



NATIONAL  
AGENCY  
FOR THE  
PREVENTION  
OF  
TORTURE

# ANNUAL REPORT 2022

**Period under review**

1 January 2022 – 31 December 2022

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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 *Land* governments and the *Land* parliaments. The report covers the period from 1 January to 31 December 2022.

In this period, the National Agency visited a total of 66 facilities and monitored four deportation procedures. In the course of these activities, it observed restrictions on the exercise of human rights and violations of human dignity, protected by Article 1 (1) of Germany's Basic Law (*Grundgesetz*, GG).

The focus of the National Agency's activities in 2022 was on forensic psychiatric detention. An issue of particular concern is the overcrowding observed in a large number of the facilities visited. Aside from impairing the care and treatment of the affected patients, in some cases this overcrowding led to persons who should have been in forensic psychiatric detention under section 126a of the Code of Criminal Procedure (*Strafprozessordnung*, StPO) being detained in regular prisons. Prisons are increasingly unable to provide the psychiatric care that is indispensable in such cases to the required extent, if at all. Another fundamental problem observed again and again in recent years concerns the custody of detainees whose condition had deteriorated due to a lack of psychiatric care. The National Agency believes a comprehensive examination of this problem is urgently needed. Accordingly, besides maintaining its focus on forensic psychiatric detention in 2023, it also plans to devote greater attention to the handling of mental health issues in the prison system.

The National Agency currently has an annual budget of EUR 640,000 at its disposal. It consists of 10 honorary members whose mandate covers the whole of Germany. They are supported by a secretariat staffed with six full-time employees.

By ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), Germany has undertaken to establish a national preventive mechanism, which, under the OPCAT, is required to "regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4". Although the Association for the Prevention of Torture (APT) has called for a target of one visit per year to institutions with a rapid turnover of detainees or where detainees are exposed to special risks, and of visits every three years to all other institutions, in view of its current staffing situation the National Agency is able, on average, to conduct around 60 visits per year to the 13,000 places of detention that fall within its remit.

The National Agency is in regular contact with the relevant supervisory authorities in order to enhance the effectiveness of its activities. These efforts include the pursuit of increased funding and personnel resources.

A positive aspect in 2022 was the constructive dialogue with many supervisory authorities in the field of forensic psychiatric detention, which was reflected in the responses to visit reports and elsewhere. Positive mention should also be made of the regular exchange with the Central Customs Authority, the Federal Ministry of Defence and the Federal Ministry of the Interior and Community, which enables the National Agency to push for nationwide implementation of its recommendations.

In 2022, former prison director Mr Friedhelm Kirchhoff (*Leitender Regierungsdirektor*, retd) was appointed as a member of the Joint Commission. Certified psychologist Dr Monika Deuerlein resigned her mandate as a member of the Joint Commission with effect from 31 December 2022.



Rainer Dopp  
State Secretary (retd)  
Chairman of the Joint Commission



Ralph-Günther Adam  
Senior civil servant and prison director (retd)  
Director of the Federal Agency

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## LIST OF ABBREVIATIONS

APT	Association for the Prevention of Torture
File no.	File number
CAT	United Nations 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
CJEU	Court of Justice of the European Union
NPM	National Preventive Mechanism
ODIHR	Office for Democratic Institutions and Human Rights of the Organisation for Security and Cooperation in Europe
OPCAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
Margin no.	Margin number
SPT	United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
UN	United Nations



**I  
ESPECIALLY  
PROBLEMATIC  
FINDINGS**

In 2022, the National Agency visited a total of 66 places of detention and observed four deportation procedures. A particular focus of its activities was on visits to forensic psychiatry facilities. In addition, visits focused on prisons that had been repeatedly criticised by the Agency in the past for failing to provide adequate treatment and care to prisoners suffering from mental illness. Disproportionately long periods of segregation and placement in specially secured cells are often directly connected to untreated mental disorders and illnesses.

During its visits, the National Agency observed a large number of problematic circumstances of a structural, systematic or situational nature. A comprehensive description of these circumstances in all of the facilities visited is provided in the following chapters, organised according to the type of facility and *Land*.

The current chapter lists only the most serious problems observed in 2022. The National Agency encountered the following serious issues, which constitute egregious violations of human dignity and in some cases led to the immediate notification of the relevant minister.

### Deportations

Families with children, including infants and small children, are regularly deported from Germany. In 2022, a total of 2196 minors were deported<sup>1</sup>, including children in particularly vulnerable situations. Despite emphatic recommendations, the National Agency has found that the best interests of the child are generally not taken into sufficient consideration in connection with deportation procedures. In the majority of cases, deportees are picked up at night, regardless of whether children or other vulnerable persons are affected by the measure. For young children in particular, besides causing a severe disruption of their normal sleep pattern, being picked up at night can result in trauma when processing the events experienced.

### Segregation

In both forensic psychiatry facilities and regular prisons, individuals were segregated from others for periods lasting weeks or even months.<sup>2</sup>

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<sup>1</sup> Study by the Federal Police.

<sup>2</sup> Further details are given in IV 3.1 for forensic psychiatric detention and V 1.1.1 for prisons.

They received only limited care, and had barely any means of occupying themselves. On top of this, some were even denied the possibility of spending an hour a day outdoors.

### Specially secured cells

The specially secured cells in one of the prisons visited resembled a “glass cage”. The prisoners held there find themselves behind a glass wall, and their only means of making themselves heard is to lie or kneel on the floor and speak through the food hatch. This is the floor-level hatch through which inmates receive their daily food rations. These circumstances are degrading for the affected prisoners, and constitute inhumane detention conditions.<sup>3</sup>

### Physical restraint

The rules on physical restraint in the *Land* legislation governing forensic psychiatric detention in Saarland, Lower Saxony, Berlin and Saxony-Anhalt were still not compatible with constitutional requirements, more than three years after the Federal Constitutional Court judgment of 24 July 2018.<sup>4</sup>

### Requirement for a judicial decision on physical restraint

In one psychiatric clinic for children and juveniles, it was observed that an individual had been repeatedly subjected to physical restraint for up to six weeks on the basis of a single judicial decision. During this time, there was no further regular external examination of the legality of this measure.<sup>5</sup>

### Physical restraint without clothing

In one prison, as on its first visit in 2012, the National Agency found that persons subjected to physical restraint were almost fully undressed throughout, even when restrained for longer periods. They are merely provided with paper underwear. This procedure is demeaning, and constitutes degrading treatment.<sup>6</sup>

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<sup>3</sup> Further details are given in V 2.2.

