Bundestag* Committee for Human Rights and Humanitarian Aid, Gyde Jensen, the German representative at the European Committee for the Prevention of Torture, Prof. Dr Thomas Feltes, and the Federal Government's Nursing Care Representative,

State Secretary Andreas Westerfellhaus, enriched the event. All of the speeches given at this reception as well as written contributions can be found in an online publication.¹ The fact that a large number of the participants were representatives from governmental and non-governmental bodies and from facilities the National Agency has visited shows the keen **interest in the National Agency's activities and its growing reputation over the years**.

The National Agency strives to have a preventive effect, and therefore endeavours to disseminate and publicise the findings of its activities as widely as possible. To this end, it carried out numerous activities in addition to its regular visits to places of detention.

At the international level, a particularly important event was the review of the **Federal Republic of Germany's implementation of the UN Convention against Torture**, which was conducted within the framework of the periodic reporting procedure. The CAT reviewed Germany in spring 2019. The National Agency participated in this procedure. It not only took part in a consultation meeting with the Federal Ministry of Justice and Consumer Protection, but also took part in a meeting with the expert committee itself in Geneva. In its concluding observations on the sixth periodic report of Germany, the CAT makes several important recommendations for improving the protection of human rights in places of detention.² **The CAT also incorporated the National Agency's findings into its observations and emphasised, amongst other things, the need to provide the National Agency with sufficient human, financial, technical and logistical resources to enable it to carry out its mandate effectively.**

The international exchange with various partner organisations is also important for the **National Agency's work**. In 2019, the annual exchange of NPMs from Germany, Austria and Switzerland took place in Zurich, at the invitation of Switzerland. The meeting focussed on deprivation of liberty under migration law

¹ https://www.nationale-stelle.de/fileadmin/dateiablage/Dokumente/Sonstiges/Jubilaeumsbroschuere_Nationale_Stelle.pdf

² https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT/C/DEU/CO/6&Lang=En (retrieved on 23 September 2020)

and deportation in light of human rights requirements. The exchange on various potential solutions is particularly helpful. It primarily serves to provide a platform for discussion and to enable the further development of standards. To this end, the National Agency is also involved in **the project “Working towards harmonised detention standards in the EU”, and took part in a respective workshop in Sofia in November 2019.**

At the national level, the National Agency conducted information meetings with the highest supervisory authorities, submitted comments on draft legislation, and participated in expert meetings and seminars. As part of the **project “Political Education and the Police”,** which is organised by the Federal Agency for Civic Education [*Bundeszentrale für politische*

Bildung], the German Police University [*Deutsche Hochschule der Polizei*] and the University of Applied Sciences for Public Administration and Management of North Rhine-Westphalia, the National Agency offers a training module on the protection of human rights and human dignity in police detention.

A table in the annex to this report provides an overview of all activities conducted in 2019 that **went beyond the National Agency’s visits to facilities.**

The present report as well as information on the work of the National Agency can be accessed **on the Agency’s website.** Additionally, the National Agency is also active on social networks where it provides concise information on its work as an NPM to the broader public.

II
GENERAL
INFORMATION
ABOUT THE WORK
OF THE NATIONAL
AGENCY

The National Agency for the Prevention of Torture is Germany's designated National Preventive Mechanism. By establishing the Agency, the Federal Republic of Germany fulfilled its obligations under international law following from the OPCAT. The National Agency is responsible for places where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence. The following provides an overview of the National Agency's special status, as well as background information regarding its structure.

1.1 – INSTITUTIONAL FRAMEWORK

The objective of preventing torture and abuse is laid down in the OPCAT, which adds a preventive approach to the UN Convention against Torture of 1984. At the start of 2020, it had 103 signatory states and had been ratified by 90 states.³

Article 3 of the OPCAT requires that the States Parties set up an NPM. These independent national mechanisms engage in preventive measures and assess whether places of detention ensure humane treatment and detention conditions. To date, 70 States Parties are in compliance with this requirement.⁴

Germany's National Preventive Mechanism comprises the Federal Agency for the Prevention of Torture, which is responsible for facilities run at federal level, and the Joint Commission of the *Länder* for the Prevention of Torture, which is responsible for facilities at federal-state level. The Federal Agency and the Joint Commission work together as a National Agency for the Prevention of Torture, and closely coordinate their activities.

Under Article 18 of the OPCAT, the States Parties are obliged to guarantee the functional independence of the preventive mechanisms and to make the necessary financial resources available.

The members of the Federal Agency are appointed by the Federal Ministry of Justice and Consumer Protection, while the members of the Joint Commission are appointed by the Conference of Ministers of Justice of the *Länder*. Furthermore, in November 2017 the Conference of Ministers of Justice decided that, in future, civil society organisations must be involved to a greater extent when appointing the members of the Joint Commission of the National Agency for the Prevention of Torture. Consequently, NGOs will be given the opportunity to propose candidates to the Conference of Justice Ministers for positions at the Joint Commission. The appointed members are not subject to supervisory control or legal oversight, and are independent in the exercise of their functions. They act in an honorary capacity. Strict conditions apply for the removal of members before the end of their term in office, as set out in sections 21 and 24 of the German Judiciary Act [*Deutsches Richtergesetz*]. The full-time secretariat is based in Wiesbaden and is affiliated with the organisational structure of the Centre for Criminology [*Kriminologische Zentralstelle e.V.*].

1.2 – TASKS

The principle task of the National Agency is to visit those facilities in which people are deprived of their liberty ("places of detention"), to draw attention to problems there, and to make recommendations and suggestions to the authorities for improving the situation of detainees and for preventing torture and other ill-treatment. Under Article 4(1) of the OPCAT, a place of detention is any place under a State Party's jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence.

At the federal level, this definition encompasses all detention facilities operated by the Federal Armed Forces, Federal Police and customs authorities. In addition, the Federal Agency is also responsible for monitoring deportations carried out by the Federal Police. In 2019, a total of 19,238 persons were deported from Germany by air.

³ URL: <http://indicators.ohchr.org/> (retrieved on 29 January 2020)

⁴ URL: https://apt.ch/en/opcat-data_base/ (retrieved on 30 January 2020)

The vast majority of facilities fall within the remit of the Joint Commission. These include prisons, *Land* police stations with custody cells, all courts with holding cells, facilities for custody awaiting deportation [*Abschiebungshaft*], psychiatric clinics, child and youth welfare facilities with closed units, and homes for people with disabilities. Furthermore, all residential care and nursing homes where measures depriving people of their liberty are or can be enforced are also classified as places of detention under the above definition.

Further to these activities, the National Agency is also tasked with issuing statements regarding both existing and draft legislation.

1.3 – POWERS

Pursuant to the rules set out in the OPCAT, the Federal Government and the *Länder* grant the National Agency the following rights:

- + Access to all information concerning the number of persons deprived of their liberty in places of detention as defined in Article 4 of the OPCAT, as well as the number of places and their location;
- + Access to all information referring to the treatment of those persons as well as their conditions of detention;
- + Access to all places of detention and their installations and facilities;
- + The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the National Agency believes may supply relevant information;
- + The liberty to choose the places it wants to visit and the persons it wants to interview;
- + To maintain contact with the UN Subcommittee on Prevention of Torture (SPT), to send it information and to meet with it.

In accordance with Article 21(1) OPCAT, persons who communicate information to the National Agency are not to be sanctioned or otherwise prejudiced in any way. The members and employees of the Agency are obligated to maintain confidentiality with regard to information disclosed to them in the course of their duties. This obligation is to be maintained even beyond the term of their office.

1.4 – PERSONNEL AND FINANCIAL RESOURCES

In the EU Member States, the resources available to the individual NPMs vary considerably. In 2018, the French NPM, for example, had a total of 61 full-time and external monitors, and an annual budget of approximately EUR 5,000,000.⁵

The German NPM, however, is only made up of ten honorary members, and a Secretariat staffed with six full-time employees.

The National Agency is not equipped with sufficient resources to carry out its legally mandated task of visiting over 13,000 facilities and regularly monitoring measures within its remit involving deprivation of liberty, such as deportations.⁶ This is a problem that is also being discussed amongst various stakeholders in the field of human rights as well as on the political level.

Due to a significant increase in costs in recent years, particularly in respect of rental payments and personnel, the National Agency was forced to limit its visit activities considerably in 2018. Since it has become clear that the National

⁵ https://www.cglpl.fr/wp-content/uploads/2019/05/CGLPL_Rapport-annuel-2018_web.pdf, p. 263

⁶ CPT/Inf (2017) 13, p. 14; Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, CAT/OP/DEU/1, 16 December 2013, p. 6; Follmar-Otto, “Die Nationale Stelle zur Verhütung von Folter fortentwickeln! Zur völkerrechtskonformen Ausgestaltung und Ausstattung”, policy paper no. 20, 2013, URL: https://www.ssoar.info/ssoar/bitstream/handle/document/34935/ssoar-2013-follmar-otto-Die_Nationale_Stelle_zur_Verhütung.pdf?sequence=1, (available in German only, last retrieved on 29 January 2020); Motion put forward in the *Bundestag* by Bündnis 90/Die Grünen (“Für den Menschenrechtsschutz in Deutschland – Die Nationale Stelle zur Verhütung von Folter reformieren und stärken”) of 30 May 2017 (*Bundestag* Printed Paper 18/12544)

Agency's budget is still no longer sufficient for it to fulfil its mandate in line with the Federal Republic of Germany's obligations under international law, the Ministers of Justice of the *Länder* have unanimously agreed to increase the National Agency's budget by EUR 100,000 to a total of EUR 640,000 from the financial year 2020 with the financial participation of the Federation. The Ministry of Justice of Hesse has been asked to implement the resolution.

1.5 – ENQUIRIES BY INDIVIDUALS

In the period under review, the National Agency received individual enquiries regarding 79 separate cases.

Although the National Agency is not an ombudsman institute, details provided in individual enquiries are nevertheless of practical relevance for its work. They provide background information for visits, and may draw attention to specific problem areas. In addition, concrete information and tips can have an influence on which facilities the National Agency visits, and on the priorities it sets as a result.

Where an enquiry contains information regarding serious deficiencies, the National Agency will, with the consent of those concerned, contact the competent authority. If an enquiry provides an indication of a person posing a danger to themselves or to others, the National Agency will also immediately contact the head of the facility concerned.

1.6 – WORLDWIDE TORTURE PREVENTION

1.6.1 – CPT

30th anniversary of the CPT

The very first human-rights preventive mechanism worldwide was the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), inaugurated by the Council of Europe. It was established under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which came into force on 1 February 1989. To mark the CPT's 30th

anniversary, a high-level conference was held in Strasbourg on the topic of “implementing safeguards in the first hours of police custody”.⁷ Members of the National Agency also took part in this conference.

CPT's visit to Germany

The CPT last visited Germany in 2018. Its final report looked at the treatment of foreign nationals before and during a return flight from Munich to Kabul, and was published in 2019.⁸ Some of the in-flight incidents documented in the report are particularly worrying. One returnee is said to have been restrained by six escort officers. During this process, one of the escort officers put his arm around the returnee's neck. The pressure applied around his throat momentarily obstructed his respiratory tract. Furthermore, according to the CPT, the returnee was ill-treated through the squeezing of his genitals.⁹

1.6.2 – Review of Germany by the UN Committee against Torture

Another important event in the year under review was the visit by the UN Committee against Torture (CAT), which conducted a review of the Federal Republic of Germany's implementation of the UN Convention against Torture. The CAT last reviewed Germany in 2011, and made a series of recommendations to the Federal Government in its concluding observations. These recommendations and several new issues formed the content of the review of the sixth periodic report of the Federal Republic of Germany in 2019.¹⁰

At the Federal Ministry of Justice and Consumer Protection's invitation, the National Agency, the German Institute for Human Rights and numerous non-governmental organisations took part in a consultation meeting that served as preparation for the review. During this meeting, the National

⁷ <https://www.coe.int/en/web/human-rights-rule-of-law/-/cpt30-the-cpt-celebrates-its-30th-anniversary>

⁸ CPT/Inf (2019) 14

⁹ CPT/Inf (2019) 14, paragraph 55

¹⁰ CAT/C/DEU/6, 26 September 2017, URL:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT/C/DEU/CO/6&Lang=En (retrieved on 23 September 2020)

Agency set out the key human rights challenges associated with state deprivation of liberty that emerge from the visits it conducts at the various facilities. Furthermore, in a personal conversation, the Chair of the Joint Commission explained to the expert committee the key requirements of the National Agency.

The review itself was conducted on 29 and 30 April 2019 in Geneva. In its concluding observations on the sixth periodic report of Germany, the CAT also included recommendations concerning the National Agency.¹¹ It emphasised that the National Agency must be provided with sufficient human, financial, technical and logistical resources to enable it to carry out its functions effectively and independently (paragraph 14). Furthermore, it recommended that the National Agency be given authority to publish the names of the privately run institutions that are visited (paragraph 16).

¹¹https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT/C/DEU/CO/6&Lang=En (retrieved on 23 September 2020)

III STANDARDS

The National Agency is tasked with preventing torture and other cruel, inhuman or degrading treatment or punishment at places of detention. This means that it has a preventive remit. For the fulfilment of this task, it is necessary that the **Agency's recommendations** are implemented not only in the facilities it visits but in all the relevant facilities across Germany. The National Agency translates recurring recommendations into standards. These standards are developed on a continual basis and are intended to provide the supervisory authorities and facilities with

benchmarks for humane detention conditions and humane treatment of persons who are deprived of their liberty in any of the facilities under their responsibility. This helps ensure humane detention conditions while also increasing the effectiveness of the National **Agency's work despite the large number of** facilities. The standards are also published on the website of the National Agency.

To ensure the respect of human dignity, the National Agency considers the following standards to be indispensable.

1 – DEPORTATIONS

1.1 – TIME OF COLLECTION

Collections at night should be avoided.

1.2 – DEPORTATION FROM PRISON

Where persons who are required to leave the country are currently serving a prison sentence, every effort should be made to ensure they are deported before the end of their sentence. At the very least, it should be ensured that the conditions for deportation are in place before they have fully served their prison sentence.

1.3 – DEPORTATION FROM EDUCATIONAL, MEDICAL, AND CARE FACILITIES

As a rule, deportations should not be carried out from hospitals, schools or daycare facilities.

1.4 – RESPECT FOR THE BEST INTERESTS OF CHILDREN

Families should not be separated as a result of deportation measures. Children should not be shackled. Parents should not be shackled in the presence of their children. If children are deported, there should always be one person who is tasked with ensuring the child's best interests are respected during the deportation procedure. Suitable facilities to keep children occupied should be available at the airport.

1.5 – STRIP-SEARCHES

Strip-searches involving a visual inspection of the detainee's genital area represent a severe interference with the detainee's general right of personality.¹² It should therefore be decided on a case-by-case basis whether there are indications of a danger to public security and order that

would justify a strip-search. Any such measures must adhere to the principle of proportionality.¹³

If a strip-search is carried out, the reasons for this should be documented in a clear and comprehensible manner. Furthermore, the search should be conducted as respectfully as possible, for example involving two stages where half the body remains dressed in each stage. Staff members of the opposite sex to the detainee must not be present during such searches.

1.6 – FURTHER TRAINING FOR STAFF

Deportations should be carried out by members of staff who are sufficiently qualified and have received adequate further training.

1.7 – LUGGAGE

Every person awaiting deportation must be given the opportunity to pack personal belongings. Steps must be taken to ensure that the person being deported is dressed appropriately for the procedure and for the country of destination, and that identity documents, necessary medication, provisions for children, and any necessary medical aids (e.g. glasses) are packed. One of the persons carrying out the deportation should make sure that luggage is also packed for children being deported. A supply of basic hygiene products and sufficient clothing should be kept at the airport and issued as necessary.

1.8 – CASH LUMP SUM

All deportees must have sufficient financial means to pay for the journey from the airport to their final destination, as well as for meals needed during this journey.

¹² Federal Constitutional Court, order of 5 March 2015, file no.: 2 BvR 746/13, margin no. 33

¹³ Cologne Administrative Court, judgment of 25 November 2015, file no.: 20 K 2624/14, juris, margin no. 115 et seq.

1.9 – INFORMATION ON THE TIME OF EXECUTION OF THE DEPORTATION ORDER

For humanitarian reasons, wherever individual cases require – for example if there are children or sick people in the family – persons required to leave the country should be informed at least a week in advance that their deportation is imminent.

1.10 – INFORMATION ON THE DEPORTATION PROCEDURE

At the time of collection, persons being deported should be provided with information on the deportation procedure. This should be done immediately, comprehensively, in writing and in a language they understand. The information should include the following details:

- The schedule of the deportation including flight times
- Information on luggage
- Information on rights during the deportation procedure

1.11 – COMMUNICATION DURING THE ENTIRE DEPORTATION PROCEDURE

It must be possible for persons being deported and the accompanying prison staff to communicate during the entire deportation procedure. The written information on the **person's rights and the schedule of the deportation** cannot substitute for the service of an interpreter where communication difficulties arise. Interpreters may also assist via telephone or video conferencing.

1.12 – CONTACT WITH LEGAL COUNSEL

During the deportation procedure, persons awaiting deportation must be allowed to contact

legal counsel. Such contact must be made possible at the beginning of the deportation procedure so that any necessary legal measures can be taken in due time. In case the person concerned has so far had no contact with a lawyer, they must be given contact details for emergency legal services.

1.13 – SPECIAL CONSIDERATION FOR CHILDREN AND SICK PERSONS

During deportation procedures, special consideration should be given to the needs of children and sick persons, including any particular care they require.

1.14 – PHONE CALLS WITH RELATIVES

All persons awaiting deportation should be given the opportunity to contact their relatives.

1.15 – MOBILE PHONES

Mobile phones should only be confiscated during a deportation procedure if this is deemed necessary in substantiated individual cases. If circumstances no longer require the confiscation of mobile phones, they must be returned to their owners. Before a mobile phone is confiscated, the person being deported must be given the opportunity to write down important phone numbers.

1.16 – MEALS

Sufficient amounts of food and drink must be available during the entire deportation procedure.

2 – CUSTODY AWAITING DEPORTATION AND CUSTODY TO SECURE DEPARTURE

2.1 – INITIAL MEDICAL EXAMINATION

Every person required to leave the country must undergo an initial medical examination upon admission into custody awaiting deportation [*Abschiebungshaft*] or custody to secure departure [*Ausreisegewahrsam*]. It must be ensured that any indications of trauma or mental illness are diagnosed. In case of communication difficulties, an interpreter should always be called upon to assist in initial medical examinations. For reasons of confidentiality, translations should not be performed by other detainees awaiting deportation. Moreover, if translations are performed by staff members or other detainees awaiting deportation, there is no guarantee that technical terms and subject matter will be correctly translated into the other language.

2.2 – EXTERNAL CONTACT

It should be possible for persons required to leave the country to receive visitors without restrictions, especially relatives. In order to establish or maintain contact with their families and home country, and to facilitate their return, they should also be allowed to use mobile phones and have access to the internet.

2.3 – WORK AND RECREATIONAL ACTIVITIES

It should be possible for persons required to leave the country to make meaningful use of their time. There should be sufficient opportunities to do so every day. This includes access to common rooms, prayer rooms and kitchens where detainees can prepare their own meals.

2.4 – STRIP-SEARCHES

Strip-searches involving a visual inspection of the detainee's genital area represent a severe interference with the detainee's general right of

personality. It should therefore be decided on a case-by-case basis whether there are indications of a danger to public security and order that would justify a strip-search. Any such measures must adhere to the principle of proportionality.

If a strip-search is carried out, the reasons for this should be documented in a clear and comprehensible manner. Furthermore, the search should be conducted as respectfully as possible, for example involving two stages where half the body remains dressed in each stage. Staff members of the opposite sex to the detainee must not be present during such searches.

2.5 – VISIBILITY OF TOILETS

Staff members should indicate their presence before entering a cell, especially if the toilet is not partitioned off. The person in the cell might be using the toilet and should be given the opportunity to indicate this.

CCTV cameras must be installed in such a way that the toilet area is either not visible on the monitor at all or, alternatively, is only shown in the form of pixelated images. If deemed necessary in individual cases, it may be possible to permit unrestricted monitoring of detainees held in specially secured cells due to an acute danger of self-harm or suicide. However, any such decision should be carefully considered, substantiated and documented. If a toilet area is indeed covered by CCTV monitoring and is not pixelated, only persons of the same sex as the detainee should carry out the monitoring.

2.6 – PHYSICAL RESTRAINT

The National Agency defines physical restraint (*“Fixierung”*) as **the act of depriving a person of their freedom to move by binding their arms, legs and in some cases the centre of the body, with the result that they are unable or only marginally able to change their sitting or lying position independently.** The Agency requires the following conditions be met for the use of this measure:

The use of physical restraints is only to be ordered as a last resort, on the basis of clear and precisely defined criteria, and for the shortest possible period of time. To minimise the risk of physical harm, restraints should be applied using a strap-based system. Persons being physically restrained should, at the very least, be given paper underwear and a paper shirt to wear in order to protect their sense of modesty. The detainee must also be checked on regularly by a doctor. Persons under physical restraint must also be observed continuously and personally by therapeutic or care staff who are in direct proximity to the detainee (one-on-one supervision). For any physical restraint applied for more than just a short period of time, a court decision is required.¹⁴ The measure should be discussed with the detainee concerned afterwards.¹⁵ The detainee should also be informed after the measure of the possibility to have a court review the permissibility of the restraint procedure.¹⁶

Written reasons should be given for every instance of physical restraint. This should include documentation of which less restrictive measures had been tried in advance and why these failed.

2.7 – CCTV MONITORING

CCTV monitoring should only be used in individual cases where it is imperative to protect the person concerned. The reasons for the use of CCTV monitoring should be documented. In addition, the person concerned must be informed that monitoring is taking place. The mere fact that the camera is visible is not sufficient. It should be possible for the person concerned to discern whether the camera is running.

¹⁴ Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 502/16, margin no. 69

¹⁵ DGPPN [German Society for Psychiatry and Psychotherapy] (2018): “S3-Leitlinie: Verhinderung von Zwang: Prävention und Therapie aggressiven Verhaltens bei Erwachsenen” URL: <https://www.dgppn.de/Resources/Persistent/154528053e2d1464d9788c0b2d298ee4a9d1cca3/S3%20LL%20Verhinderung%20von%20Zwang%20LANG%20BLITERATUR%20FINANZ%2010.9.2018.pdf> (retrieved on 29 January 2020)

¹⁶ Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 502/16, margin no. 85

2.8 – CLOTHING

As a rule, persons required to leave the country should be allowed to wear their own clothes.

2.9 – STAFF

The staff of facilities for the enforcement of custody awaiting deportation [*Abschiebungshaft*] or custody to secure departure [*Ausreisegewahrsam*] should be specifically chosen and trained to work in this field.

2.10 – PSYCHOLOGICAL AND PSYCHIATRIC CARE

The facility should make sure that a psychologist or psychiatrist is called in where this is necessary.

2.11 – LEGAL ADVICE

Persons required to leave the country must be given the opportunity to seek legal advice.

2.12 – LEGAL BASIS

The detention conditions of persons in custody awaiting deportation [*Abschiebungshaft*] and custody to secure departure [*Ausreisegewahrsam*] must differ from those of sentenced prisoners.¹⁷ Furthermore, any interference with basic rights beyond the mere placement in such a detention facility requires its own legal basis.¹⁸ Consequently, a specific legal basis must be established for the enforcement of custody awaiting deportation and custody to secure departure.

2.13 – RESPECTFUL TREATMENT

Detainees awaiting deportation should be treated respectfully. For example, staff members should indicate their presence in a suitable manner before entering a room, and should, as a

¹⁷ Article 16 para. 1 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals

¹⁸ Federal Constitutional Court, judgment of 31 May 2006, file no.: 2 BvR 1673/04, NJW 2006, 2093 (2093)

rule, speak to detainees using polite forms of address.

2.14 – PLACEMENT OF MINORS

Unaccompanied minors should not be placed in facilities for the enforcement of custody awaiting deportation or custody to secure departure, but in child and youth welfare facilities. If minors are placed in facilities for custody awaiting deportation or custody to secure departure together with their parents or legal guardians, it must be ensured that such **custody takes account of the child's best interests**.

2.15 – WEAPONS IN CUSTODY

In facilities for custody awaiting deportation or custody to secure departure, officers should remove firearms before entering a custody suite.

Due to the significant health risks involved, the use of pepper spray in confined spaces is not a proportionate measure under any circumstances. It should therefore be avoided inside detention facilities.¹⁹

2.16 – ADMISSION MEETING

An admission meeting must be held with every newly admitted person, during which they should be informed of the reason for their detention. They should also be informed of their rights.

During these meetings, special attention should be paid to any indications of mental illness. If necessary, a psychologist should be involved. For these purposes, the detention **facility's staff members responsible for** conducting admission meetings must receive specialised training enabling them to recognise signs of trauma or mental illness. In case of communication difficulties, an interpreter must be called upon to assist in admission meetings.

¹⁹ ECHR, *Tali v. Estonia*, judgment of 13 February 2014, Application no. 66393/10, § 78; CPT/Inf (2008) 33, margin no. 86

3 – FEDERAL AND LAND POLICE, CUSTOMS AUTHORITIES

3.1 – FURNISHING AND FITTINGS, CONDITIONS IN CUSTODY CELLS

The conditions in custody cells, including furnishings and fittings, must uphold the human dignity of detainees. Every custody cell should be equipped with a smoke detector, an emergency button, adjustable lighting, a non-flammable, washable mattress, a blanket and a pillow. Where a custody cell is only equipped with a low bed, it should have additional seating at standard height.

To ensure the protection of persons placed in custody in the event of a fire, all custody cells must be equipped with a smoke detector.

In addition, it must be possible for persons deprived of their liberty to call for attention through an emergency button. It must be guaranteed that the alarm system is working. This should be checked before each occupancy of a custody cell.

It should be possible to adjust the lighting in custody cells to ensure that persons taken into custody are able to sleep, while at the same time reducing the risk of injury and enabling detainees to find their way in the dark.

Every custody cell should receive natural light, including those intended for short-term custody. Furthermore, a suitable room temperature should be ensured in custody cells.

3.2 – INSTRUCTION ABOUT RIGHTS

Each and every person deprived of their liberty must be informed of their rights, immediately and without exception. To this end, forms containing all the relevant information should be available in various languages. They must at the very least include information about the fact that anyone who is taken into custody has the right to be examined by a doctor, to consult a lawyer, to notify a trusted third party and, where applicable, inform the consulate of their home country. It should be documented in the police custody record book that the person taken into custody has been instructed about their rights so

that it is immediately clear to staff members following a shift change-over whenever the relevant information has not been communicated for any specific reason. If a person was not instructed about their rights when they were brought into custody, this must be done at a later point in time.

3.3 – DOCUMENTATION

Custody documentation at police stations and customs offices should be clear and comprehensible. This serves to protect those being held in custody, as well as the responsible staff members.

The following details should be documented:

- **The detainee's personal details**
- When the deprivation of liberty began
- The staff members responsible for taking the person concerned into custody and for supervising them during custody
- The health condition of the person concerned
- Whether the person was informed of their rights
- Whether the person was informed of the reason for the deprivation of liberty
- Whether a judicial order had been obtained
- If a strip-search was conducted, the reasons for this
- The name of the staff member conducting the strip-search
- The times of checks, including the initials of the responsible staff member
- The time and type of meals
- The removal and subsequent return of personal objects
- The time of release
- If it was not possible to inform the persons concerned of their rights when they were brought into custody, it should be documented whether this was done at the latest by the time they were released.

Senior officers should check at regular intervals whether the documentation is complete. These checks should be recorded.

3.4 – STRIP-SEARCHES

Strip-searches involving a visual inspection of the detainee's genital area represent a severe interference with the detainee's general right of personality.²⁰ It should therefore be decided on a case-by-case basis whether there are indications of a danger to public security and order that would justify a strip-search. Any such measures must adhere to the principle of proportionality.²¹

If a strip-search is carried out, the reasons for this should be documented in a clear and comprehensible manner. Furthermore, the search should be conducted as respectfully as possible, for example involving two stages where half the body remains dressed in each stage.

3.5 – VISIBILITY OF CUSTODY CELLS

It must not be possible for third persons to look inside a custody cell.

3.6 – VISIBILITY OF TOILETS

It must be ensured without exception that persons taken into custody cannot be observed when using the toilet. For example, a screen could be installed to block the view of the toilet area.

CCTV cameras must be installed in such a way that the toilet area is either not visible on the monitor at all or, alternatively, is only shown in the form of pixelated images. Unrestricted monitoring of the custody cell should only be permitted in carefully assessed, substantiated and clearly documented individual cases where there is an acute danger of self-harm or suicide. If a toilet area is indeed covered by CCTV monitoring and is not pixelated, only persons of the same sex as the detainee should carry out the monitoring.

²⁰ Federal Constitutional Court, order of 5 March 2015, file no.: 2 BvR 746/13, margin no. 33

²¹ Cologne Administrative Court, judgment of 25 November 2015, file no.: 20 K 2624/14, juris margin no. 115 et seqq.

3.7 – SHACKLES

In contrast to physical restraint, “shackling”, in the National Agency’s usage of the term, is the restriction of movement by tying together arms or legs, or by tying them to an object.

Tying persons to the wall or to other objects violates their human dignity and must be avoided without exception.

In order to protect the right to physical integrity, any shackling in custody should be carried out using textile hand restraint belts²², which should be kept in stock at all times.

3.8 – PHYSICAL RESTRAINT

Physical restraints should not be used at all during police custody or customs custody.

3.9 – SIZE OF CUSTODY CELLS

Custody cells must be designed in a way that ensures humane detention conditions.

A single-occupancy custody cell must have a floor space of at least 4.5 square metres. Multiple-occupancy custody cells must have a floor space of at least 3.5 square metres per person.

Facing walls must be separated by a distance of at least two metres, and the ceiling must be considerably higher than two metres.

3.10 – CCTV MONITORING

CCTV monitoring should only be used in police stations and customs offices in individual cases where it is imperative for the protection of the person concerned. The reasons for the use of CCTV monitoring should be documented. In addition, the person concerned must be informed that monitoring is taking place. The mere fact that the camera is visible is not sufficient. It should be possible for the person concerned to discern whether the camera is running.

²² An example of this can be seen in the model used by FRONTEX during deportation flights.

3.11 – MULTIPLE-OCCUPANCY OF CUSTODY CELLS

In order to ensure humane detention conditions, it is indispensable that custody cells accommodating more than one person have a completely separate toilet with separate ventilation.

3.12 – RIGHT TO MEDICAL EXAMINATION

Every person taken into custody has the right to consult a doctor.

3.13 – RESPECTFUL TREATMENT

Persons being held in detention should be treated respectfully. For example, staff members should indicate their presence in a suitable manner before entering a custody cell, and should, as a rule, speak to detainees using polite forms of address.

3.14 – INDEPENDENT COMPLAINTS OFFICES AND INVESTIGATION BODIES

An essential element of preventing abuse by staff members is the detection, prosecution and punishment of misconduct.

Every *Land* should therefore set up independent complaints offices and investigation bodies.²³

3.15 – CONFIDENTIALITY OF CONVERSATIONS

Persons in custody must be given the opportunity to have confidential conversations with their lawyers. Confidentiality should also be assured for conversations with doctors or relatives.

3.16 – WEAPONS IN CUSTODY

Officers should remove firearms before entering a custody suite.

Due to the significant health risks involved, the use of pepper spray in confined spaces is not a proportionate measure under any circumstances. It should therefore be avoided inside police stations.²⁴

²³ Cf. *inter alia* ECHR, Kummer v. Czech Republic, judgment of 25 July 2013, Application no. 32133/11, § 83; Eremiášova and Pechová v. Czech Republic, judgment of 16 February 2012, Application no. 23944/04, § 135

²⁴ ECHR, Tali v. Estonia, judgment of 13 February 2014, Application no. 66393/10, § 78; CPT/Inf (2008) 33, margin no. 86

4 – CHILD AND YOUTH WELFARE FACILITIES

4.1 – POSSIBILITIES FOR COMPLAINT

Children and juveniles must be in a position to submit complaints to a suitable complaint body. In addition to contact persons within the facility, it is important that an external ombudsperson exists who has no ties with the facility.

It must be ensured that children and juveniles can contact such an ombudsperson easily and confidentially. The complaint channels and all necessary contact details should be provided in an information leaflet worded in a child-appropriate manner, or in the facility's house rules, and explained to them when they are first admitted to the facility.

4.2 – OUTDOOR EXERCISE

Every person deprived of their liberty should be offered at least one hour of outdoor exercise per day. Children and juveniles should be offered considerably more time outdoors for exercise.

4.3 – INFORMATION ON RIGHTS

When they are admitted to the facility, children and juveniles must be informed in writing about their rights. This information must be given in a manner that is appropriate to their age.

4.4 – CCTV MONITORING

Children and juveniles should not be subjected to uninterrupted and indiscriminate CCTV monitoring. Under no circumstances can CCTV monitoring replace the presence of members of staff. The reasons for the use of CCTV monitoring should be documented. In addition, the persons concerned must be informed of the monitoring. The mere fact that the camera is visible is not sufficient. It should be possible for the person concerned to discern whether the camera is running.

5 – PRISON SYSTEM

5.1 – CLOTHING WORN IN SPECIALLY SECURED CELLS

When detained in a specially secured cell containing no dangerous objects, prisoners should be given at least a pair of paper underwear and a paper shirt to wear.