<sup>4</sup> Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15.

<sup>5</sup> Further details are given in VI 3.3.1.

<sup>6</sup> Further details are given in V 1.1.4.

### Crisis intervention room

Some crisis intervention rooms in forensic psychiatry facilities have no sanitary facilities whatsoever. Moreover, the persons detained in these rooms were regularly denied the use of a toilet. As a result, they were forced to relieve themselves using basins while the entire room was monitored by a CCTV camera with no pixelation. This situation was all the more intolerable as detainees had to pass the basin holding their excreta to care staff via the same food hatch through which their meals were delivered.<sup>7</sup>

### Multiple occupancy

A majority of facilities in forensic psychiatric detention are overcrowded. In many cases, this results in multiple occupancy of patient rooms, and in one case full occupancy of a five-bed room. Confining three or more mentally ill or addicted persons to a room is problematic, even if the room is of sufficient size. The lack of privacy can trigger aggressive behaviour and provoke incidents. This can lead to conflicts between patients, besides significantly complicating medical and therapeutic treatment and delaying the treatment's intended outcome.<sup>8</sup>

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<sup>7</sup> Further details are given in IV 4.1.1.

<sup>8</sup> Further details are given in IV 1.2.

### Multiple occupancy and separate toilets without ventilation

The National Agency observed that prisoners continue to be held in double-occupancy cells without separate toilets.<sup>9</sup> Such conditions constitute a violation of human dignity, which is protected by Article 1 (1) of the Basic Law.<sup>10</sup>

In one prison, some cells holding up to three prisoners did have separate toilets, but at the time of the visit the carbon filters were not in working order. Natural ventilation was hindered by the fact that prisoners were not able to open the windows of their cells themselves.<sup>11</sup>

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<sup>9</sup> This is the case in Baden-Württemberg, for example (Heilbronn prison, visited on 14 April 2023, and others).

<sup>10</sup> Cf.: Federal Constitutional Court, order of 22 February 2011, file no.: 2 BvR 409/09; Lübke-Wolff (2016) “*Die Rechtsprechung des Bundesverfassungsgerichts zum Strafvollzug und Untersuchungshaftvollzug*”, p. 269; ECHR, 5 April 2013, *Canali v. France*, Application no. 40119/09; Karlsruhe Higher Regional Court, judgment of 19 July 2005, 12 U 300/04.

<sup>11</sup> Further details are given in V 2.1.2.





**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 pages provide an overview of the National Agency's special status, as well as background information regarding its structure.

## 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 2022, it had 104 signatory states and had been ratified by 91 states.<sup>12</sup>

Article 3 of the OPCAT requires that the States Parties set up a national preventive mechanism (NPM). These independent national mechanisms engage in preventive measures and assess whether places of detention ensure humane treatment and detention conditions. To date, 77 States Parties are in compliance with this requirement.<sup>13</sup>

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 as well as the independence of their personnel, and to make the necessary financial resources available.

The members of the Federal Agency are appointed by the Federal Ministry of Justice in agreement with the Federal Ministry of the Interior and Community and the Federal

Ministry of Defence, while the members of the Joint Commission are appointed by the Conference of Ministers of Justice of the *Länder*.<sup>14</sup> 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.*).

## 2 – TASKS

The principle task of the National Agency is to visit 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 (i) 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 forced deportations. In 2022, a total of 10,777 persons were deported from Germany by air.<sup>15</sup>

The vast majority of facilities fall within the remit of the Joint Commission. These include prisons, *Land* police stations, all courts with holding cells, facilities for custody pending deportation, psychiatric clinics, child and youth welfare facilities with closed units, and homes for people with

<sup>12</sup> URL: <https://indicators.ohchr.org/> (accessed 19 April 2023).

<sup>13</sup> URL: <https://www.apt.ch/en/knowledge-hub/opcat> (accessed 19 April 2023).

<sup>14</sup> Organisational decree of the Federal Ministry of Justice dated 20 November 2008 (Federal Gazette no. 182, p. 4277); State Treaty on the establishment of a national mechanism of all *Länder* pursuant to Article 3 of the Optional Protocol dated 18 December 2002 to the Convention of the United Nations against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 25 June 2009 (published e.g. in the *Land Law Gazette* of Baden-Württemberg dated 7 December 2009, p. 681).

<sup>15</sup> Statistical survey by the Federal Police.

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.

### 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 concerning 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 conduct private interviews with the persons deprived of their liberty without witnesses, either personally or with an interpreter 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 they wish to visit and the persons they wish 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.

### 4 – ENQUIRIES BY INDIVIDUALS

Between 1 January 2021 and 31 December 2022, 64 enquiries were made to the National Agency by individuals. These individual enquiries,

pertaining to a range of different issues, were for the most part submitted by prison inmates, followed by persons held in forensic psychiatric detention. Individual enquiries are also occasionally received from persons who are not being held in facilities where measures involving deprivation of liberty are enforced.

Since the National Agency does not operate as the office of an ombudsperson, it is not authorised to directly investigate complaints by individuals or to remedy them. However, it may provide the addresses of relevant contact points or complaints bodies to individuals who send enquiries. Where an enquiry contains information regarding serious shortcomings in a facility, the National Agency will, with the consent of the individual in question, contact the competent authorities. If an enquiry provides an indication of a person posing a danger to themselves or to others, the National Agency will immediately contact the head of the facility concerned.

Furthermore, tips from individual enquiries are of considerable relevance for the National Agency's work, since such information can direct attention to specific problem areas. In addition, concrete information and tips can have an influence on which facilities are visited.