5.2 – STRIP-SEARCHES

According to the Federal Constitutional Court, strip-searches involving a visual inspection of the prisoner's genital area represent a severe interference with the prisoner's general right of personality.²⁵ It is not permissible to carry out strip-searches routinely and without case-specific suspicions.²⁶ To satisfy this requirement, general strip-search orders must allow for exceptions if the principle of proportionality so demands. Staff must be made aware that in individual cases it may not be necessary for the prisoner to undress fully.

If it is indeed necessary that the prisoner undress fully, then the search should be conducted in a respectful procedure, for example involving two stages where half the body remains dressed in each stage.

5.3 – SHOWERS

Persons who have been deprived of their liberty should be given the opportunity to shower alone if they wish to do so. At least one shower should be partitioned off in communal shower rooms.

5.4 – VISIBILITY OF TOILETS

Staff members should indicate their presence before entering a cell, especially if the toilet is not partitioned off. The person in the cell might

be using the toilet and should be given the opportunity to indicate this.

CCTV cameras must be installed in such a way that the toilet area is either not visible on the monitor at all or, alternatively, is only shown in the form of pixelated images. If deemed necessary in individual cases, it may be possible to permit unrestricted monitoring of detainees held in specially secured cells due to an acute danger of self-harm or suicide. However, any such decision should be carefully considered, substantiated and documented. If a toilet area is indeed covered by CCTV monitoring and is not pixelated, only persons of the same sex as the detainee should carry out the monitoring.

5.5 – SOLITARY CONFINEMENT

To mitigate the negative impact of solitary confinement on mental and physical health, detainees should be provided with sufficient opportunities for human contact (e.g. extended visiting times) and to engage in meaningful activities. Those placed in solitary confinement are also to be seen regularly by a psychiatrist or psychologist. This should take place in a suitable and confidential environment.

5.6 – PHYSICAL RESTRAINT

The use of physical restraints²⁷ is only to be ordered as a last resort, on the basis of clear and precisely defined criteria, and for the shortest possible period of time. To minimise the risk of physical harm, restraints should be applied using a strap-based system. Persons being physically restrained should, at the very least, be given paper underwear and a paper shirt to wear in order to protect their sense of modesty. The prisoner must also be checked on regularly by a doctor. Persons under physical restraint must also be observed continuously and personally by therapeutic or care staff who are in direct proximity to the detainee (one-on-one supervision). For any physical restraint applied for more than just a short period of time, a court

²⁵ Federal Constitutional Court, order of 5 March 2015, file no.: 2 BvR 746/13, juris margin no. 33-35

²⁶ Federal Constitutional Court, order of 10 July 2013, file no.: 2 BvR 2815/11, margin no. 16, with reference to ECHR, *Van der Ven v. the Netherlands*, judgment of 4 February 2003, Application no. 50901/99, § 62

²⁷ For definition, see part III. 2.6 – “Physical restraint”

decision is required.²⁸ The measure should be discussed with the detainee concerned afterwards.²⁹ The detainee should also be informed after the measure of the possibility to have a court review the permissibility of the restraint procedure.³⁰

Written reasons should be given for every instance of physical restraint. This should include documentation of which less restrictive measures had been tried in advance and why these failed.

5.7 – CELL SIZE

In order for detention conditions to be humane, a single-occupancy cell must have a floor space of at least six square metres³¹, excluding the sanitary area. In cases where the sanitary area is not partitioned, approximately one further square metre should be added for that area, giving a total floor space of at least seven square metres. For multiple-occupancy, a further four square metres of floor space must be added to this figure for each additional person, excluding the sanitary area.

5.8 – CCTV MONITORING

CCTV monitoring in prisons should only be conducted in individual cases where this is imperative to protect the person concerned. The reasons for the use of CCTV monitoring should be documented. In addition, the person concerned must be informed that monitoring is taking place. The mere fact that the camera is visible is not sufficient. It should be possible for

²⁸ Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 502/16, margin no. 69

²⁹ DGPPN [German Society for Psychiatry and Psychotherapy] (2018): “S3-Leitlinie: Verhinderung von Zwang: Prävention und Therapie aggressiven Verhaltens bei Erwachsenen” URL:

<https://www.dgppn.de/Resources/Persistent/154528053e2d1464d9788c0b2d298ee4a9d1cca3/S3%20LL%20Verhinderung%20von%20Zwang%20LANG%20BLITERATUR%20FIN AL%2010.9.2018.pdf> (retrieved on 29 January 2020)

³⁰ Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 502/16, margin no. 85

³¹ The absolute minimum requirement is six square metres. In the National Agency’s view, cells that are smaller than this violate Article 1 of the Basic Law [*Grundgesetz*]. Any additional legal requirements must, of course, also be observed, and are welcomed.

the person concerned to discern whether the camera is running.

5.9 – MULTIPLE-OCCUPANCY OF PRISON CELLS

According to the case law of the German Federal Constitutional Court³², prison cells accommodating more than one person must have a completely separate toilet with separate ventilation. Multiple-occupancy without such a separation constitutes a violation of human dignity.

5.10 – USE OF SEGREGATION UNITS

In addition to the specially secured cells containing no dangerous objects, facilities may also have segregation units with similar furnishings and fittings. In such cases, the same detention conditions must be applied as for the specially secured cells. Furthermore, comprehensive documenting must be carried out, in line with procedures for specially secured cells.

5.11 – RESPECTFUL TREATMENT

Detainees should be treated respectfully. This includes staff indicating their presence in a suitable manner before entering the prison cell, and speaking to detainees using polite forms of address.

5.12 – PEEPHOLES

With the exception of observation rooms, peepholes should be made opaque in order to protect the privacy of the detainees.

5.13 – INTERPRETATION DURING MEDICAL CONSULTATIONS

Confidentiality must be assured for medical consultations, which are subject to medical secrecy. Furthermore, it must be ensured, where necessary, that technical terms and subject matter are adequately translated into the other

³² Federal Constitutional Court, order of 22 February 2011, file no.: 1 BvR 409/09, margin no. 30

language. In case of communication difficulties, an interpreter must be called upon to assist. Translation by fellow inmates or any of the facility's non-medical staff is not appropriate.

5.14 – HANDLING CONFIDENTIAL MEDICAL INFORMATION

In order to ensure medical information is handled confidentially, details concerning infectious diseases, for example, should only be recorded in medical files and not in prisoner files. This ensures that only medical personnel are made aware of such information, and not general prison staff.

5.15 – CONDITIONS IN PRISON CELLS

In prisons, inmates should have access to natural, unfiltered light in their cells. Their view outside may not be obstructed by opaque plexiglass panes, for instance.

6 – PSYCHIATRIC CLINICS

6.1 – OUTDOOR EXERCISE

Every person deprived of their liberty should be offered at least one hour of outdoor exercise per day. Children and juveniles should be offered considerably more time outdoors for exercise.

6.2 – DOCUMENTATION OF COERCIVE MEASURES

All coercive measures should be documented comprehensively, comprehensibly and completely. The measure must be documented in writing. This includes documenting which less severe measures have already been tried and an explanation of why they failed.

6.3 – PHYSICAL RESTRAINT

The use of physical restraints³³ is only to be ordered as a last resort, on the basis of clear and precisely defined criteria, and for the shortest possible period of time. Persons under physical restraint must be observed continuously and personally by therapeutic or care staff who are in direct proximity to the detainee (one-on-one supervision). For any physical restraint applied for more than just a short period of time, a court decision is required.³⁴ The measure should be discussed with the detainee concerned afterwards.³⁵ The detainee should also be informed after the measure of the possibility to

³³ For definition, see part III. 2.6 – “Physical restraint”

³⁴ Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 502/16, margin no. 69

³⁵ DGPPN [German Society for Psychiatry and Psychotherapy] (2018): “S3-Leitlinie. Verhinderung von Zwang: Prävention und Therapie aggressiven Verhaltens bei Erwachsenen” URL: <https://www.dgppn.de/Resources/Persistent/154528053e2d1464d9788c0b2d298ee4a9d1cca3/S3%20LL%20Verhinderung%20von%20Zwang%20LANG%20BLITERATUR%20FIN AL%2010.9.2018.pdf> (retrieved on 29 January 2020)

have a court review the permissibility of the restraint procedure.³⁶

6.4 – INFORMATION ON RIGHTS

Patients must receive written information on their rights in the psychiatric facility. Where young people are concerned, this information should be provided in an age-appropriate form.

6.5 – CCTV MONITORING

Persons held in psychiatric facilities should not be subjected to uninterrupted and indiscriminate CCTV monitoring. Under no circumstances can CCTV monitoring replace the presence of members of staff. The reasons for the use of CCTV monitoring should be documented. In addition, the person concerned must be informed that monitoring is taking place. The mere fact that the camera is visible is not sufficient. It should be possible for the person concerned to discern whether the camera is running.

6.6 – RESPECTFUL TREATMENT

Patients should be treated respectfully. For example, staff members should indicate their presence by knocking on the door before entering a room, and should, as a rule, speak to patients using polite forms of address.

6.7 – CONFIDENTIALITY OF CONVERSATIONS

In psychiatric facilities, measures should be introduced to ensure that phone calls can be made confidentially and personal conversations can be conducted in private.

³⁶ Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 502/16, margin no. 85

IV
SPECIAL FOCUS:
PSYCHIATRIC
CLINICS

1 – INTRODUCTION

In the year under review, the National Agency placed a particular focus on visits to psychiatric facilities.

In 2019, it visited a total of 17 psychiatric clinics, including 11 forensic psychiatric clinics, two clinics for general psychiatry, and four clinics for child and youth psychiatry. The respective clinics were in the *Länder* Baden-Württemberg, Bavaria, Berlin, Brandenburg, Bremen, Hesse, Mecklenburg-Western Pomerania, North Rhine-Westphalia, Saarland, Saxony, Saxony-Anhalt and Schleswig-Holstein.

The visits to the forensic psychiatric clinics in Bremen and North Rhine-Westphalia were follow-up visits to determine to what extent the problems found during the first visit had been remedied.

1.1 – COOPERATION WITH THE RESPONSIBLE MINISTRIES

1.1.1 – Comments on draft legislation

Pursuant to Article 19 (c) of the OPCAT, the National Agency has the power to submit proposals and observations concerning existing or draft legislation. In order to have a preventive effect, the Agency endeavours to submit comments during the legislative process. This means that it has to be invited to participate in the process by the individual governments or parliaments.

In the year under review, it was given the opportunity to provide comments on draft legislation in Saxony-Anhalt (the use of coercive treatment and physical restraints, including in secure psychiatric detention³⁷) and Schleswig-

Holstein (secure psychiatric detention³⁸ and placement of mentally ill persons³⁹).

Other Federal *Länder* did not make use of this possibility.

1.1.2 – Lack of cooperation

The highest supervisory authorities must allow the National Agency to fulfil its mandate.

According to Article 22 of the OPCAT, these supervisory authorities are required to examine the recommendations of the National Agency and enter into a dialogue with it on possible implementation measures. For the National Agency to be effective in its task of preventing inhumane treatment, it is essential that independent consideration is given to the recommendations it makes.

In accordance with their international obligations, which have been implemented into domestic law, the respective ministries usually issue clear statements on each individual recommendation made by the National Agency. However, in isolated cases, the highest supervisory authorities responsible for psychiatric clinics failed to do this.

By the end of the year under review, and despite repeated reminders, the Hesse Ministry for Social Affairs and Integration had still not submitted any statements on either a visit made in 2018 or several visits made in 2019.

1.2 – THE FEDERAL CONSTITUTIONAL COURT'S JUDGMENT OF 24 JULY 2018

1.2.1 – Judicial decisions

During its visits, the National Agency carries out random inspections of judicial orders for measures involving deprivation of liberty.

In one forensic psychiatric clinic, it was observed that an individual had been subjected

³⁷ Draft bill on the use of coercive treatment and physical restraints in connection with execution of measures involving deprivation of liberty in the *Land* of Saxony-Anhalt, Printed Paper 7/4953; hearing before the Committee on Law, Constitution and Equality, *Land* Parliament of Saxony-Anhalt, on 8 November 2019

³⁸ Participation in the hearing procedure regarding draft legislation on secure psychiatric detention (MVollzG)

³⁹ Participation in the hearing procedure regarding draft legislation on assistance and placement of persons requiring assistance as a result of mental disorders (PsychHG)

to the repeated use of physical restraint over a period of nine months on the basis of a single judicial order.

From a preventive point of view, the National Agency has reservations about such “supply orders”.

The use of physical restraints is only to be ordered as a last resort, on the basis of clear and precisely defined criteria, and for the shortest possible period of time.⁴⁰ Judicial authorisation to use physical restraint should not lead to a departure from the fundamental objective, which is to avoid the use of such a measure as far as possible. With this in mind, the Federal Constitutional Court takes the view “that judicial authorisation to use physical restraint [must] meet a strict standard of proportionality, especially with regard to the length of the measure, and be limited to what is absolutely necessary”.⁴¹ Otherwise, it said, the courts would be able to make blanket decisions that would be applicable beyond the period of acute necessity. “The constitutional requirement of judicial authorisation must not be undermined by the ordering of physical restraint beyond the necessary period in order to avoid having the court that issued the order decide on the matter again.”⁴²

Judicial authorisations for a disproportionate period of time are not compatible with the requirements of constitutional law. Psychiatric clinics should seek to ensure that these requirements are respected.

1.2.2 – Implementation of the judgment

Following the Federal Constitutional Court’s judgment of 24 July 2018, greater attention was paid during the visits to the implementation of constitutional requirements on the use of physical restraints.

Legal basis

At the time of the visits, not all of the Federal *Länder* had brought their relevant laws in line

with the judgments. The respective legislation of the *Länder* must be sufficiently precise, i.e. it must set clear standards as to the content, purpose and extent of the restrictions of liberty.⁴³ The legislation must explicitly regulate the following aspects: the requirement of judicial authorisation, permissible grounds for using physical restraint, adherence to the principle of proportionality, the requirement for physical restraint to be ordered and monitored by a doctor, one-on-one supervision for every instance of physical restraint, documentation and notification of legal remedies.

In some Federal *Länder*, the National Agency was given the opportunity to submit comments on the respective draft legislation. This enables constructive cooperation during the legislative process.

Requirement of judicial authorisation

During one visit, it was reported that applications for court decisions on the authorisation of physical restraint had been filed with the criminal division with jurisdiction over the execution of sentences, but no decision had ever been issued in any of the cases. The court did not consider itself responsible for giving a decision on this matter, as special security measures could be ordered by the chief medical officer. This legal opinion overlooks the fact that the requirement of judicial authorisation is directly applicable under Article 104 para. 2 of the Basic Law [*Grundgesetz*, GG].⁴⁴

Furthermore, there were varying opinions in the facilities as to what form of physical restraint the requirement of judicial authorisation applied to, as the Federal Constitutional Court’s judgment of 24 July 2018 had explicitly referred to five-point and seven-point restraints.

In the view of the National Agency, the requirements applicable to these measures of physical restraint are also necessary for all other forms of physical restraint. After all, placing a person in three-point restraints also deprives them of their freedom to move around freely on a ward, or at the very least move around their

⁴⁰ Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 502/16, margin no. 73, 80

⁴¹ Federal Constitutional Court, judgment of 19 March 2019, file no.: 2 BvR 2638/18, margin no. 30

⁴² Federal Constitutional Court, judgment of 19 March 2019, file no.: 2 BvR 2638/18, margin no. 30

⁴³ Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15, 2 BvR 502/16, margin no. 77

⁴⁴ Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15, 2 BvR 502/16, margin no. 124

room.⁴⁵ Moreover, it should be noted that this measure poses an equally serious risk of injury. If physical restraints other than five-point or seven-point restraints did not require judicial review, there would be a risk that those types of physical restraints would be used more frequently as an alternative, even though they might not necessarily constitute a milder measure.

⁴⁵ Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15, 2 BvR 502/16, margin no. 68

2 – VISITS

2.1 – POSITIVE EXAMPLES

The National Agency highlighted the following positive examples during its visits:

In the forensic psychiatric clinics visited in Bavaria and Saxony, patients are not locked up at night. The patients are able to move freely around the wards, even at night. The National Agency welcomes this approach, as night lock-up can prevent continuous treatment and interrupt the therapeutic process.⁴⁶ It is unclear why most of the forensic psychiatric clinics visited still lock up their patients at night, even though no security concerns have been expressed in the facilities that choose not to do so.

At the time of the visit, the forensic psychiatric clinic visited in Mecklenburg-Western Pomerania had already started to equip the patient rooms and crisis rooms with “challenging” furniture. In order to prevent patients from harming themselves or others, this furniture is heavily weighted and extremely robust, yet still has soft edges. This enables the rooms to be designed appropriately, without having to sacrifice furniture or comfort for safety reasons.

Phone booths were available on the wards of the forensic psychiatric clinics visited in Bremen and Rhineland-Palatinate. In addition, several facilities now allow the use of private mobile phones. This enables the patients to make telephone calls in private, without being disturbed.

In several cases, for example in the general psychiatric clinics visited in Baden-Württemberg and Berlin, the wards had direct access to their own gardens. In the opinion of the National Agency, this is useful from an architectural design standpoint, since it makes it easy to ensure that all patients have sufficient opportunities for outdoor exercise every day.

All of the visited psychiatric facilities offer de-escalation training and training courses on

violence prevention. This is particularly welcomed when such training courses are made mandatory for all staff members, in order to ensure that everyone is equipped with the necessary confidence to act in crisis situations. This can help to prevent assaults and reduce the use of coercive measures.

2.2 – FINDINGS AND RECOMMENDATIONS

The visited facilities were given recommendations *inter alia* on the following topics:

2.2.1 – Segregation

Duration of segregation

While inspecting the documentation during its visits to forensic psychiatric clinics in Bremen and North Rhine-Westphalia, the National Agency noted a number of cases where persons had been segregated for several months in a separate and sparsely furnished room, with no access to the clinic’s wider community.

There are serious doubts as to whether the use of long-term isolation can ever be proportionate if regular efforts are not made to relax the measure.

Insufficient social contact and constant isolation can have a negative impact on patients’ mental health. Indeed, according to the Federal Constitutional Court’s judgment of 24 July 2018, isolation may not always be considered a less restrictive measure, “since the intensity of its effects in the specific case can be equal to those of five-point or seven-point restraints. If persons placed in isolation are not sufficiently monitored, isolation also entails the risk of considerably damaging their health.”⁴⁷

Therefore, segregation should be closely monitored, especially with regard to its duration, in order to bring about a relaxation of the measure as soon as possible.

⁴⁶ Bulla/Hoffmann, *Der Nachteilschluss – eine Methode des modernen Maßregelvollzugs?*, Forensische Psychiatrie und Psychotherapie, Vol. 19, 2012, pp. 204-216

⁴⁷ Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15, 2 BvR 502/16, margin no. 80

Furnishing and fittings in crisis rooms

In Baden-Württemberg, Brandenburg, Bremen, North Rhine-Westphalia and Schleswig-Holstein, the inspected crisis rooms for segregating patients in crisis situations were furnished with only a bed and a non-partitioned toilet. No seating was provided. In some cases, there was reduced access to daylight due to the rooms having frosted glass windows.

In particular, given that patients are sometimes even segregated under these conditions for days or weeks at a time, this is not compatible with human dignity.

If segregation is necessary, a humane environment for this should be created. The persons concerned should be provided with seating at standard height. Covered foam dice or “challenging” furniture could be used, for example, which would allow the rooms to be designed appropriately without having to sacrifice furniture or comfort for safety reasons. A table and chair could also be provided for eating meals. It is also essential to install emergency call buttons so that the persons placed in segregation can call for help if necessary. Furthermore, crisis rooms should have access to daylight.

2.2.2 – Possibilities for complaint

In most of the psychiatric facilities, patients on closed wards did not have the possibility of making anonymous complaints.

The contact details of a patient advocate or an ombudsperson should be made available on the wards. Some facilities also have a complaints box where patients can submit complaints anonymously.

Mentally ill patients on closed wards may find it particularly difficult to contact a complaints body. Regular consulting hours at fixed times can help solve this problem.

Complaints should be recorded centrally and evaluated on a regular basis. This makes it possible to detect recurring issues and implement counter-measures if necessary.

2.2.3 – Outdoor exercise

In two facilities in Hesse – a forensic psychiatric clinic and a child and youth

psychiatric clinic – patients who are not allowed to use any of the exits due to their mental condition. They only have the possibility to spend time outdoors in an area that is bricked up or barred up on all sides. Since these outdoor areas are also barred up from above, they resembled a cage. Furthermore, there were no seats or activities available in these areas.

Outdoor exercise has unique health benefits that cannot be replicated by any other measure.⁴⁸ In similar facilities, outdoor exercise is made possible via a secure outdoor area or through supervision by sufficient personnel. The barred-up outdoor areas of these facilities in Hesse do not constitute an appropriate place for outdoor exercise, and negatively impact the patients’ human dignity.

2.2.4 – Shackles

In contrast to physical restraint, “shackling”, in the National Agency’s usage of the term, is the restriction of movement by tying together arms or legs, or by tying them to an object.

In a forensic psychiatric clinic in Brandenburg, the Agency was informed that there had been incidents where a patient had been tied to the bed frame in the crisis room by means of an ankle cuff. What was worse is that the ankle cuff was made of metal.

Tying persons to the wall or to other objects violates their human dignity and must be avoided without exception.

2.2.5 – Physical restraint

Documentation of the use of physical restraints

In some cases, the use of physical restraints had not been fully documented. In certain cases, for example, there was no fully documented reason for using the measure, or no record of the time of removal of the physical restraints. It was also not always documented whether the measure had been discussed with the patient afterwards, or whether the patient had been

⁴⁸ Arloth/Krä, “StVollzG-Kommentar” [Commentary on the Prison Act], 4th edition, section 64 of the Prison Act, margin no. 1

informed of the possibility to apply for judicial review.

In order to guarantee effective legal protection and ensure the proportionality of the measure, the use of physical restraints is subject to particularly strict documentation requirements.⁴⁹

All physical restraint measures should be documented comprehensively, comprehensibly and completely. The measure must be documented in writing. This includes documenting which less severe measures have already been tried and an explanation of why they failed. Furthermore, at short, regular intervals, reasons must once again be provided as to why the measure still cannot be terminated. In addition, the measure must be discussed with the patient afterwards, and the patient must be informed of the possibility to apply for judicial review. This, too, must be documented.

One-on-one supervision

In one facility, it was reported that continuous one-on-one supervision was not provided during the application of physical restraint measures.

Given the severity of the measure and the health risks associated with it, persons under physical restraint must be observed continuously and personally by therapeutic or care staff who are in direct proximity to the person concerned (one-on-one supervision).⁵⁰ This is the only way to ensure comprehensive care and to establish the earliest possible time to end this use of physical restraint. The guidelines of the German Society for Psychiatry, Psychotherapy and Nervous Diseases [*Deutsche Gesellschaft für Psychiatrie und Psychotherapie, Psychosomatik und Nervenheilkunde e.V.*, DGPPN] also call for continual one-on-one supervision of patients under physical restraint, as well as the possibility for personal contact throughout the entire duration of the measure.⁵¹

⁴⁹ Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15, 2 BvR 502/16, margin no. 84

⁵⁰ Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15, 2 BvR 502/16, margin no. 83

⁵¹ DGPPN [German Society for Psychiatry and Psychotherapy] (2018): “S3-Leitlinie: Verhinderung von Zwang: Prävention und Therapie aggressiven Verhaltens bei Erwachsenen” URL:

2.2.6 – Privacy

Occupancy of patient rooms

In some of the facilities visited in Baden-Württemberg, Bavaria, Berlin and Hesse, there were patient rooms designed to accommodate up to four beds.

In the view of the National Agency, confining three or more mentally ill patients to a room is problematic, even if the room is of sufficient size. The lack of privacy can trigger aggressive behaviour and provoke incidents. Where facilities are renovated or newly built, the patient rooms should generally be geared towards accommodating a lower number of patients.

Strip-searches

The National Agency welcomes the fact that, in most of the psychiatric clinics visited, patients are only searched or required to undress for specific reasons. If it is indeed necessary that the patient undress fully, then the search should be conducted in a respectful procedure, for example involving two stages where half the body remains dressed in each stage.

Visibility of toilets

At the time of the visit, the CCTV monitoring of the crisis rooms at the forensic psychiatric clinics visited in Hesse, North Rhine-Westphalia, Saarland and Saxony-Anhalt also covered the toilet area, which was shown without pixelation.

Privacy must also be guaranteed in forensic psychiatric clinics.

In order to protect the patients’ personality rights, CCTV cameras must be installed in such a way that the toilet area is either not visible on the monitor at all or, alternatively, is only shown in the form of pixelated images. If deemed necessary in individual cases, it may be possible to permit unrestricted monitoring of a room due to an acute danger of self-harm or suicide. However, any such decision should be carefully considered, substantiated and documented.

https://www.dgppn.de/_Resources/Persistent/154528053e2d1464d9788c0b2d298ee4a9d1cca3/S3%20LL%20Verhinderung%20von%20Zwang%20LANG%20BLITERATUR%20FINAL%2010.9.2018.pdf (retrieved on 29 January 2020)

Under no circumstances can CCTV monitoring replace the presence of members of staff. In addition, the person concerned must be informed that monitoring is taking place. The mere fact that the camera is visible is not sufficient.

that this has not resulted in an increased security risk. Furthermore, it was reported to have a de-escalating effect.

2.2.7 – Confidentiality of conversations

In some facilities, the patients' telephone was located in the living areas of the wards and was not fully partitioned off. In some cases, sound insulation was at least provided by means of a telephone hood. However, it is almost impossible to make private phone calls under such circumstances.

Having phone booths or cordless phones would solve this problem by allowing patients to make private phone calls without being disturbed. Several facilities also allow the use of private mobile phones. These facilities reported

V SPECIAL FOCUS: CUSTOMS

1 – INTRODUCTION

Detention in customs custody is a relatively rare occurrence. Nevertheless, work in custody facilities requires specific knowledge regarding the rights of persons deprived of their liberty, intercultural skills, suicide prevention and de-escalation. This knowledge helps provide staff with the confidence needed to deal with the special circumstances of custody.

With these aspects in mind, the National Agency decided to place a particular focus on visits to customs authorities. It visited the following customs investigation offices:

28/01: Dresden Customs Investigation Office, Leipzig office

26/03: Berlin Customs Investigation Office (headquarters)

23/07: Munich Customs Investigation Office, Nuremberg branch

24/07: Munich Customs Investigation Office at the Bavarian Criminal Police Office

24/07: Munich Customs Investigation Office (headquarters)

It carried out follow-up visits to the following customs investigation offices:

08/08: Dresden Customs Investigation Office (headquarters)

02/12: Berlin Customs Investigation Office (headquarters)

1.1 – STANDARDS

In order for the National Agency to fulfil its **task effectively, it is necessary that the Agency's recommendations** are implemented not only in the facilities it visits, but in all of the relevant facilities.

Based on the increased number of visits to customs investigation offices and the observations made during these visits, the National Agency translated its recommendations into standards for customs authorities. The Agency made it clear that the requirements for customs custody are the same

as those for custody by the Federal and *Land* Police.⁵²

1.2 – COOPERATION WITH THE CENTRAL CUSTOMS AUTHORITY

On 14th November 2019, an exchange meeting took place between the National Agency and the Central Customs Authority in Bonn. The main objective of this meeting was to enable constructive cooperation and thus promote the effective and timely implementation of the **National Agency's recommendations**.

During this exchange and in subsequent statements, the Central Customs Authority expressed its willingness to implement a large number of the recommendations. This includes recommendations on matters such as furnishings/fittings and size of custody cells, removing dangers that lead to an increased risk of injury in custody, restricting the use of strip-searches to individual cases, preventing visibility of toilets, complete custody documentation, and confidentiality of conversations. In future, textile disposable handcuffs will be kept in stock in custody facilities. These textile handcuffs will, as a rule, be regarded as the most appropriate means of shackling and should therefore always take priority over other forms of shackling.

However, the officers still carry firearms and pepper spray in custody. This poses an increased risk of danger or significant health risks for the person taken into custody.

⁵² See standards in part III.3

2 – VISITS

2.1 – POSITIVE EXAMPLES

The National Agency highlighted the following positive examples during its visits:

The customs investigation offices visited in Munich have large, bright and well-equipped custody cells. The custody cells at the Munich headquarters are equipped with adjustable lighting and have a screened-off toilet area that ensures the privacy of persons taken into custody. This corresponds to the National Agency's standards.

During the follow-up visit to the Berlin Customs Investigations Office (headquarters), it was noted that some of the measures agreed with the Central Customs Authority had been swiftly implemented. A further suggestion to keep a sufficient supply of hygiene products in stock had also been complied with.

2.2 – FINDINGS AND RECOMMENDATIONS

The visited facilities were given recommendations *inter alia* on the following topics:

2.2.1 – Furnishing and fittings in custody cells

Lighting

During its visits, the National Agency observed that the custody cells in a number of the customs investigation offices only provide the possibility of switching the lighting on or off. Consequently, there is no way of adjusting the lighting in the cells, which would ensure that persons taken into custody are able to sleep, while at the same time reducing the risk of injury and enabling detainees to find their way in the dark.

All custody cells used by the customs authorities should be equipped with adjustable lighting.

Mattresses

The custody cells at the Berlin headquarters did not have any mattresses. Although persons taken into custody usually stay in the customs custody suite for only a short period of time, sometimes people are also taken into custody at night.

Back in 2012, the Federal Government called upon all of the *Länder* to take immediate steps to **implement the CPT's long-standing recommendation**⁵³ that all persons held overnight in police custody be provided with a clean mattress.

The same must apply for customs offices. Therefore, the custody cells of all customs offices should be equipped with washable, non-flammable mattresses.

Smoke detectors

At the time of the National Agency's visit, the custody cells in a number of the customs investigation offices were not equipped with smoke detectors.

In order to protect persons being held in custody, a smoke detector must be installed in all custody cells used by the customs authorities.

Risk of injury

In order to prevent people in custody from escaping out of the window, both Dresden Customs Investigation Office (headquarters) and the Leipzig office have box-like bars fitted in front of their cell windows. In Berlin Customs Investigation Office (headquarters), there is a perforated metal partition in front of the windows to prevent escape. The hinges on these partitions protrude into the rooms.

This increases the risk of people injuring themselves. The risk of escape should be prevented in a way that ensures there is little risk of self-injury. Until modifications have been

⁵³ CPT/Inf (2012) 6, p. 17, margin no. 27

made, the frequency of the checks should be increased in order to reflect the current situation.

2.2.2 – Strip-searches

In several of the customs investigation offices visited, the National Agency was informed that every person taken into custody is subjected to a strip-search upon entering custody.

Strip-searches involving a visual inspection of the detainee's genital area represent a severe interference with the detainee's general right of personality.⁵⁴ According to recent court decisions, it should be decided on a case-by-case basis whether there are specific indications of a danger to public security and order that would justify a strip-search. Any such measures must adhere to the principle of proportionality.⁵⁵

Strip-searches involving a visual inspection of the genital area should only be carried out on an individual basis after careful consideration. The reasons for conducting a strip-search should be documented in a clear and comprehensible manner. Furthermore, the search should be conducted as respectfully as possible, for example involving two stages where half the body remains dressed in each stage. Staff members of the opposite sex to the detainee must not be present during such searches.⁵⁶

2.2.3 – Visibility of toilets

The custody cells of all three customs investigation offices in Munich are fitted with peepholes. Inside the cells, the toilet is not partitioned off.

The privacy of individuals held in custody must be protected. Monitoring an individual while they are using the toilet represents a considerable interference with their rights of

personality. It must be ensured that persons taken into custody cannot be observed when using the toilet. For example, a screen could be installed to block the view of the toilet area.

2.2.4 – Shackles

Type of shackles

At the time of the National Agency's first visit to Berlin Customs Office (headquarters), there was a bench in the corridor outside the custody cells with metal rings attached to it. This made it possible for individuals to be shackled to the bench.

Tying persons to the wall or to other objects constitutes an interference with their human dignity and must therefore be avoided without exception.

Shackling materials

If shackling is required in custody, the customs offices use either metal or plastic handcuffs. These types of handcuffs can cause serious injuries.

In order to protect the right to physical integrity, any shackling in custody should be carried out using textile hand restraint belts.⁵⁷

2.2.5 – Custody documentation

During the visits to the customs investigation offices in Berlin and Dresden, it became apparent upon inspection of the custody record book that there were sometimes no entries regarding the checks that had been carried out or the time of release from custody. Furthermore, in some cases the entries documenting checks were not signed.

In order to protect the individuals in custody as well as the members of staff, all custody-related information must be fully documented. Supervisors should verify at regular intervals whether custody records are being kept correctly. These checks must also be recorded.

⁵⁴ Federal Constitutional Court, order of 4 February 2009, file no.: 2 BvR 455/08, margin no. 25; Federal Constitutional Court, order of 5 March 2015, file no.: 2 BvR 746/13, margin no. 33

⁵⁵ Cologne Administrative Court, judgment of 25 November 2015, file no.: 20 K 2624/14; Hamburg Regional Court, decisions on complaints against G20 detentions, 18 June 2018, URL: <http://justiz.hamburg.de/pressemitteilungen/11228482/pressemitteilung-2018-06-18-olg-01/> (retrieved on 29 January 2020)

⁵⁶ Cf. for example section 81d of the Code of Criminal Procedure

⁵⁷ An example of this can be seen in the model used by FRONTEX during deportation flights.