### 5 – PERSONNEL AND FINANCIAL RESOURCES

The mandate of the National Agency for the Prevention of Torture is carried out by ten members acting in an honorary capacity. They are supported by a secretariat staffed with six full-time employees.

In 2022, Mr Friedhelm Kirchhoff (*Leitender Regierungsdirektor*, retd) was appointed as a member of the Joint Commission. Certified psychologist Dr Monika Deuerlein resigned her mandate as a member of the Joint Commission with effect from 31 December 2022. In 2022, the mandates of Petra Bertelsmeier, Petra Heß, Margret Osterfeld, Dr Werner Päckert and the Chairman of the Joint Commission Rainer Dopp were extended.

The National Agency's budget was most recently increased by EUR 100,000 to a total of EUR 640,000 for the 2020 budget year. In spite of this increase, the practical means at the National Agency's disposal for the performance of its mandate are severely limited.

By ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), Germany undertook to establish a national preventive mechanism, which, under the OPCAT, is required to “regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4”. Accordingly, the Association for the Prevention of Torture (APT) has called for a target of one visit per year to institutions with a rapid turnover of detainees or where detainees are exposed to special risks, and of visits every three years to all other institutions. In practice, however, on average the National Agency only has the capacity to visit 60 of the 13,000 places of detention that fall within its remit each year.

In view of rising costs, the National Agency’s budget is unlikely to allow it to perform its tasks to the same extent in future as is currently the case.

In autumn 2021, the governing parties pledged to increase staff and funding for the National Agency in the coalition agreement.<sup>16</sup> So far, this pledge remains unfulfilled, however.

A solution must be found that will enable the National Agency to fulfil its mandate in line with the Federal Republic of Germany’s obligations under international law.

## 6 – TORTURE PREVENTION WORLD-WIDE

### 6.1 – CPT visit to Germany

The final report on the visit of the Committee for the Prevention of Torture (CPT) to Germany (December 2020), dealing with the treatment of persons held in police establishments, prisons and psychiatric detention facilities, was published on 14 September 2022. Some of the findings documented in the report are particularly worrying:<sup>17</sup> Patients with mental disorders were handcuffed in secure outdoor areas.<sup>18</sup> Prisoners in specially secured cells were not given a blanket or pillow.<sup>19</sup> In prisons, cases of individuals being segregated for months or even years due to mental health issues were documented.<sup>20</sup> For patients in forensic psychiatry facilities, opportunities to exercise outdoors were severely limited.<sup>21</sup>

### 6.2 – International activities of the National Agency

#### 6.2.1 – Report to the United Nations Committee Against Torture

The United Nations Committee against Torture (CAT), which is responsible for the Federal Republic of Germany’s implementation of the UN Convention against Torture, asked the National Agency to report on the current situation regarding human rights in Germany. The report to the CAT in April 2022 highlighted in particular the structural challenges associated with the National Agency’s mandate, as well as the key findings from recent visits.

<sup>16</sup> Coalition agreement between the SPD, Alliance 90/The Greens and the FDP (2021), “*Mehr Fortschritt wagen. Bündnis für Freiheit, Gerechtigkeit und Nachhaltigkeit*”, p. 146.

<sup>17</sup> <https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-publishes-report-on-its-2020-visit-to-germany> (accessed 19 April 2023).

<sup>18</sup> See also the findings of the National Agency in Riedstadt (Hesse) in IV 4.6.2.

<sup>19</sup> See also the findings of the National Agency in various *Länder* in V 1.1.2.

<sup>20</sup> See also the findings of the National Agency in various *Länder* in V 1.1.1.

<sup>21</sup> See also the findings of the National Agency in Eberswalde (Brandenburg) in IV 4.3.

### 6.2.2 – Dialogue with national preventive mechanisms

International dialogue with various partner organisations is important for the National Agency's work.

In the year under review, the National Agency was accompanied by the French NPM (*Contrôleur général des lieux de privation de liberté*) on a trip to visit facilities in Schleswig-Holstein and Bremen. The trip was arranged in connection with a dialogue on the problem of overcrowding in prisons.

The support of the Senator for Justice and the Constitution of the Free Hanseatic City of Bremen deserves particular mention in this regard.

In addition, the National Agency took part in the regular annual exchange of German-speaking NPMs alongside representatives of the Lichtenstein NPM, the Luxembourg Ombudsman, the Austrian Ombudsman Board and the Swiss National Commission for the Prevention of Torture in Vienna on 10 and 11 November 2022.

Comparative discussions were held on issues such as the methods used by NPMs to more effectively fulfil their inspection duties in social institutions, particularly child and youth welfare facilities and residential care and nursing homes.

### 6.2.3 – Dialogue with the SPT and the Council of Europe

Once again in 2022, dialogue with partner organisations and participation in international events of the NPM network played a significant role in the activities of the National Agency.

These include the NPM webinar organised by the SPT in June 2022 on the role of NPMs in monitoring places where migrants are deprived of their liberty. The participants in the discussion unanimously agreed with the UN Special Rapporteur for the Human Rights of Migrants that in cases in which a deprivation of liberty cannot be avoided, unaccompanied minors must be placed in dedicated facilities, and under no circumstances in general holding centres for immigration detainees.

In June 2022, the National Agency also took part in a seminar on preventing torture and ill-treatment in the context of public assemblies,

including illegitimate use of coercive measures, organised by the Association for the Prevention of Torture (APT) and the Office for Democratic Institutions and Human Rights (ODIHR). Finally, also worthy of note is the National Agency's participation in a conference of NPMs held in Strasbourg in October 2022, hosted by the Council of Europe with support from the European Union. The focus of the conference was on the role of NPMs in identifying human rights violations in places of detention in which especially vulnerable individuals such as minors or older persons are detained.



# 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 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 respect for human dignity, the National Agency considers the following standards to be indispensable.