2.2.6 – Size of custody cells

At Dresden Customs Investigation Office (headquarters), one of the custody cells was just under four square metres in size.

At customs offices, custody cells must be designed in a way that ensures humane detention conditions.

According to the National Agency's standards, a single-occupancy custody cell must have a floor space of at least 4.5 square metres. Cells that do not comply with this minimum requirement must not be used.

2.2.7 – Confidentiality of conversations

At the Leipzig office, all telephone calls by individuals in custody take place in the presence of staff members.

Confidential conversations between the accused party and their defence counsel are essential in order to mount an effective defence within the meaning of section 148 (1) of the Code of Criminal Procedure and the rule-of-law principal pursuant to Article 20 para. 3 of the Basic Law. It must also be ensured that conversations with trusted persons can be conducted without the presence of staff members, unless security concerns or ongoing investigations dictate otherwise.

2.2.8 – Weapons in custody

During the visits to the customs investigation offices in Munich, the National Agency was informed that the officers who arrest individuals also take them to the custody suite and, throughout this time, do not remove their weapons. At the Leipzig office, staff members said that they carry firearms and pepper spray both when taking individuals into custody and when inspecting the custody cells.

Because of the increased risks involved, officers should refrain from carrying weapons in the custody suite. Furthermore, due to the significant health risks involved, the National Agency takes the view that the use of pepper spray in confined spaces is not a proportionate measure under any circumstances and should therefore be avoided. This is consistent with the view of the ECHR and the CPT.⁵⁸

⁵⁸ ECHR, *Tali v. Estonia*, judgment of 13 February 2014, Application no. 66393/10, § 78; CPT/Inf (2008) 33, margin no. 86

VI VISITS

1 – DEPORTATIONS

In 2019, the National Agency observed the following seven deportation procedures:

- 29/01: Leipzig/Halle to France
- 26/03: Berlin-Schönefeld to Kosovo, Moldova
- 30/04: Frankfurt am Main to Slovenia
- 12/06: Hamburg, deportation procedures
- 24/07: Munich to Nigeria
- 26/09: Berlin-Schönefeld to Russia
- 20/11: Nuremberg to Kosovo

As a rule, the immigration authorities of the respective *Länder* are responsible for the enforcement of deportation procedures. Deportees are generally picked up by the relevant *Land* police authorities and taken to the airport. The procedures followed (e.g. regarding luggage during removals and the handing out of a cash lump sum) should be uniform throughout Germany and in line with the standards set by the National Agency.

From the airport onwards, the Federal Police generally takes control of the deportation procedure and is henceforth responsible for enforcing it humanely. During its observations of deportation procedures in 2019, the National Agency encountered the following difficulties:

The National Agency was unable to observe the deportation procedure on the tarmac of Hamburg Airport, because the Federal Police had failed to procure the necessary security badge. The National Agency can only carry out its task effectively if it is guaranteed access to all German airports. This is particularly true for unannounced observations.

At Nuremberg Airport, the National Agency observed a deportation procedure carried out by the Bavarian *Land* police authorities. However, the security personnel of the Air Bulgaria airline were entrusted with escorting the deportees during the flight until they were to be handed over in the country of destination. While the **escorting of returnees by an airline's private security staff** is, in principle, compatible with Article 8 of the Return Directive, this does not mean that the state can evade its general duty of

supervision.⁵⁹ In this particular situation, the National Agency was refused access to the aircraft. This prevented the Agency from effectively carrying out its mandate. Furthermore, the National Agency was unable to obtain information on the training that the security personnel had received, the conditions on board and the general possibility of independent monitoring.

Deportation monitoring and regular exchanges between monitoring centres and authorities as well as non-state actors help to prevent or at least address misconduct during deportation operations.

1.1 – POSITIVE EXAMPLES

The National Agency highlighted the following positive examples during its visits:

At Berlin-Schönefeld Airport, toys were handed out to children. Keeping children occupied during their time at the airport can have a de-escalating effect, including on their parents.

At Munich Airport, body searches were largely avoided thanks to the use of a body scanner. This helps protect the privacy of the individuals concerned and also avoids worsening a situation that is already difficult enough, especially for children. In addition, the airport staff showed a high degree of sensitivity and professionalism.

1.2 – FINDINGS AND RECOMMENDATIONS

The executive authorities were given recommendations *inter alia* on the following topics:

⁵⁹ The Committee of Ministers of the Council of Europe, 24 May 2005, "Twenty Guidelines on Forced Return", guideline 18.

https://www.coe.int/t/dg3/migration/archives/Source/Malaga_RegConf20_Guidelines_Forced_Return_en.pdf;

"Privatization should not lead the public authorities to escape or diminish their responsibilities." (p. 50)

1.2.1 – Respect for the best interests of children

Activities to keep children occupied

During the observed procedure at Munich Airport, families with small children were being deported. Despite the long waiting time, only a small selection of toys was available for the children to play with.

There should be sufficient facilities available to keep children occupied, as these can have a de-escalating effect both on children and their parents.

Coercive Measures

The National Agency was informed that, due to the layout of Hamburg Airport, coercive measures may be carried out in front of other deportees. This may even take place when the children of the persons concerned are present.

Article 3 para. 1 of the Convention on the Rights of the Child provides that, in all actions concerning children, the best interests of the child shall be a primary consideration. Therefore, coercive measures should not be carried out against parents in the presence of their children.

1.2.2 – Duration of the procedure

One deportation procedure from Munich Airport took a disproportionate amount of time because the persons concerned were picked up early, had to wait six hours at the airport and then had their flight time extended due to a stopover in Vienna. The returnees were only handed over to the Nigerian authorities at 7 a.m. the following day.

The fact that small children were part of this deportation procedure made the situation even worse. Pursuant to Article 3 para. 1 of the Convention on the Rights of the Child, the best interests of the child must be a primary consideration.

Care must be taken to avoid disproportionately long deportation procedures and the burdens that come with them. This applies all the more when particularly vulnerable persons are involved.

1.2.3 – Discrimination

At Berlin-Schönefeld Airport, the chairs in one of the waiting areas are covered with plastic sheets. The aim of this measure is to prevent deportees from soiling the furniture by dropping or spilling food and drinks or other solid or liquid substances.

At no other airport did the National Agency encounter such a measure during its previous observations.

In the view of the National Agency, this measure is discriminatory and unjustified.

1.2.4 – Strip-searches

During one deportation procedure at Leipzig/Halle Airport, each deportee was subjected to a strip-search involving a visual inspection of their genital area. This was carried out by medical staff in the presence of police officers. Decisions to carry out strip-searches were not made on a case-by-case basis.

At other airports, such decisions were made on a case-by-case basis, but the reasons were not documented.

Strip-searches involving a visual inspection of the prisoner's genital area represent a severe interference with the prisoner's general right of personality.⁶⁰ It should therefore be decided on a case-by-case basis whether there are in fact indications of a danger to public security and order that would justify a strip-search. Any such measures must adhere to the principle of proportionality.⁶¹ Staff members of the opposite sex to the person concerned must not be present during such searches.⁶² Furthermore, the search should be conducted as respectfully as possible, for example involving two stages where half the body remains dressed in each stage.

The extent of the search and the reasons for carrying it out must always be documented so that the actions of the Federal Police in areas affecting fundamental rights can be examined to determine whether they are necessary.

⁶⁰ Federal Constitutional Court, order of 29 October 2003, file no.: 2 BvR 1745/01; order of 4 February 2009, file no.: 2 BvR 455/08

⁶¹ Cologne Administrative Court, judgment of 25 November 2015, file no.: 20 K 2624/14

⁶² cf. section 81 d of the Code of Criminal Procedure

1.2.5 – Shackles

Documentation

During the ground handling phase of one observed deportation procedure, three individuals were body-cuffed.

Only in one case were the reasons for this coercive measure clear from the documentation.

Coercive measures and the reasons for them must be documented clearly and comprehensively so that it can be verified whether they were necessary and proportionate. The reasons should be based on current information indicating an imminent risk of endangerment.

Shackling system

The shackles used during deportations are mainly made of metal or plastic.

During a deportation procedure from Frankfurt Airport, the hands of one Afghan citizen were tied to her wheelchair with textile handcuffs. Her feet, however, were tied to her wheelchair using disposable plastic cuffs.

During the deportation procedure observed at Munich Airport, three individuals were body-cuffed using metal handcuffs. In addition, one officer from the Bavarian *Land* police reported that metal and plastic cuffs are always kept in stock in case an individual needs to be shackled.

The National Agency emphasises that the use of metal and plastic cuffs can result in serious injuries. It is up to the police to prevent injuries to the individuals concerned. In order to protect the right to physical integrity, any shackling should be carried out using textile restraint belts, which should be kept in stock at all times.

1.2.6 – Cash lump sum

During deportation procedures from Leipzig/Halle Airport, the National Agency observed that an individual with no financial means was not provided with a cash lump sum. The deportation of individuals without any means of their own was also observed during deportation procedures from Berlin-Schönefeld Airport.

While the payment of a lump sum in cash is the responsibility of the respective foreigner

authority of the *Länder*⁶³, the National Agency takes the view that the Federal Police are responsible for the humane enforcement of the deportation from the moment they take charge of the deportees at the airport. It was observed at several airports that, due to internal rules, the Federal Police paid out a cash lump sum in individual cases to individuals without any funds of their own. It was reported in these cases that the police officers advanced the cost of this payment.

Those responsible are asked to ensure that no individual is deported without any financial means. All deportees must have sufficient means to pay for the journey from the airport to the final destination, as well as for meals needed during this journey.

1.2.7 – Interpretation

During one deportation procedure at Leipzig/Halle Airport, there was no one present who could have helped the persons concerned overcome language barriers.

When observing deportation procedures from Hamburg Airport, the National Agency noted that there were no interpreters on site, even though some of the deportees did not speak German.

It must be possible for persons being deported, accompanying officers and medical staff to communicate during the entire deportation procedure. Confidentiality must be assured for medical consultations, which are subject to medical secrecy. Furthermore, it must be ensured, where necessary, that technical terms and subject matter are adequately translated into the other language. Interpreters may also assist via telephone or video conferencing, especially where assistance is needed in several languages.

1.2.8 – Mobile phones

During several deportation procedures, **deportees' mobile phones were taken from them** upon their arrival at the airport. The waiting period at the airports was up to six hours.

⁶³ It should be noted that many *Länder*, including Baden-Württemberg, Brandenburg, Bremen, Hesse, Lower Saxony, North Rhine-Westphalia and Thuringia, have already adopted internal rules to this effect.

During a deportation from Leipzig/Halle Airport to France, the National Agency observed that deportees only had to turn off their phones shortly before departure and hand them over to the Federal Police officers on site for the duration of the flight. This allowed them

to make any necessary phone calls independently.

In the view of the National Agency, mobile phones should only be confiscated if this is deemed necessary in substantiated individual cases.

2 – CUSTODY AWAITING DEPORTATION AND CUSTODY TO SECURE DEPARTURE

In 2019, the National Agency visited four facilities for custody awaiting deportation [*Abschiebungshafteinrichtungen*] in Baden-Württemberg, Bavaria, Bremen and Rhineland-Palatinate and one facility for custody to secure departure [*Ausreisegewahrsam*] in Brandenburg.

2.1 – POSITIVE EXAMPLES

The National Agency highlighted the following positive examples during its visits:

In the facilities in Ingelheim, Pforzheim and Berlin-Schönefeld, detainees awaiting deportation are not subjected to physical restraints.

A further positive is that several facilities have found solutions that enable individuals in custody to have confidential conversations with third parties. In Pforzheim and Bremen, the individuals concerned were allowed to use their private mobile phones. At the facility for custody awaiting deportation in Erding, detainees have access to telephones inside their cells. All individuals to be deported have phones in their respective cells on which they can store up to ten numbers of their choice. This allows them to stay in contact with their relatives and to have confidential conversations.

In Pforzheim, a variety of activities are available to those awaiting deportation. Apart from night lock-up, detainees can move freely throughout the facility and use the outside area (including a football pitch), the sports facilities and the library. The workshop and internet café may only be used for a limited period of time and by a limited number of people.

A further positive is the fact that a psychologist is available at the facility in Erding. Generally speaking, there is a considerable need for psychological care in such facilities, as the detainees awaiting deportation have frequently undergone traumatic experiences while fleeing their country of origin, and the prospect of deportation may cause feelings of fear and anxiety.

In addition, a video-based interpreting service is available at the Erding facility. For conversations with social workers or medical staff, interpreters can be involved at short notice via video conferencing. This system makes communication much easier, helps prevent comprehension problems and guarantees confidential conversations with social workers, psychologists and medical staff.

2.2 – FINDINGS AND RECOMMENDATIONS

The visited facilities were given recommendations *inter alia* on the following topics:

2.2.1 – Distance requirement

Structural conditions

In February 2018, Erding Prison was rededicated as a facility for custody awaiting deportation without any structural changes **being made**. In the facility's various accommodation areas, there are no common rooms available to the individuals awaiting deportation. There are no kitchenettes or cooking facilities either.

The facility for custody to secure departure in Ingelheim is surrounded by high barbed wire fences. In addition, extensive structural security measures were observed, such as bars in front of the windows and CCTV monitoring.

The extent of these security measures is not proportionate in facilities for custody awaiting deportation.

Pursuant to the case law of the Court of Justice of the European Union, the enforcement of custody awaiting deportation should, as a matter of principle, differ significantly from a prison sentence in terms of detention conditions, the restrictions of liberty that are specific to a prison sentence, and security measures.⁶⁴ In the CPT's

⁶⁴ CJEU, judgment of 17 July 2014, file no.: C-473/13 and C-574/13

view, the use of former prison establishments without any structural changes should, as a rule, be avoided.⁶⁵

Legal basis for the enforcement of custody awaiting deportation

In the view of the Bavarian State Ministry of Justice, the provisions on the enforcement of prison sentences must be applied to the enforcement of custody awaiting deportation in prisons.⁶⁶ This means that, according to the State Ministry, the creation of a Bavarian law to govern the execution of custody awaiting deportation is neither necessary nor permissible under currently applicable law.

Under the Return Directive⁶⁷, the Member States of the European Union are obligated to ensure that, as a rule, custody awaiting deportation takes place in specialised detention facilities. The purpose of custody awaiting deportation is not to rehabilitate, but merely to secure deportation.⁶⁸ Advocate General Yves Bot made it clear that in order to respect the human dignity and fundamental rights of migrants, detention conditions during custody awaiting deportation must differ considerably from conditions during the execution of a prison sentence.⁶⁹ “[M]aking men, women and children awaiting removal look like criminals [...] by treating them as such” is, in itself, prejudicial to human dignity, he said.⁷⁰ For this reason, several *Länder* no longer consider it permissible to enforce custody awaiting deportation under sections 62 and 62a of the Residence Act in prisons by way of administrative assistance.⁷¹

⁶⁵ CPT/Inf (2019) 14, margin no. 65

⁶⁶ See section 422 (4) of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction [*Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit*, FamFG] in conjunction with sections 175 and 178 (3) of the Prison Act

⁶⁷ Article 16 para. 1 of Directive 2008/115/EC

⁶⁸ Cf. also Federal Constitutional Court, order of 16 May 2007, 2 BvR 2106/05, margin nos. 19, 21 et seq., with reference to Decisions of the Federal Constitutional Court [*Entscheidungen des Bundesverfassungsgerichts*, BVerfGE] 29, 183, 196; 83, 24, 32

⁶⁹ Opinion of Advocate General Yves Bot of 30 April 2014 in joined cases C-473/13 and C-574/13 as well as in case C-474/13, margin no. 99

⁷⁰ *Ibid.*, margin no. 94

⁷¹ Cf. for example, the introduction of the draft Act on the Execution of Custody Awaiting Deportation in Baden-Württemberg, Printed Paper 15/764, cf. also the statement of

The resulting legal provisions form the basis for placement in specialised facilities for detainees awaiting deportation.

A specific legal basis must be created for the enforcement of custody awaiting deportation and custody to secure departure.

Personal clothing

At the facility for custody awaiting deportation in Erding, detainees were not allowed to wear their own clothes. They were all given grey tracksuits as uniform clothing.

Due to the nature and purpose of custody awaiting deportation, any restrictions imposed **must be kept at a minimum**. **Wearing one's own clothes** – as is legally provided for in Brandenburg, for example⁷² – helps bring the living conditions in custody awaiting deportation as close to general living conditions as possible.⁷³ As a rule, persons required to leave the country should therefore be allowed to wear their own clothes.

2.2.2 – Furnishing and fittings in specially secured cells

In several facilities, the specially secured cells did not have any seating.

Where the period of detention lasts for several hours or days, it is inhumane to force the individuals concerned to stand or sit on the floor.