## **1 – DEPORTATION**

### **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 the end of 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 serious infringement of their general right of personality.<sup>22</sup> 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.<sup>23</sup>

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 carried out as respectfully as possible, for example in two stages with the individual keeping on their clothing above the waist while they are searched below the waist and vice versa. Staff members of the opposite sex to the detainee must not be present during such searches.

### **1.6 – Further training for prison 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 personal hygiene products and sufficient clothing should be kept at the airport and issued as necessary.

<sup>22</sup> Federal Constitutional Court, order of 5 March 2015, file no.: 2 BvR 746/13, margin no. 33.

<sup>23</sup> Cologne Administrative Court, judgment of 25 November 2015, file no.: 20 K 2624/14, margin no. 115 et seqq.

### 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.

### 1.9 – Information on the time of execution of the deportation order

For humanitarian reasons, wherever individual cases require – for example if families with children or sick persons are involved – persons required to leave the country should be informed at least a week in advance that their deportation is imminent.<sup>24</sup> A corresponding amendment to section 59 (1) sentence 8 of the Residence Act (*Aufenthaltsgesetz*) aims to ensure this.

### 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 throughout the 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 the event that 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 relatives.

### 1.15 – Mobile phones

Mobile phones should only be confiscated during a deportation procedure if this is deemed necessary in justified 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 throughout the deportation procedure.

## 2 – CUSTODY PENDING 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 pending deportation (*Abschiebungsbhaft*) or custody to secure departure (*Ausreisegewahrsam*). It must be ensured that any indications of trauma or mental illness are diagnosed. In the event of communication difficulties, an interpreter should always be called upon to assist in initial medical examinations. For reasons of confidentiality, translations should

<sup>24</sup> Cf. CPT/Inf (2019) 14, paragraphs 16–19, <https://rm.coe.int/t/1680945a2b> (accessed 20 April 2023).

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 – Activities and recreation**

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 serious infringement of 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.

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 carried out as respectfully as possible, for example in two stages with the individual keeping on their clothing above the waist while they are searched below the waist and vice versa. 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 fitted in such a way that the toilet area is either not visible on the monitor at all or is pixelated. 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, reasoned and clearly documented. If a toilet area is indeed covered by CCTV monitoring without pixelation, only persons of the same sex as the detainee should carry out the monitoring.

### **2.6 – Physical restraint**

The National Agency defines physical restraint 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 in such a way that they are unable or only marginally able to change their sitting or lying position independently. The Agency requires that the following conditions be met for the use of this measure:

The use of physical restraint 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, a strap-based system should be used for restraint. Persons who are 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. They must be checked on regularly by a doctor. Persons who are being physically restrained must be observed continuously and in person by therapeutic or care staff in direct proximity to the individual concerned (one-on-one supervision). A judicial decision is also required if physical restraint is to be used for more than just a short period of time.<sup>25</sup> After the measure ends, it should be discussed with the individual concerned.<sup>26</sup> The person concerned should also be informed after the measure of their right to request a court review of the lawfulness of the restraint procedure.<sup>27</sup>

The reasons for every instance of physical restraint should be documented in writing. That written record should include what less severe measures had already been tried and an explanation of why they failed.

<sup>25</sup> Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15, margin no. 69.

<sup>26</sup> DGPPN [German Society for Psychiatry and Psychotherapy] (2018): “S3-Leitlinie: Verhinderung von Zwang: Prävention und Therapie aggressiven Verhaltens bei Erwachsenen”. Available from (accessed 19 April 2023).

<sup>27</sup> Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15, margin no. 85.

### **2.7 – CCTV monitoring**

CCTV monitoring should only be used in individual cases where this 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 made aware 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.

### **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 pending deportation or custody to secure departure should be specifically selected 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 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 and custody to secure departure must differ from those of sentenced prisoners.<sup>28</sup> Furthermore, any infringement of fundamental rights beyond the mere placement in such a detention facility requires its own legal basis.<sup>29</sup> Consequently, a specific legal basis must be established for the enforcement of custody pending 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 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 pending deportation or custody to secure departure, but in child and youth welfare facilities. If minors are placed in facilities for custody pending 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 pending 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.<sup>30</sup>

### **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.

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 the event of communication difficulties, an interpreter must be called upon to assist in admission meetings.

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<sup>28</sup> Article 16(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.

<sup>29</sup> Federal Constitutional Court, judgment of 31 May 2006, file no.: 2 BvR 1673/04.

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<sup>30</sup> ECHR, *Tali v. Estonia*, judgment of 13 February 2014, Application no. 66393/10, § 78; CPT/Inf (2008) 33, paragraph 86, <https://rm.coe.int/1680697fb3> (accessed 20 April 2023).

## 3 – CUSTOMS AND FEDERAL AND LAND POLICE

### 3.1 – Furnishings, fittings and 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 only has 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 using an emergency button. Proper functioning of the alarm system must be ensured, and checked before each occupancy of a detention 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 about in the dark.

Every custody cell, even those intended for short-term custody, should have a source of a natural light. A suitable room temperature should also be ensured in custody cells.

### 3.2 – Notification of rights

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 informed of 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 informed of 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 staff members responsible.

The following details should be documented:

- + The personal details of the individual concerned
- + When the deprivation of liberty began
- + The staff members responsible for taking the individual into custody and for supervising them during custody
- + The individual's state of health
- + Whether the individual was informed of their rights
- + Whether the individual was informed of the reason for the deprivation of liberty
- + Whether a judicial order was 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 staff member in question
- + The time and type of meals
- + The confiscation and subsequent return of personal items
- + The time of release
- + If it was not possible to inform an individual 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 serious infringement of their general right of personality.<sup>31</sup> 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.<sup>32</sup>

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 carried out as respectfully as possible, for example in two stages with the individual keeping on their clothing above the waist while they are searched below the waist and vice versa.

### 3.5 – Visibility of custody cells

It must not be possible for third persons to see into 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 fitted in such a way that the toilet area is either not visible on the monitor at all or is pixelated. Unrestricted monitoring of the custody cell should only be permitted in carefully assessed, reasoned 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 without pixelation, only persons of the same sex as the detainee should carry out the monitoring.

### 3.7 – Shackling

In contrast to physical restraint (*Fixierung*), shackling (*Fesselung*), in the National Agency’s usage of the term, is the restriction of movement by tying an individual’s arms or legs together or to an object.

Tying people to the wall or to other objects violates their human dignity and must be avoided in all situations.

In order to protect the right to physical integri-

ty, any shackling in custody should be carried out using textile hand restraint belts<sup>33</sup>, which should be kept on hand at all times.

### 3.8 – Physical restraint

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

### 3.9 – Size of custody cells

Custody cells must be designed in such a way as to ensure humane detention conditions.

A single-occupancy custody cell must have a floor space of at least 4.5 m<sup>2</sup>. Multiple-occupancy custody cells must have a floor space of at least 3.5 m<sup>2</sup> per person.

Opposite walls must be separated by a distance of at least 2 m, and the ceiling must be considerably higher than 2 m.

### 3.10 – CCTV monitoring

CCTV monitoring should only be used in police stations and customs offices in individual cases where this 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 made aware 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.

### 3.11 – Multiple occupancy of custody cells

In order to ensure humane detention conditions, it is imperative 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.

#### 3.12A – Medical supervision during excretion of drug packages

Due to the potential risks involved and in order to protect the individual’s right to life and physical integrity, a detained person who has internally concealed drugs should be under medical supervision before, during and after they excrete the foreign objects.

<sup>31</sup> Federal Constitutional Court, order of 5 March 2015, file no.: 2 BvR 746/13, margin no. 33.

<sup>32</sup> Cologne Administrative Court, judgment of 25 November 2015, file no.: 20 K 2624/14, margin no. 115 et seqq.

<sup>33</sup> For example Segufix hand restraint belts.

### 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 bodies 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 and investigation bodies.<sup>34</sup>

### 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 and customs offices.<sup>35</sup>

## 4 – CHILD AND YOUTH WELFARE FACILITIES

### 4.1 – Possibilities for complaint

Children and juveniles must be able to submit complaints to a suitable complaints body. In addition to contact persons within the facility, section 9a of Book VIII of the Social Code (*Sozialgesetzbuch VIII – SGB VIII*) provides for the establishment in the *Länder* of offices of ombudspersons, to which young people and families can turn for advice and conflict resolution. The necessary framework for this needs to be created under *Land* law.

Children and juveniles must be able to contact their competent ombudsperson easily and in confidence. The complaints channels and all necessary contact details should be set out in a child-friendly information leaflet or in the facility's house rules, and explained to new arrivals 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. That period should be considerably longer for children and juveniles.

### 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 provided 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 is CCTV monitoring a substitute for 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 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.

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<sup>34</sup> See, *inter alia*, ECHR, Kummer v. The Czech Republic, judgment of 25 July 2013, Application no. 32133/11, § 83; Er-emiášova and Pechová v. The Czech Republic, judgment of 16 February 2012, Application no. 23944/04, § 135.

<sup>35</sup> ECHR, Tali v. Estonia, judgment of 13 February 2014, Application no. 66393/10, § 78; CPT/Inf (2008) 33, paragraph 86.

## 5 – PRISONS

### 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 a person's genital area represent a serious infringement of that individual's general right of personality.<sup>36</sup> Strip-searches must not be conducted as a matter of routine in the absence of concrete suspicions.<sup>37</sup> 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 person concerned undress fully, then the search should be conducted respectfully, for example in two stages with the individual keeping on their clothing above the waist while they are searched below the waist and vice versa.

### 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 fitted in such a way that the toilet area is either not visible on the monitor at all or is pixelated. 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

<sup>36</sup> Federal Constitutional Court, order of 5 March 2015, file no.: 2 BvR 746/13, margin no. 33.

<sup>37</sup> Federal Constitutional Court, order of 10 July 2013, file no.: 2 BvR 2815/11, margin no. 16.

should be carefully considered, reasoned and clearly documented. If a toilet area is indeed covered by CCTV monitoring without pixelation, 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 restraint<sup>38</sup> 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, a strap-based system should be used for restraint. Persons who are 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. They must be checked on regularly by a doctor. Persons who are being physically restrained must be observed continuously and in person by therapeutic or care staff in direct proximity to the individual concerned (one-on-one supervision). A judicial decision is also required if physical restraint is to be used for more than just a short period of time.<sup>39</sup> After the measure ends, it should be discussed with the individual concerned.<sup>40</sup> The person concerned should also be informed after the measure of their right to request a court review of the lawfulness of the restraint procedure.<sup>41</sup>

The reasons for every instance of physical restraint should be documented in writing. That written record should include what less severe measures had already been tried and an explanation of why they failed.

<sup>38</sup> For definition, see III 2.6 - Physical restraint.

<sup>39</sup> Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15, margin no. 69.

<sup>40</sup> DGPPN [German Society for Psychiatry and Psychotherapy] (2018): "*S3-Leitlinie: Verbinderung von Zwang: Prävention und Therapie aggressiven Verhaltens bei Erwachsenen*". Available from (accessed 19 April 2023).

<sup>41</sup> Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15, margin no. 85.



### 5.7 – Cell size

In order for detention conditions to be humane, a single-occupancy cell must have a floor space of at least 6 m<sup>2</sup>,<sup>42</sup> excluding the sanitary facilities. In cases where the sanitary facilities are not partitioned off, approximately one further square metre should be added for that area, giving a total floor space of at least 7 m<sup>2</sup>. For multiple occupancy, a further 4 m<sup>2</sup> of floor space must be added to this figure for each additional person, excluding the area of the sanitary facilities.

### 5.8 – CCTV monitoring

CCTV monitoring in prisons should only be conducted in individual cases where this 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 made aware 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.

### 5.9 – Multiple occupancy of prison cells

According to past decisions of the German Federal Constitutional Court,<sup>43</sup> 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 documentation must be maintained, in line with procedures for specially secured cells.

### 5.11 – Respectful treatment

Prisoners 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 covered in order to protect the privacy of 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 language. In the event 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 of 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.