They should be provided with seating at standard height.

The National Agency would like to point out that covered foam dice or "challenging" furniture were used in the specially secured cells of similar facilities.

the German Bar Association concerning the Saxon Act on the Execution of Custody Awaiting Deportation, p. 13 et seq., as well as its statement on the Hesse Act on the Execution of Custody Awaiting Deportation, p. 39 et seq.

⁷² Brandenburg Act on the Execution of Custody Awaiting Deportation [*Abschiebungshaftvollzugsgesetz*, AbschhVG], section 5, no 3

⁷³ This objective is provided for by law – see, for example, section 2 no. 2 of the Brandenburg Act on the Execution of Custody Awaiting Deportation; section 2 no. 2 of the Act on the Execution of Custody Awaiting Deportation of North Rhine-Westphalia.

2.2.3 – Activities

There are no common rooms or cooking facilities at the facility for custody awaiting deportation in Erding.

While a prayer room and a sports room were available for individuals awaiting deportation at the facility in Bremen, these were locked and could only be used in the presence of staff. However, the responsible staff were not usually present in this part of the facility. They mainly oversaw the police custody cells on the lower floor. The common room had a TV with a broken screen. A social worker with foreign language skills, who worked with the individuals placed in the facility, only worked there part-time. There were no books in Arabic.

It should be possible for persons required to leave the country to make meaningful use of their time. There should be sufficient opportunities to do so every day.

The lower the number of persons placed in a facility, the more important it is to provide possibilities for them to stay occupied.

2.2.4 – Complaint management

At the facilities for custody awaiting deportation in Bremen and Pforzheim, the individuals concerned had no way of lodging an anonymous complaint on their respective units at the time of the visit. The complaints lodged in the respective facilities were not recorded centrally.

It should be possible for persons required to leave the country to lodge complaints anonymously. Furthermore, complaints should be recorded centrally and evaluated on a regular basis. This makes it possible to detect recurring issues and implement counter-measures if necessary.

2.2.5 – Strip-searches

It was observed at several facilities that all persons awaiting deportation were subjected to a strip-search upon arrival.

According to the Federal Constitutional Court, strip-searches involving a visual **inspection of detainees' genital area represent a severe interference with their general right of personality.** It should therefore be decided on a

case-by-case basis whether there are indications of a danger to public security and order that would justify a strip-search. Any such measures must adhere to the principle of proportionality. Staff members of the opposite sex to the detainee must not be present during such searches.⁷⁴

Since this measure constitutes a severe interference with human rights, the reasons for doing so must be documented so that it can be verified whether the measure was necessary and proportionate. Furthermore, the search should be conducted as respectfully as possible, for example involving two stages where half the body remains dressed in each stage.

2.2.6 – Information on the time of execution of the deportation order

While being held in the facility for custody awaiting deportation in Erding, the individuals to be deported were prepared for their deportation by social workers. However, they are usually not informed of the exact time of their deportation until the day of the deportation itself or the moment they are picked up.

This approach is inconsistent with section 59 (5), second sentence, of the Residence Act, which provides that an impending deportation from detention or public custody is to be announced at least one week beforehand. Section 59 (1), eighth sentence, of the Residence Act is not applicable in these cases, since it applies to persons who are not detained.⁷⁵

The timely notice provided ahead of deportation gives the persons concerned the chance to ensure they are organised and mentally prepared to leave the country. This can help prevent situations where the person experiences severe stress or anxiety, which can result in resistance, or long-term personal injury.

Persons required to leave the country who are placed in custody awaiting deportation or in custody to secure departure should be informed of the time of their deportation at least one week in advance.

⁷⁴ Cf. section 84 (2), second sentence, of the Prison Act

⁷⁵ Cf. Bundestag Printed Paper 18/6185, p. 50

2.2.7 – Luggage

It was observed in all facilities for custody awaiting deportation that some of the individuals awaiting deportation arrived without any luggage as they were apprehended on the streets, for example, and were not given the opportunity to pack their personal belongings.

The detention and subsequent deportation of a person must not lead to them losing their belongings. Therefore, the responsible officers must always give the individuals being deported the opportunity to pack their personal belongings. These must be handed over to the facility at the time of arrival. Where this is impossible in justified exceptional cases, steps **must be taken to ensure that an individual's** luggage is available at the latest when the deportation order is executed.

2.2.8 – CCTV monitoring

At the facilities for custody awaiting deportation in Bremen and Erding and at the facility for custody to secure departure in Brandenburg, some areas were subject to constant video surveillance which the affected individuals were unable to avoid. There were no indications that CCTV monitoring was in place.⁷⁶ In Bremen, there was not even a legal basis for this measure.

CCTV monitoring without a special legal basis is not allowed. Moreover, CCTV monitoring must only be used in individual cases where it is imperative for the protection of the person concerned. Continuous and covert CCTV monitoring of detainees without specific cause is not permissible. Transparent CCTV monitoring requires more than just making the camera visible (e.g. with signs showing pictogrammes). It must also be possible for the person concerned to discern whether the camera is running (e.g. through a light signal).

⁷⁶ The Ministry of the Interior and for Municipal Affairs of Brandenburg assured in a written statement dated 10 January 2020 that it would draw attention to the corridor and fence cameras by means of pictogrammes and in the translated short version of the house rules. They were planning to inform the National Agency as soon as the pictogrammes were installed.

2.2.9 – Allegations of abuse

At the facility for custody awaiting deportation in Pforzheim, several detainees made allegations of police violence in front of the delegation. The delegation was also shown injuries. No record of this could be found in the medical files of the persons concerned.

An essential element of preventing abuse by staff members is the detection, prosecution and punishment of misconduct. State institutions are obligated to document signs of abuse.⁷⁷ This is the only way the individual concerned can prove their allegations.

2.2.10 – Interpretation

It became clear from various conversations that the video-based interpreting system at the Pforzheim facility for custody awaiting deportation is not used in all cases. Apparently, staff members or other detainees serve as interpreters during conversations with social workers.

To ensure confidentiality and correct translations, the interpreting system must be used whenever there are language problems.

2.2.11 – Psychological and psychiatric care

Most of the visited facilities for custody awaiting deportation did not have their own psychologists on site.

Generally speaking, there is a considerable need for psychological care in such facilities, as the detainees have frequently undergone traumatic experiences while fleeing their country of origin, and their deportation back is often accompanied by feelings of fear and anxiety.

It must be ensured that adequate psychological or psychiatric care is provided where there is evidence of psychological damage.

⁷⁷ Resolution adopted by the General Assembly of the United Nations of 22 February 2001, A/RES/55/89, URL: https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/55/89&Lang=E; Holger Furtmayr/ Andreas Frewer, "Das Istanbul-Protokoll und die Dokumentation von Folter", MenschenRechtsMagazin no. 2/2008, p. 155 – 167, URL: https://publishup.uni-potsdam.de/opus4-ubp/frontdoor/deliver/index/docId/3417/file/mrm13_02_online_2009_09_15.pdf

3 – RESIDENTIAL CARE AND NURSING HOMES

In 2019, the National Agency visited six residential care and nursing homes in Bavaria, Berlin, Bremen, North Rhine-Westphalia and Schleswig-Holstein.

3.1 – POSITIVE EXAMPLES

The National Agency highlighted the following positive examples during its visits:

In the visited residential care and nursing homes, the National Agency frequently noted that the residents were treated very respectfully. For example, residents were given the opportunity to participate in the day-to-day running of their home through regular residents' meetings in which their wishes and ideas were heard.

Due to the high proportion of people with dementia, targeted activities such as memory training are to be welcomed.

The residents are supported in their everyday life in the home through clearly arranged signs in the living areas and barrier-free access to information.

Thanks to specialist care staff with a supplementary qualification for gerontological psychiatry, persons with gerontological psychiatric deficiencies can be cared for according to their individual needs.

As part of its occupational health management, one facility offers measures to ease the burden on staff. This can help to increase staff satisfaction and prevent absences due to illness.

3.2 – FINDINGS AND RECOMMENDATIONS

3.2.1 – Accessibility

Some residential care and nursing homes lacked the necessary accessibility.

At one facility, some of the mirrors in the sanitary areas were mounted so high up on the wall that wheelchair users would be hardly able to look into them. At another facility, the door to the courtyard could only be opened using a door handle that was difficult to reach for wheelchair users.

Residential care and nursing homes should be barrier-free.

3.2.2 – Ability to lodge a complaint

Several facilities failed to display contact details for the responsible supervisory authority or information on external advisory or complaints bodies. In some, this information was not barrier-free.

In order to effectively protect residents from violations of their rights, it should be possible for them, their family members, and their legal representatives to access information about their rights, including from external bodies. They should also have the opportunity to make complaints if necessary.

Complaints boxes where residents and their relatives can submit anonymous suggestions and complaints within the facility also appear useful.

3.2.3 – Deprivation of liberty

Consent

Affected persons may give their consent to the application of measures involving deprivation of liberty. To do so, they must be capable of giving their consent and must have been informed of alternatives and the possibility of revoking their consent any time.

At some facilities, however, consent to measures involving deprivation of liberty was only given orally and was not documented in writing.

Care must be taken to ensure that consent to measures involving deprivation of liberty is

legally valid. Clear documentation is therefore necessary. Furthermore, the person concerned should be asked at regular intervals whether the consent they gave is still valid.

Preventing residents from leaving a living area

In some living areas, measures were encountered that could prevent residents with dementia from leaving an area or facility even though no placement orders or orders for measures involving deprivation of liberty had been issued.

For example, doors or elevators were hidden behind photographic wallpaper, door knobs were installed in unusual ways and push buttons for doors were out of reach of wheelchair users.

Measures like these can make it more difficult or even impossible for the individuals concerned to leave the respective areas. Since this may constitute a deprivation of liberty, such measures should be subject to court review.

3.2.4 – Premises

During the visit, it was noted in some facilities that corridors and common rooms were unclean or in need of renovation. The delegation also **received some complaints that the residents' rooms were insufficiently cleaned.** There was also a bad smell in several living areas.

In addition, several facilities have a high number of double rooms. In the view of the National Agency, this no longer meets modern standards. Living together with a stranger restricts the privacy of residents and can place a psychological strain on them.

Pursuant to the Act on Residence and Participation of North Rhine-Westphalia [*Wohn- und Teilhabegesetz, WTG*], for example, double rooms may only account for 20% of the total rooms in existing facilities providing residential care. New facilities must consist of single rooms only.

Care must be taken to ensure that the immediate surroundings of residents are appropriate and homely. Where facilities are renovated or newly built, sufficient numbers of single rooms should be created as the generally preferred type of accommodation.

3.2.5 – Legality of medication

Some facilities reported that guardians responsible for health care are sometimes only involved in changes of treatment or medication retrospectively, even if the person concerned is incapable of providing consent.

However, the purpose of health care guardianship is to protect affected persons from receiving treatment or medication without legally valid consent. Responsibility lies with the attending physician, who should comprehensively inform guardians in advance about any planned changes, possible consequences and alternatives, and who should respect the decisions taken by guardians on the basis of this information. For this to be possible, the various actors must at least be aware of each **other and have each other's contact details.**

Therefore, procedures should be implemented that enable physicians and guardians to work together effectively. Medication without valid consent is not permissible.

4 – FEDERAL AND LAND POLICE

In 2019, the National Agency visited ten police stations, including seven *Land* police stations in Baden-Württemberg, Brandenburg, Hamburg, Hesse and Thuringia as well as three federal police stations in Brandenburg, Hamburg and North-Rhine Westphalia.

4.1 – POSITIVE EXAMPLES

The National Agency highlighted the following positive examples during its visits:

As a rule, police officers in Brandenburg and Thuringia wear name badges. Officers at the visited police station in Baden-Württemberg wore name badges on a voluntary basis. Name badges can have a preventive effect, as they make it possible to identify officers. Furthermore, a name badge allows the officers to be addressed personally by the person taken into custody, which can have a positive effect on any interactions between them.

In the event of suicide attempts or self-harm at Hamburg-Altona Federal Police Station, an officer is placed by the open door of the custody cell until the emergency psychiatric service arrives. This measure aims to calm down the individual concerned. At the visited federal police station in Baden-Württemberg, persons taken into custody are immediately transferred to a psychiatric facility if they show signs of mental illness. These approaches can reduce or prevent the use of special security measures.

At the visited federal police station in Hesse, sufficient food is held in stock for persons taken into custody. Düsseldorf Federal Police Station has a petty cash box that makes it possible to procure food for individuals who do not have any cash of their own.

4.2 – FINDINGS AND RECOMMENDATIONS

The visited facilities were given recommendations *inter alia* on the following topics:

4.2.1 – Furnishing and fittings in custody cells

In both federal and *Land* police stations, shortcomings were found with regard to the furnishings and fittings of custody cells. These included a lack of mattresses and smoke detectors, non-adjustable lighting, poor ventilation and no access to daylight. At one station, there were no regular checks to verify whether the emergency call system in the custody cells was working. Furthermore, one of the police stations visited does not have an emergency exit.

The conditions in police custody cells, including furnishings and fittings, must uphold the human dignity of detainees. Every custody cell should be equipped with a smoke detector, an emergency button, sufficient ventilation, adjustable lighting, a non-flammable, washable mattress, a blanket and a pillow. Where a custody cell is only equipped with a low bed, it should have additional seating at standard height. Where the custody suite is located separately from the guard room or if it is in another part of the building, an intercom system is advisable. Checks should be carried out to ensure that the intercom and the emergency call system are working before each occupancy of a custody cell. Access to daylight is recommended for every custody cell, including those intended for short-term custody.

4.2.2 – Instruction of rights

In the view of the National Agency, the Hamburg Act to Protect Public Safety [*Gesetz zum Schutz der öffentlichen Sicherheit*] lacks necessary provisions in the following areas: It does not expressly stipulate the right to call in a physician or to consult a lawyer, and it does not provide for written instruction to be given to the person taken into custody.

Individuals deprived of their liberty must be informed without delay, in writing and in a language they understand of the reasons underlying the measure and of their rights. This

includes the right to contact relatives and a lawyer as well as the right to a medical examination.⁷⁸ These are essential elements of proceedings in a state governed by the rule of law⁷⁹ and serve to prevent torture and other cruel, inhuman or humiliating treatment.⁸⁰ If a person was unable to be instructed about their rights when they were brought into custody, this must be done at the earliest possible time. It must be documented that instruction has been given.

4.2.3 – Strip-searches

In several of the visited federal and *Land* police stations, the National Agency found that individuals were subjected to strip-searches involving a visual inspection of the genital area upon entering police custody. At one police station, officers reported that strip-searches of women taken into custody are conducted by two male officers if there are no female officers on duty.

Strip-searches constitute a serious interference with general rights of personality.⁸¹ It should therefore be decided on a case-by-case basis whether there are indications of a danger to public security and order that would justify a strip-search. Any such measures must adhere to the principle of proportionality.⁸² Strip-searches must only be conducted by people of the same sex.⁸³ The reasons for conducting a strip-search should be clearly documented. Furthermore, the search should be conducted as respectfully as possible, for example involving two stages where half the body remains dressed in each stage.

4.2.4 – Visibility of toilets

At Düsseldorf Federal Police Station, the partitioned sanitary area in custody cells has a peephole through which the toilet is fully visible. The National Agency was already assured during its visit that the peephole would immediately be

taped over to protect the privacy of the individuals concerned.

Persons placed in police custody have equal rights to privacy. Monitoring an individual while they are using the toilet represents a considerable interference with their rights of personality. Monitoring of a person using the toilet should only be permitted in carefully assessed, substantiated and clearly documented individual cases where there is an acute danger of self-harm or suicide. In such cases, only persons of the same sex should be allowed to carry out the monitoring.

4.2.5 – Shackles

At the visited federal and *Land* police stations, metal and plastic handcuffs were used.

These can cause serious injuries.

In order to protect the right to physical integrity, any shackling in custody should be carried out using textile hand restraints.⁸⁴

4.2.6 – Physical restraint

Physical restraint constitutes a severe interference with fundamental rights and carries the risk of health impairments.⁸⁵ Back in 2015, the National Agency recommended that no physical restraints be applied in police custody. The CPT also called upon the Federal Republic of Germany to put an end to the practice of physical restraint.⁸⁶

However, *Land* police stations in several Federal *Länder* still carry out measures of physical restraint.

Potsdam Police Station reported that, in 2018, physical restraints were applied in 15 cases. This involved the use of metal handcuffs which were attached at four points to the beds in the custody cells. One-on-one supervision by therapeutic personnel or care staff was not provided. The reason documented in one of the cases was that the person concerned “resisted the officers”. The Brandenburg Police Act

⁷⁸ CPT/Inf (2002) 15, margin no. 42

⁷⁹ Pieroth/Schlink/Kniesel, *Polizei- und Ordnungsrecht*, 5th edition, § 17 margin no. 12

⁸⁰ CPT/Inf (2012) 6, margin no. 21

⁸¹ Federal Constitutional Court, order of 5 March 2015, file no.: 2 BvR 746/13, margin no. 33

⁸² Cologne Administrative Court, judgment of 25 November 2015, file no.: 20 K 2624/14, juris margin no. 115 et seqq.