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<sup>42</sup> The absolute minimum requirement is 6 m<sup>2</sup>. In the National Agency's view, cells that are smaller than this violate Article 1 of the German Basic Law (*Grundgesetz*, GG). Any additional legal requirements must, of course, also be observed, and are welcomed.

<sup>43</sup> Federal Constitutional Court, order of 22 February 2011, file no.: 1 BvR 409/09, margin no. 30.

## 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. That period should be considerably longer for children and juveniles.

### 6.2 – Documentation of coercive measures

All coercive measures should be clearly and comprehensively documented. 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 restraint<sup>44</sup> 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 who are being physically restrained must be observed continuously and in person by therapeutic or care staff who are in direct proximity to the individual concerned (one-on-one supervision). A judicial decision is also required if physical restraint is to be used for more than just a short period of time.<sup>45</sup> After the measure ends, it should be discussed with the individual concerned.<sup>46</sup> The person concerned should also be informed after the measure of their right to request a court review of the lawfulness of the restraint procedure.<sup>47</sup>

### 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 is CCTV monitoring a substitute for the presence of members of staff. The reasons for the use of CCTV monitoring should be documented. In addition, the person concerned must be made aware 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 – Private 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.

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<sup>44</sup> Definition: See III 2.6 - Physical restraint.

<sup>45</sup> Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15, margin no. 69.

<sup>46</sup> DGPPN [German Society for Psychiatry and Psychotherapy] (2018): “S3-Leitlinie: *Verhinderung von Zwang: Prävention und Therapie aggressiven Verhaltens bei Erwachsenen*”. Available from (accessed 19 April 2023).

<sup>47</sup> Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15, margin no. 85.

## 7 – DETENTION FACILITIES OF THE FEDERAL ARMED FORCES

### 7.1 – Furnishings, fittings and conditions in detention cells

In the detention facilities of the Federal Armed Forces, the conditions in the cells, including furnishings and fittings, must uphold the human dignity of detainees. Every detention cell should be equipped with a smoke detector, an emergency button, adjustable lighting, a non-flammable, washable mattress, a blanket and a pillow. In addition, it should have seating at standard height and a table.

To ensure the protection of detainees in the event of a fire, all detention cells must be equipped with a smoke detector.

In addition, it must be possible for persons deprived of their liberty to call for attention using an emergency button. Proper functioning of the alarm system must be ensured, and checked before each occupancy of a detention cell.

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

In the detention facilities of the Federal Armed Forces, detainees should have access to natural, unfiltered light in their cells. Their view outside may not be obstructed by opaque plexiglass panes, for instance. Furthermore, a suitable room temperature should be ensured in detention cells.

### 7.2 – Notification of rights

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 – at the very least information about the fact that the persons concerned have the right to be examined by a doctor, to consult a lawyer and to notify a trusted third party – must be kept available.

### 7.3 – Specially secured detention cells

In specially secured cells, there must be no objects that could enable detainees to injure themselves.

In addition, close supervision and medical

observation of detainees must be ensured.

Where a person is placed in a specially secured cell and is therefore isolated, it is critical that the medical staff give particular attention to the person's health and that regular medical checks are ensured in order to prevent health damage. Close supervision must be ensured in order to exert a de-escalating influence on the detainee and to help terminate the measure in a timely manner.

### 7.4 – Documentation

Documentation in detention facilities should be clear and comprehensible. In order to protect the individuals held in detention as well as the soldiers in charge (detention enforcement officers), all information related to the detention must be fully documented.

The following details should be documented:

- + The personal details of the individual concerned
- + When the deprivation of liberty began
- + The soldiers in charge (detention enforcement officers) at the time the individual is taken to the facility
- + The fitness for detention of the individual concerned
- + The individual's state of health
- + Whether the individual was informed of their rights
- + Whether the individual was informed of the reason for the deprivation of liberty
- + Whether a judicial order was obtained
- + The times of checks, including the initials of the soldiers in charge
- + The time and type of meals
- + Outdoor exercise
- + The daily routine of the individual concerned (whether they leave detention to perform their duties or to engage in purposeful activities)
- + The confiscation and subsequent return of personal items
- + The time of release

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

### **7.5 – Visibility of toilets**

The soldiers in charge (detention enforcement officers) should indicate their presence in an appropriate manner before entering a detention 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.

### **7.6 – Size of detention cells**

In order for detention conditions to be humane, a detention cell must have a floor space of at least 6 m<sup>2</sup>, excluding the sanitary facilities. In cases where the sanitary facilities are not partitioned off, approximately one further square metre should be added for that area, giving a total floor space of at least 7 m<sup>2</sup>.

### **7.7 – Respectful treatment**

Persons being held in detention should be treated respectfully. This includes staff indicating their presence in a suitable manner before entering the detention cell, and speaking to detainees using polite forms of address. Should peepholes be deemed necessary in justified individual cases, the soldiers in charge (detention enforcement officers) should make themselves heard before looking through the peephole.

### **7.8 – Fitness for detention**

Whether a person to be detained is actually fit for detention should always be determined on the basis of a medical examination.



**IV**  
**FOCUS: FORENSIC**  
**PSYCHIATRIC**  
**DETENTION**

## INTRODUCTION

As in the previous year, the National Agency's focus in 2022 was on forensic psychiatric detention. This decision arose from the National Agency's self-imposed goal of visiting each of Germany's forensic psychiatry facilities by the end of 2023. By doing so, it hopes to gain a complete overview of the situation, make additional observations on the ground, and take more effective action to remedy the shortcomings found.

In 2022, the National Agency visited a total of 24 forensic psychiatry facilities<sup>48</sup> in 12 *Länder*.<sup>49</sup> The visits to the Bremen East (Bremen) and Merzig (Saarland) facilities were repeat/follow-up visits to establish the extent to which previous recommendations had been implemented.

The present chapter, which comprises four sections, offers an overview of the Agency's findings in 2022, in particular those gained during its visits. Section 1 summarises the current situation with regard to occupancy in forensic psychiatry facilities at the national level, while section 2 examines recent legislative reforms in the field of forensic psychiatric detention in Bremen, North Rhine-Westphalia and Thuringia. Section 3 lists all the recommendations that were made to many of the forensic psychiatry facilities visited. Section 4 provides an overview of the facilities visited in each *Land*, highlighting selected findings concerning particular institutions and the corresponding recommendations.

## 1 – OCCUPANCY

### 1.1 – Overcrowding

Once again, extensive overcrowding was a major problem for forensic psychiatry facilities in 2022. The National Agency conducted a nationwide survey on this issue. The resulting data on capacity and occupancy levels in forensic psychiatry facilities clearly revealed occupancy levels approaching or exceeding full capacity in 14 *Länder* at the start of 2022.

<sup>48</sup> Of which two for juvenile detainees: the Division for Juvenile Forensic Psychiatry in Bad Zwischenahn (Lower Saxony) and the Juvenile Clinic in Marburg (Hesse).

<sup>49</sup> Baden-Württemberg, Bavaria, Brandenburg, Bremen, Hamburg, Hesse, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate, Saarland, Schleswig-Holstein and Thuringia.

The National Agency visited facilities in the four remaining *Länder* in 2021.

This finding was confirmed in the course of the year, with 17 of the 24 facilities visited (in 8 out of 12 *Länder*) found to be overcrowded.<sup>50</sup> Furthermore, in reply to a survey sent to the competent *Land* ministries in early 2023, overcrowding was reported by 11 *Länder* (Brandenburg, Berlin, Baden-Württemberg, Bavaria, Bremen, Hamburg, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate, Schleswig-Holstein and Saxony-Anhalt), and full occupancy by four others (Hesse, Mecklenburg-Western Pomerania, Saarland and Thuringia). Saxony was the only *Land* to report a lower occupancy rate of 84%.<sup>51</sup>

In connection with this issue, the National Agency always recommends that appropriate measures are taken to alleviate overcrowding.

At the same time, it acknowledges the unique challenges that this poses for the facilities in question and supervisory authorities.

For example, in a statement from 21 November 2022 regarding the visit to the forensic psychiatry clinic in Reichenau, the Ministry for Social Affairs, Health and Integration of Baden-Württemberg told that National Agency that “it is clear to all concerned that the current detention conditions are by no means an ideal setting for treatment”. A statement from the Bavarian Ministry for Family, Labour and Social Affairs likewise confirms this nationwide problem: “Occupancy levels in forensic psychiatry facilities both in Bavaria and in Germany at large remain extremely challenging. The rising number of patients in these facilities, particularly in connection with section 64 of the Criminal Code (*Strafgesetzbuch*, StGB), is stretching the limits of the available space. There is a constant need for the operators of these facilities to increase capacity in the short and medium term in order to alleviate the high occupancy rates and thereby improve both the atmosphere and security of their clinics.”

### 1.2 – Multiple occupancy

In concrete terms, excessive occupancy levels often result in multiple occupancy or overcrowding of patient rooms. Double occupancy of single rooms, triple occupancy of twin rooms, or

<sup>50</sup> Brandenburg, Baden-Württemberg, Bavaria, Hesse, Lower Saxony, Rhineland-Palatinate, Saarland and Schleswig-Holstein.

<sup>51</sup> As at 20 April 2023.

occupancy of rooms by three or more individuals was observed in eleven of the facilities visited.<sup>52</sup> In all four forensic psychiatry facilities visited in Baden-Württemberg, for example, problematic instances of multiple occupancy were encountered. In the Ravensburg and Reichenau facilities, overcrowding led to situations such as triple occupancy of twin rooms. In Wiesloch, 23 three-bed rooms, 5 four-bed rooms and one five-bed room were fully occupied. In Zwiefalten, single and twin rooms were regularly converted to twin and three-bed rooms by adding an extra bed or bunk.

Confining three or more mentally ill or addicted persons to a room is problematic, even if the room is of sufficient size. The resulting lack of privacy can trigger aggressive behaviour and provoke incidents. It can lead to conflicts between detained persons, besides significantly complicating medical and therapeutic treatment and delaying the treatment's intended outcome. On 3 January 2023, the Lower Saxony Ministry of Social Affairs, Labour, Health and Equality issued the following statement in this regard: "We share the National Agency's view that three or more patients with mental disorders should not be accommodated in the same room in forensic psychiatry units. Nevertheless, the high patient numbers we are currently experiencing in Lower Saxony do not always permit restricting occupancy to just one or two patients per room.

The National Agency considers the principle of single occupancy, which is set out in statute for the prison system,<sup>53</sup> to be indispensable. It takes the view that single occupancy should be prescribed by law as the general rule. In cases where double occupancy is unavoidable, steps must be taken to ensure that it in no way hinders treatment, and that the occupants' privacy is protected at all times. Allocating three or more individuals to a room should be avoided.

In a statement dated 21 November 2022, the Baden-Württemberg Ministry of Health cited the goal, set out in the *Land* psychiatric plan of

<sup>52</sup> Baden-Württemberg, Bavaria, Hesse, Lower Saxony, Rhineland-Palatinate, Saarland and Thuringia.

<sup>53</sup> German Prison Act (*Strafvollzugsgesetz*, StVollzG), section 18 (1) sentence 1, Accommodation at Night: "During the night the prisoners shall be lodged alone in their cells." A similar wording can be found in many of the Prison Acts of the *Länder*.

2018, of accommodating all patients in forensic psychiatric detention in single or twin rooms with integrated bathrooms by 2025.

### 1.3 – Outlook

In view of steadily rising occupancy rates, proposals for reform have been made with a view to alleviating the pressure on forensic psychiatry facilities. To this end, in early 2022 the Federal Ministry of Justice presented a draft amendment to section 64 of the Criminal Code, which was adopted by the Bundesrat and is currently before the Bundestag.<sup>54</sup> In order to reduce the number of patients admitted on the grounds of addiction, the amendment proposes a more restrictive definition of the term "addiction" ("*Hang*"). This would result in fewer patients meeting the criteria for placement pursuant to section 64 of the Criminal Code.