⁸³ Cf. section 81 d of the Code of Criminal Procedure

⁸⁴ An example of this can be seen in the model used by FRONTEX during deportation flights.

⁸⁵ Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 502/16, margin no. 71

⁸⁶ CPT/Inf (2017) 13, margin no. 33.

[*Brandenburgisches Polizeigesetz*] does not provide a legal basis for physical restraints.

Two police stations visited in Hamburg have a "secure room". These are equipped with a wooden plank bed to which a person can be tied at five points using a strap-based system. According to information provided by officers on site, disposable blankets are placed under the individual concerned if this is deemed necessary in individual cases. There is no one-on-one supervision. In addition, at one of the two police stations, a doctor is only involved in individual cases. Court permission is not sought. The Act to Protect Public Safety and Order [*Gesetz zum Schutz der öffentlichen Sicherheit und Ordnung*] does not provide a basis for authorising the application of physical restraints.

The requirements established by the Federal Constitutional Court in its judgment of 24 July 2018 are not being complied with.

In the view of the National Agency, physical restraints should not be applied at all in police custody.

4.2.7 – In-service training

The National Agency noted that some *Länder* do not offer any (in-service) training specifically on custody-related issues.

However, the work in custody facilities differs **in many respects from officers' usual tasks**. Training on the rights of persons deprived of their liberty, intercultural skills, suicide prevention and de-escalation can strengthen the competence and confidence needed for the special circumstances of custody.

It is recommended that training opportunities in these areas be developed further.

4.2.8 – Custody documentation

Custody documentation at many federal and *Land* police stations was inadequate. Moreover, not all of the entries documenting checks of persons in custody were signed. Furthermore, the custody record books were not always regularly checked by senior officers.

Several police stations do not carry out regular evaluations of special incidents. The clear documentation of special incidents and the associated security measures, as well as the

subsequent evaluation of these security measures, serve not only to improve recollection of the incidents and the frequency with which they occurred, but also to prevent such security measures from being applied disproportionately.

In order to protect individuals in custody and staff, all custody-related information must be fully and clearly documented and signed by name. Supervisors should verify at regular intervals whether custody records are being kept correctly. These checks must also be documented. Furthermore, the documentation of special security measures should be recorded centrally and evaluated on a regular basis.

4.2.9 – Size of custody cells

All single-occupancy custody cells at the visited police stations in Hamburg had a floor space of less than 4 square metres.

In the custody area of a police station in Hesse, a single-occupancy custody cell had a length of 4.5 metres and a width of 1.44 metres.

According to the National Agency's current standards, a single-occupancy custody cell must have a floor space of at least 4.5 square metres. Facing walls must be separated by a distance of at least two metres, and the ceiling must be considerably higher than two metres. This represents an absolute minimum requirement.

The custody area of a police station in Erfurt has a multi-occupancy cell designed for up to 15 persons with a floor space of approximately 15 square metres.

The National Agency takes the view that 3.5 square metres of floor space per person in a multi-occupancy police custody cell is an absolute minimum requirement that must not be undercut under any circumstances.

Cells that do not comply with these minimum requirements must not be used.

4.2.10 – CCTV monitoring

At the visited police stations in Hamburg, all custody cells are equipped with CCTV monitoring which is active at all times. Inside the cells, there was nothing to indicate that monitoring was taking place. Information to this effect was only provided in the corridors outside the cells. It is not possible for the affected

individuals to tell from the cameras themselves whether or not they are switched on.

CCTV monitoring should only be used in police stations in individual cases where it is imperative for the protection of the person concerned. The reasons for the use of CCTV monitoring should be documented. In addition, the person concerned must be informed (e.g. through pictogrammes) that monitoring is taking place. The mere fact that the camera is visible is not sufficient. It should also be possible for the person concerned to discern whether the camera is running.

4.2.11 – Spatial conditions

At some police stations, the current spatial conditions can lead to potentially dangerous situations for persons taken into custody.

Hamburg-Altona Federal Police Station does not have an emergency exit. It is urgently necessary to provide a secure escape route for everyone present in the station.

Access to Düsseldorf Federal Police Station is only possible via a staircase or via an elevator. Moving agitated persons up a staircase can lead to a higher risk of injury. Due to technical problems, the elevator has already stalled several times. On one specific occasion, this led to two police officers and one individual in custody being stuck in the elevator together. It is urgently necessary to create secure access to the custody area at Düsseldorf Federal Police Station.

4.2.12 – Respectful treatment

It was observed during the visits to several police stations that some officers enter custody cells without indicating their presence, for example by knocking on the door.

Persons placed in police custody are entitled to have their privacy respected. To this end, staff members should generally indicate their presence by knocking on the door before entering a room.

4.2.13 – Independent complaints and investigation office

Access to an external independent complaints and investigation office is not always guaranteed.

A key element in preventing abuse by police officers is the detection, prosecution and punishment of police misconduct. Independent complaints and investigation offices should be perceived as unbiased points of contact by injured parties, witnesses and police officers. Furthermore, they should serve to increase confidence in the rule of law. Allegations against police officers should therefore be investigated by independent bodies.

4.2.14 – Placement of minors

At one visited *Land* police station in Hamburg, officers reported that juveniles were placed in a room equipped with a restraint bed. The visible presence of a restraint bed can feel threatening, especially to minors, and may cause feelings of insecurity and anxiety. Situations like this must be avoided.

4.2.15 – Confidentiality of conversations

At one federal police station, all telephone calls by individuals in custody take place in the presence of police officers. Cells at this station do not have telephones, nor is there a cordless telephone available.

At the two *Land* police stations in Hamburg, individuals in custody could only have telephone conversations in the presence of police officers.

Confidential conversations between the accused party and his/her lawyer are essential in order to mount an effective defence and must therefore be allowed to take place. Equally, it should be possible to have confidential conversations with doctors or trusted persons, unless security concerns or ongoing investigations dictate otherwise.

4.2.16 – Weapons in custody

In federal and *Land* police stations, some officers carried firearms while bringing individuals into custody or inspecting the custody cells. At one station, the officers carried pepper spray.

Because of the risks involved, police officers should refrain from carrying weapons or pepper spray in the custody area. This is stipulated by an internal Federal Police provision. Furthermore, due to the significant health risks involved, the

National Agency takes the view that the use of pepper spray in confined spaces is not a proportionate measure under any circumstances and must therefore be avoided.

1 – YOUTH DETENTION

In 2019, the National Agency visited the youth detention facility in Remscheid, North-Rhine Westphalia.

1.1 – POSITIVE EXAMPLES

The National Agency highlighted the following positive example during its visits:

At Remscheid Youth Detention Centre, extensive educational measures are offered to juveniles on an individual or group basis. A wood workshop offers the detained juveniles the opportunity to engage in a purposeful activity. Computers with internet access are available – for example, in order to apply for jobs.

1.2 – FINDINGS AND RECOMMENDATIONS

The visited facility was given recommendations on the following main topics:

1.2.1 – Specially secured cells

Visibility of toilets

The CCTV monitoring of specially secured cells also covers the toilet area, which is shown on the monitor without pixelation.

Monitoring detainees while they are using the toilet represents a considerable interference with their personality rights. CCTV cameras must therefore be fitted in such a way that the toilet area is either not visible on the monitor at all or, alternatively, is only shown in the form of pixelated images. If deemed necessary in individual cases following careful consideration, it may be possible to permit unrestricted monitoring of detainees held in specially secured cells due to an acute danger of self-harm or suicide. The reasons for such a decision must be clearly documented. In addition, if a toilet area is indeed covered by CCTV monitoring and is not pixelated, only persons of the same sex as the detainee may carry out the monitoring.

CCTV monitoring

When occupied, the specially secured cells are subject to constant CCTV monitoring. Inside the cells, there was nothing to indicate whether the cameras were running.

CCTV monitoring should only be used in individual cases where it is imperative to protect the person concerned. The reasons for CCTV monitoring must be documented. In addition, the person concerned must be informed in a suitable manner (e.g. through pictogrammes) that monitoring is taking place. Furthermore, it must be possible for the person concerned to discern whether the camera is running.

Security

The specially secured cells are equipped with an emergency button which detainees can use to attract attention if necessary. However, there are no regular checks to verify whether the emergency call system is working before each occupancy of the custody cells.

It must be ensured that persons transferred to specially secured cells are always able to call for help using the emergency call system. Therefore, checks should be carried out before each occupancy to verify whether the emergency call system is working.

1.2.2 – Outdoor exercise

In order to exercise outside, detainees are allowed to use the outdoor sports facilities and garden every day between 7:45 and 9:15 am. This is less than the legally prescribed minimum of two hours.

Detainees should be allowed to spend at least the legally prescribed amount of time outside every day.

2 – PRISONS

In 2019, the National Agency visited ten prisons. In Bavaria, it visited the prisons in Bamberg, Kaisheim, Munich, Nuremberg and St. Georgen-Bayreuth; in Baden-Württemberg, it visited the prisons in Mannheim and Offenburg; in Berlin, it visited Berlin-Moabit Prison; in Rhineland-Palatinate, it visited Diez Prison and in Thuringia, it visited Tonna Prison. The visits to the prisons in Diez, Nuremberg and Tonna were follow-up visits to see whether and to what extent previous objections and recommendations had been dealt with.

2.1 – POSITIVE EXAMPLES

The National Agency highlighted the following positive example during its visits:

At St. Georgen-Bayreuth Prison, prisoners are allowed to have visitors even on Sundays. This extension of visiting hours makes it easier for prisoners to maintain direct contact, especially with children and relatives who have jobs. Berlin-Moabit Prison makes it easier for prisoners to maintain contact with the outside world by allowing them to make unlimited phone calls in their cells at their own cost.

In the past several years, Bavaria has set up video-based interpreting systems in numerous prisons through which sworn interpreters for all necessary languages can be made available at short notice. This is a welcome addition, since it allows communication difficulties to be overcome while ensuring that the conversation itself can be kept confidential.

In order to protect prisoners' privacy, drug tests at Berlin Moabit Prison take the form of saliva tests. This removes the need to submit a urine sample under the observation of general prison officers, which prisoners may consider degrading.

As a general rule, no physical restraints are applied at Bamberg and Mannheim Prisons. At Kaisheim Prison, no physical restraints have been applied in the last two years. This is particularly positive considering the high degree of interference associated with this measure.

The mother-and-child unit at Munich Prison was furnished in a way that is both functional and homely. The children living there are not only cared for on the prison premises; they are also allowed to visit public playgrounds with the childcare workers, for example. Their mothers can also take part in these activities if they meet the relevant requirements. Mannheim Prison regularly holds father-child days. These kinds of **measures can improve prisoners' relationships** with their children in spite of their prison sentence.

Any programmes that enable prisoners to engage in purposeful activities are also considered positive. One such example is the "Bee Project" at Offenburg Prison, which gives prisoners the opportunity to take up beekeeping as a hobby.

2.2 – FINDINGS AND RECOMMENDATIONS

The visited facilities were given recommendations *inter alia* on the following topics:

2.2.1 – External contact

The prisons in Kaisheim, Munich and St. Georgen-Bayreuth only allow prisoners to have telephone conversations once a month upon application or in urgent cases. This means that Bavaria is the only *Land* where, apart from actual visits, the external contacts of prisoners are mainly limited to letters.

In the view of the National Agency, this approach is both outdated and inappropriate. Maintaining contact with the outside world **serves to facilitate prisoners' social rehabilitation** and helps them reintegrate into their life outside of prison after their release. Short detention periods do not justify such limited contact to relatives either.

Bavarian prisons should allow prisoners to have regular telephone conversations with relatives, as is common in other *Länder*.

2.2.2 – Furnishings and design

Several prisons appeared run-down and in need of renovation in various areas.

In some cases, the walls of the prison cells at Berlin-Moabit Prison were extremely dirty and the furniture was worn. Some cells only had very small windows that were installed in a high position, greatly limiting the view outside. Similarly, Mannheim Prison did not meet current standards in several areas and was generally in great need of renovation and refurbishment.

Any necessary renovation measures should be carried out swiftly and in accordance with applicable standards to create a living situation that ensures humane detention conditions.

Most of the specially secured cells inspected by the delegation were only equipped with a low bed or a mattress on the floor. Upon enquiry, the National Agency was informed that seating is not provided even if an individual is placed in such a cell for a longer period of time.

Where the period of detention lasts for several hours or days, it is inhumane to force prisoners to stand or sit on the floor. Solutions should therefore be found to allow prisoners to sit in a normal position. At similar facilities, the National Agency observed that covered foam dice were used as seating.

2.2.3 – Physical restraint

At several prisons, there was incomplete documentation of physical restraint measures. For example, there was no documentation of the less severe measures that had previously been tried without success, and there was no information about debriefing sessions with the affected persons following such measures.

The use of physical restraint constitutes a **serious interference with a person's liberty** (Article 2 para. 2, second sentence, in conjunction with Article 104 of the Basic Law). The ordering and application of physical restraints is therefore subject to strict conditions. The use of physical restraint must be open to scrutiny, which is why the entire process must be documented comprehensively and completely. This includes the documentation of

medical checks and of the debriefing held with the person concerned.

2.2.4 – Living conditions in prison

At Berlin-Moabit Prison, the delegation of the National Agency was told that prisoners are frequently only allowed to leave their cells for one hour per day for outdoor exercise. Out-of-cell times at Bamberg Prison are also very short. Prisoners are given just one hour to exercise in the prison yard and one hour of out-of-cell time, during which they also have to shower.

According to the Higher Regional Court, being locked up for 23 hours per day can constitute a violation of human dignity.⁸⁷

Life in prison should be aligned as far as possible with general living conditions. This is impossible if prisoners are locked up for 23 hours per day.

2.2.5 – Privacy

Drug tests

At most prisons, drug tests are conducted on urine samples that have to be passed while under the observation of non-medical staff. This procedure considerably interferes with the privacy of the persons concerned.

During its visits, the National Agency encountered various drug testing methods which minimised the degree of interference with **prisoners' privacy, such as the use of a marker system**. With this procedure, it is no longer necessary to observe the passing of the urine sample. At least one alternative method of drug testing should be available so that prisoners can choose the method they find to be the least intrusive.

Showers

The communal showers at Kaisheim, Berlin-Moabit, Nuremberg and Offenburg Prisons did not have any partitions. At all of these prisons, prisoners are only allowed to shower alone in exceptional cases.

⁸⁷ Cf. Berlin Higher Regional Court, judgment of 17 February 2015, file no.: 9 U 129/13

In order to sufficiently protect their privacy, prisoners should be given the opportunity to shower alone if they wish to do so. At least one shower should be partitioned off in communal shower rooms.

Strip-searches

During their prison visits, the delegation was told that all new prisoners are strip-searched upon their arrival.

According to the Federal Constitutional Court, strip-searches involving a visual **inspection of the prisoners' genital area** represent a severe interference with their general right of personality.⁸⁸ They must not be carried out routinely or in the absence of case-specific suspicions.⁸⁹ To satisfy this requirement, general strip-search orders must allow for exceptions if the principle of proportionality so demands.

It must therefore be ensured that orders for strip-searches involving a visual inspection of the genital area always allow officers to exercise discretion in assessing whether or not the measure is necessary. Officers must be made aware of this.

If it is indeed necessary that the prisoner undress fully, then the search should be conducted in a respectful procedure, for example involving two stages where half the body remains dressed in each stage. This serves to protect the human dignity of those concerned, as they are not forced to stand in front of prison staff completely undressed. Staff members of the opposite sex to the detainee must not be present during such searches.⁹⁰

Visibility of toilets

At all Bavarian prisons visited in 2019, CCTV monitoring in the specially secured cells also covered the toilet area, which was shown on the monitoring screen without pixelation.

Monitoring prisoners while they are using the toilet represents a considerable interference

with their rights of personality. Prisons in other *Länder* found appropriate solutions for this problem. For example, the toilet area in a specially secured cell at Frankfurt Prison is **roughly pixelated so that the prisoners' movements and silhouette can still be made out** despite the pixelation. This protects the privacy of those affected and, at the same time, provides sufficient visibility to enable a timely intervention if there is a risk of self-harm.

CCTV cameras must be fitted in such a way that the toilet area is either not visible on the monitor at all or, alternatively, is taped over or only shown in the form of pixelated images. If deemed necessary in carefully considered individual cases, it may be possible to permit unrestricted monitoring of prisoners held in specially secured cells due to an acute danger of self-harm or suicide. The reasons for such a decision must be clearly documented. In addition, if a toilet area is indeed covered by CCTV monitoring and is not pixelated, only persons of the same sex as the detainee may carry out the monitoring.

Multiple occupancy of single-occupancy cells

At the prisons in Mannheim, Offenburg and Tonna, single-occupancy cells were occupied by two people and double-occupancy cells were occupied by three people, even though the size of the cells was insufficient for this.

In the view of the National Agency, a single-occupancy cell must have a floor space of at least six square metres, excluding the sanitary area, in order for detention conditions to be humane. For multiple-occupancy, a further four square metres of floor space must be added to this figure for each additional person, excluding the sanitary area.

In the Bavarian prisons in Bamberg, Kaisheim and St. Georgen-Bayreuth, multiple-occupancy cells were occupied by up to eight persons. Even if the size of the cells is sufficient, such a **high level of occupancy can interfere with prisoners' privacy and lead to conflicts among them.**

Furthermore, at St. Georgen-Bayreuth Prison, it was always possible to see into these multiple-occupancy cells from the hallway through a window next to the cell door. This violates the personality rights of those concerned.

⁸⁸ Federal Constitutional Court, order of 5 March 2015, file no.: 2 BvR 746/13, Jris, margin no. 33 – 35

⁸⁹ Federal Constitutional Court, order of 10 July 2013, file no.: 2 BvR 2815/11, margin no. 16, with reference to ECHR, *van der Ven v. the Netherlands*, judgment of 4 February 2003, Application no. 50901/99, margin no. 62

⁹⁰ Cf. section 84 (2), second sentence, of the Prison Act

The possibility of holding up to eight prisoners in one cell, as provided for in Article 20 para. 3 of the Bavarian Prison Act, must be viewed critically in terms of human rights.

It is the view of the National Agency that measures should be taken to allow for prisoners to generally be accommodated in single-occupancy cells.

Confidentiality of medical consultations

During conversations with prison doctors, the National Agency was informed that, in the event of language difficulties, prisoners or staff members who speak the same language are sometimes called in to translate if required.

Medical information must be treated confidentially. This is particularly true for medical consultations, which are subject to medical secrecy. Having staff members or other prisoners interpret is therefore not a suitable solution. In addition, there is a danger in such cases that medical terms or subject matter will not be translated correctly. For this reason, a professional interpreter must always be called upon to assist if language difficulties arise during medical consultations. This can be done via a video-based system, as has already been successfully established in several *Länder*.

3 – CHILD AND YOUTH WELFARE FACILITIES

In 2019, the National Agency visited three child and youth welfare facilities with closed units in Bavaria and Brandenburg. One of those visits was a follow-up visit.

3.1 – POSITIVE EXAMPLES

The National Agency highlighted the following positive examples during its visits:

Upon admission to the visited facilities, children and juveniles are informed in an age-appropriate manner, both orally and in writing, of their rights and obligations in the facility.

One of the visited child and youth welfare facilities does not implement lock-up or any other measures involving deprivation of liberty. The placement of juveniles in the facility is understood to be mandatory. Only in the event of an escape will the individual be returned to the facility by the police.

It was also noted positively in one facility that, in the event of linguistic difficulties with parents, it was not their children – who generally have sufficient knowledge of German – who were called in to assist, but professional interpreters. This helps the children and juveniles concerned to avoid possible conflict situations and ensures that the subject matter of conversations is translated correctly, which can have a positive impact on the course of the conversation.

3.2 – FINDINGS AND RECOMMENDATIONS

The visited facilities were given recommendations *inter alia* on the following topics:

3.2.1 – Possibilities for complaint

There are a number of ways for children and juveniles in these facilities to submit a complaint. However, the necessary contact details of the Youth Welfare Office or

ombudsperson were not always made readily available.

Children and juveniles must be in a position to submit complaints to a suitable complaint body. In addition to contact persons within the facility, it is important that an external ombudsperson exists who has no ties with the facility. It must be ensured that children and juveniles can contact such an ombudsperson easily and confidentially. Therefore, the complaint channels and all necessary contact details should be provided and explained to them when they are first admitted to the facility.

3.2.2 – Information on rights

In all of the facilities, the children and juveniles had been informed about the facility rules, but had not always been instructed about their rights.

Pursuant to Article 42 of the Convention on the Rights of the Child, State Parties have to make the principles and provisions of the Convention known, by appropriate and active means, to children and juveniles. This obligation is of particular importance in facilities where deprivation of liberty is an option. When being admitted to the facility, children and juveniles must therefore be informed in writing and in an age-appropriate manner about their rights.

3.2.3 – Cooperation with youth welfare offices

Some of the staff working at the facilities reported significant difficulties in their cooperation with youth welfare offices, which can have a negative impact on the treatment of juveniles. It was often difficult, staff reported, to organise care for juveniles following their placement in a facility – a situation which can lead to considerable uncertainty.

Cooperation between facilities and youth welfare offices ought to be improved.

VII APPENDIX

4 – CHRONOLOGICAL LIST OF VISITS

<i>Date</i>	<i>Visit</i>
09/01/2019	Psychiatric hospital (child and youth psychiatry), North-Rhine Westphalia
15/01/2019	Psychiatric hospital (Lippstadt Centre for Forensic Psychiatry), North-Rhine Westphalia
28/01/2019	Residential care and nursing home, Bavaria
28/01/2019	Dresden Customs Investigation Office (Leipzig office), Saxony
29/01/2019	St. Georgen-Bayreuth Prison, Bavaria
29/01/2019	Observation of a deportation procedure: Charter operation Leipzig/Halle – Nice (France)
13/02/2019	Bamberg Prison, Bavaria
13/02/2019	Psychiatric hospital (Bremen Centre for Forensic Psychiatry), Bremen
11/03/2019	Moabit Prison, Berlin
12/03/2019	Potsdam Federal Police Station, Brandenburg
26/03/2019	Observation of a deportation procedure: Charter operation Berlin Schönefeld – Pristina (Kosovo), Chisinau (Republic of Moldova)
26/03/2019	Berlin Customs Investigations Office (headquarters)
27/03/2019	Psychiatric hospital (Rostock Centre for Forensic Psychiatry), Mecklenburg-Western Pomerania
28/03/2019	Psychiatric hospital (child and youth psychiatry), Mecklenburg-Western Pomerania
04/04/2019	Residential care and nursing home, Schleswig-Holstein
05/04/2019	Residential care and nursing home, Schleswig-Holstein
12/04/2019	Child and youth welfare facility, Bavaria
15/04/2019	Psychiatric hospital (child and youth psychiatry), Hesse
15/04/2019	Psychiatric hospital (Merzig Centre for Forensic Psychiatry), Saarland
25/04/2019	Psychiatric hospital (Cologne Centre for Forensic Psychiatry), North-Rhine Westphalia
26/04/2019	Tonna Prison, Thuringia
30/04/2019	Observation of a deportation procedure: Charter operation Frankfurt/Main Airport – Ljubljana (Slovenia)
15/05/2019	Residential care and nursing home, Berlin
15/05/2019	Potsdam Police Station, Brandenburg
15/05/2019	Psychiatric hospital (Brandenburg an der Havel Centre for Forensic Psychiatry), Brandenburg
24/05/2019	Psychiatric hospital (Erlangen Centre for Forensic Psychiatry), Bavaria

11/06/2019	Hamburg-Altona Federal Police Station
12/06/2019	Observation of a deportation procedure: Individual measures, Hamburg Airport
17/06/2019	Erfurt-Süd Police Station, Thuringia
17/06/2019	Erfurt-Nord Police Station, Thuringia
17/06/2019	Hamburg <i>Land</i> Police, Station 23
18/06/2019	Hamburg <i>Land</i> Police, Station 11
26/06/2019	Nuremberg Prison, Bavaria
01/07/2019	Munich Prison, Bavaria
02/07/2019	Child and youth welfare facility, Bavaria
11/07/2019	Pforzheim Facility for Custody Awaiting Deportation, Baden-Württemberg
23/07/2019	Diez Prison, Rhineland-Palatinate
23/07/2019	Munich Customs Investigation Office, Nuremberg branch, Bavaria
23/07/2019	Munich Customs Investigation Office, Bavarian Criminal Police Office
24/07/2019	Munich Customs Investigation Office (headquarters), Bavaria
24/07/2019	Observation of a deportation procedure: Charter operation Munich Airport – Lagos (Nigeria)
27/07/2019	Psychiatric hospital (Hadamar Centre for Forensic Psychiatry), Hesse
08/08/2019	Psychiatric hospital (Bernburg Centre for Forensic Psychiatry), Saxony-Anhalt
08/08/2019	Dresden Customs Investigation Office (headquarters), Saxony
13/08/2019	Erding Facility for Custody Awaiting Deportation, Bavaria
27/08/2019	Psychiatric hospital (general psychiatry), Berlin
04/09/2019	Facility for police custody and custody awaiting deportation, Bremen
05/09/2019	Residential care and nursing home, Bremen
10/09/2019	Offenburg Prison, Baden-Württemberg
11/09/2019	Mannheim Prison, Baden-Württemberg
16/09/2019	Heidelberg-Mitte Police Station, Baden-Württemberg
17/09/2019	Psychiatric hospital (general psychiatry), Baden-Württemberg
25/09/2019	Child and youth welfare facility, Brandenburg
26/09/2019	Observation of a deportation procedure: Charter operation Berlin Schönefeld – Moscow (Russia)
26/09/2019	Facility for Custody to Secure Departure at Berlin-Schönefeld Airport, Brandenburg
01/10/2019	Kaisheim Prison, Bavaria
15/10/2019	Remscheid Youth Detention Centre, North-Rhine Westphalia
05/11/2019	Psychiatric hospital (Neustadt in Holstein Centre for Forensic Psychiatry), Schleswig-Holstein

08/11/2019	Psychiatric hospital (child and youth psychiatry), Hesse
13/11/2019	Rüsselsheim Police Station, Hesse
13/11/2019	Düsseldorf Federal Police Station, North-Rhine Westphalia
15/11/2019	Psychiatric hospital (Leipzig Centre for Forensic Psychiatry), Saxony
20/11/2019	Observation of a deportation procedure: Charter operation Nuremberg – Kosovo
28/11/2019	Ingelheim Facility for Custody to Secure Departure, Rhineland-Palatinate
29/11/2019	Residential care and nursing home, North-Rhine Westphalia
02/12/2019	Berlin Customs Investigations Office (headquarters)

5 – MEMBERS OF THE FEDERAL AGENCY

<i>Name</i>	<i>Official title</i>	<i>Since</i>	<i>Position</i>
Klaus Lange-Lehngut († 19/10/2019)	Senior civil servant and prison director (retd)	12/2008	Director
Ralph-Günther Adam	Senior civil servant and prison director (retd)	06/2013	Deputy Director

6 – MEMBERS OF THE JOINT COMMISSION

<i>Name</i>	<i>Official/professional title</i>	<i>Since</i>	<i>Position</i>
Rainer Dopp	State Secretary (retd)	09/2012	Chair
Petra Heß	Employee of Thuringia State Chancellery	09/2012	Member
Dr Helmut Roos	Senior civil servant (retd)	07/2013	Member
Michael Thewalt	Senior civil servant and prison director (retd)	07/2013	Member
Dr Monika Deuerlein	Certified psychologist [Dipl.-Psy.]	01/2015	Member
Margret Osterfeld	Psychiatrist, psychotherapist (retd)	01/2015	Member
Petra Bertelsmeier	Senior public prosecutor (retd)	01/2019	Member
Dr Werner Päckert	Senior civil servant and prison director (retd)	01/2019	Member

7 – SECRETARIAT STAFF

<i>Name</i>	<i>Professional title / position</i>	
Christina Hof	Political scientist (M.A.)	Head of Specialist Services (until 09/2019)
Jennifer Trunk	Fully-qualified lawyer [<i>Rechtsassessorin</i>], specialist in European law	Deputy Head of Specialist Services
Elisabeth Eckrich	Nursing educator (B.A)	Academic Assistant
Barbara Pachmann	Certified medical educator [<i>Diplom-Medizinpädagogin</i>]	Academic Assistant
Sofie Sonntag	Fully-qualified lawyer [<i>Rechtsassessorin</i>]	Academic Assistant (until 11/2019)

Dr. Sarah Teweleit	Lawyer (LL.M.)	Academic Assistant (as of 05/2019)
Katja Simon	Public administration specialist [<i>Verwaltungsfachwirtin</i>]	Administrative Department
Jill Waltrich	Management assistant in office communication	Secretariat

8 – ACTIVITIES IN THE PERIOD UNDER REVIEW

<i>Date</i>	<i>Location</i>	<i>Activity</i>
17 January 2019	Andernach	Speech at the forensics hearing before the Rhineland-Palatinate <i>Landtag</i>
24 January 2019	Berlin	Information meeting with Dr Berringer (Federal Ministry of Health)
12 February 2019	Berlin	Consultation meeting with the Federal Ministry of Justice and Consumer Protection to prepare for the CAT review
16 February 2019	Kassel	Participation in the Amnesty International expert conference “ Human rights violations against individuals with mental illness, epilepsy or mental disabilities ” [“ <i>Menschenrechtsverletzungen an Menschen mit psychiatrischen Erkrankungen, Epilepsie und geistigen Behinderungen</i> ”]
1 March 2019	Munich	8. “ Werdenfelser Weg ” conference on deprivation of liberty of minors, problems and solutions
7-8 March 2019	Emden	Speech at the ackpa Annual Meeting
12 March 2019	Berlin	Information meeting with Division B2 of the Federal Ministry of the Interior, Building and Community
20 March 2019	Düsseldorf	Speech at the joint workshop on corruption in the health care sector for police, judiciary and tax authorities
28 March 2019	Berlin	Expert meeting, Open-ended United Nations Working Group on Ageing
1-5 April 2019	Bochum	Speech at the International Spring School - Human Rights and Mental Health
10 April 2019	Hanover	Participation in the Human Rights Working Group of the <i>Aktion Psychisch Kranke e. V.</i> Association for Individuals with Mental Disorders
29 April 2019	Berlin	Presentation of the National Agency at an event of the Friedrich Naumann Foundation
7 May 2019	Altenholz	Lecture at the University of Applied Sciences for Administration and Service Altenholz [<i>Fachhochschule für Verwaltung und Dienstleistung Altenholz</i>]

14 May 2019	Berlin	Reception marking the 10-year anniversary of the National Agency for the Prevention of Torture and the publication of the 2018 report
23-24 May 2019	Bonn	Lecture at the annual psychiatry conference of the Federal Protestant Association of Care for the Disabled [<i>Bundesverband evangelische Behindertenhilfe e. V.</i>]
05 June 2019	Berlin	Expert hearing before the Human Rights Committee
11 June 2019	Hanover	Participation in the Human Rights Working Group of the <i>Aktion Psychisch Kranke e. V.</i> Association for Individuals with Mental Disorders
10 July 2019	Wiesbaden	Information meeting with EVIM GmVH
21-26 July 2019	Rome	Lecture at the International Academy of Law and Mental Health
5 August 2019	Hanover	Participation in the Human Rights Working Group of the <i>Aktion Psychisch Kranke e. V.</i> Association for Individuals with Mental Disorders
24 September 2019	Berlin	Information meeting with the Monitoring Mechanism for the Convention on the Rights of the Child
24-25 September 2019	Potsdam	Lecture, Gesundheit Berlin-Brandenburg e.V.
18 October 2019	Bremen	Participation in the Forensics Expert Committee of the German Society for Psychiatry, Psychotherapy and Nervous Diseases [<i>Deutsche Gesellschaft für Psychiatrie und Psychotherapie, Psychosomatik und Nervenheilkunde e. V.</i>]
23-25 October 2019	Zürich	Exchange of experiences between German-speaking NPMs
26 October 2019	Berlin	Presentation of the National Agency during the seminar “Violence in prisons – an analysis” [<i>“Gewalt in Gefängnissen hinterfragen”</i>]
28-30 October 2019	Berlin	Participation in the 2019 conference of the <i>Aktion Psychisch Kranke e. V.</i> Association for Individuals with Mental Disorders
4-6 November 2019	Strasbourg	30. CPT Anniversary
8 November 2019	Magdeburg	Hearing before the Committee on Law, Constitution and Equality of the <i>Landtag</i> of Saxony-Anhalt
13 November 2019	Berlin	Presentation of the 2017 and 2018 Annual Reports before the Human Rights Committee
14 November 2019	Bonn	Information meeting with the Central Customs

Authority

18-19 November 2019	Sofia	Expert meeting in connection with the project “Working towards harmonized detention standards in the EU – the role of NPMs”
19-20 November 2019	Berlin	Annual academic conference of the German Youth Institute [<i>Deutsches Jugendinstitut</i>]
3-4 December 2019	Nuremberg	Expert conference “Prison safety”
12 December 2019	Trier	Presentation of the National Agency in the framework of a training event of the German Judicial Academy [<i>Deutsche Richterakademie</i>]