The National Agency considers it imperative that steps are taken to alleviate overcrowding. However, in this connection the National Agency would point out that the prison system also houses a large number of mentally ill or addicted persons for whom it is unable to provide appropriate care or treatment.<sup>55</sup>

Adequate medical, psychiatric and psychological treatment must be ensured in all facilities where people are deprived of their liberty.

## 2 – 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. As part of its preventive efforts, the Agency endeavours to submit comments during the legislative process. To be able to do so, it must be invited to participate in the process by the individual governments or parliaments.

In the year under review, the National Agency exercised its prerogative to issue a statement

<sup>54</sup> As at 19 April 2023. The most recent public hearing was held on 17 April 2023 before the Bundestag Committee on Legal Affairs. On 19 July 2022, the Federal Ministry of Justice issued a ministerial draft setting out revised sentencing rules. Professional associations were given until 24 August 2022 to comment. On 21 December 2022, the Federal Cabinet adopted the draft bill submitted by the Federal Ministry of Justice. (Link, accessed 19 April 2023).

<sup>55</sup> See Chapter V Prisons.



on an existing legal provision in North Rhine-Westphalia, which it had already had the opportunity to comment on in the course of the legislative process.<sup>56</sup>

The National Agency would also like to highlight certain key legislative changes, intended for the most part to help ensure more humane detention conditions in forensic psychiatry facilities.<sup>57</sup>

## 2.1 – North Rhine-Westphalia Act on Criminal Law-related Committal<sup>58</sup>

### 2.1.1 – Statement on an existing legal provision

Pursuant to section 64 of the NRW Act on Criminal Law-related Committal, reports on practical experience in the context of this Act were to be submitted to the *Landtag* (State Parliament) of North Rhine-Westphalia by 31 December 2022 and every five years thereafter. The first evaluation report was submitted by the North Rhine-Westphalia Ministry of Labour, Health and Social Affairs.<sup>59</sup> The National Agency was involved in the evaluation procedure.<sup>60</sup>

In this capacity it emphatically welcomed the fact that several of the recommendations made in its statement of 4 November 2020 were taken into account and implemented in the Act, which is now in force. This was the case for one-on-one supervision by qualified therapeutic or care staff during the use of physical restraint (section 33), amended requirements for the approval of separation (section 32) and advance notification of telephone call monitoring ordered in specific cases (section 21).

<sup>56</sup> Statement of 4 November 2020, <https://www.nationale-stelle.de/aktuelles/stellungnahmen-zu-gesetzentwerfen.html>.

<sup>57</sup> Reference is also made to the planned amendment to Saxony's Mental Health Act (*Sächsisches Gesetz über die Hilfen und die Unterbringung bei psychischen Krankheiten*, SächsPsychKG) (Press release of Saxony's Ministry for Social Affairs and Social Cohesion of 15 June 2022).

<sup>58</sup> Act on Criminal Law-related Committal to a Psychiatric Hospital or an Institution for Withdrawal Treatment in North Rhine-Westphalia (*Strafrechtsbezogenes Unterbringungsgesetz NRW*, StrUG NRW) of 17 December 2021, in force since 31 December 2021.

<sup>59</sup> Evaluation report of the *Land* government on the NRW Act on Criminal Law-related Committal for the 2022 reporting period, 14 December 2022, Submission no. 18/597.

<sup>60</sup> Statement of 28 October 2022, <https://www.nationale-stelle.de/aktuelles/stellungnahmen-zu-gesetzentwerfen.html>

The principle of single occupancy was not enshrined in section 3 of the Act, however. Also absent is a clear definition of three-point restraints with legal guarantees (section 33).

### 2.1.2 – Lawfulness of special security measures

#### Segregation

Pursuant to section 32 of the Act, placement in a crisis intervention room and segregation lasting longer than 48 hours require a judicial decision.<sup>61</sup> This provision is designed to raise the threshold for the use of measures that represent a serious infringement of an individual's rights.

#### Night lock-up

Night lock-up, meanwhile, is regarded as a security measure, for which a reasoned decision is needed in each individual case, alongside other requirements.<sup>62</sup> For instance, the practice of systematic night lock-up at two wards in the facility in Münster, already criticised by the National Agency in the past, remains problematic in view of section 32 (4) of the Act.

The National Agency considers night lock-up especially problematic if imposed for organisational reasons or due to staff shortages. Measures of this sort should be applied only in individual cases where no alternative is available. The decision to do so, which should be made on a case-by-case basis, must be reasoned and comprehensible.

Accordingly, the National Agency criticised the practice of systematic night lock-up at several of the facilities visited.<sup>63</sup>

<sup>61</sup> Section 32 (3): "Measures under (1) may only be imposed for a clearly defined period, with the involvement of and supervision by a doctor. [...] every instance of separation pursuant to subsection (1) nos. 5 and 6 lasting longer than 48 hours requires a judicial decision."

<sup>62</sup> Section 32 (4).

<sup>63</sup> This was the case in Bremen East (Bremen), Zwiefalten (Baden-Württemberg), Central Hospital, Ward 6 (Hamburg), Riedstadt (Hesse), Münster (North Rhine-Westphalia) and Schleswig (Schleswig-Holstein).

## 2.2 – Bremen’s Mental Health Act

The National Agency would like to highlight two positive aspects of Bremen’s Mental Health Act (*Bremisches Gesetz über Hilfen und Schutzmaßnahmen bei psychischen Krankheiten*, BremPsychKG) of 13 December 2022. The first is the requirement for body searches involving the removal of clothing to be conducted in two stages<sup>64</sup> so as to ensure the process is as respectful as possible. The second is the prohibition of CCTV monitoring in rooms where patients are accommodated, allowing a greater degree of privacy.<sup>65</sup>

## 2.3 – Thuringian Mental Health Act

The amendment to the Thuringian Mental Health Act (*Thüringer Gesetz zur Hilfe und Unterbringung psychisch kranker Menschen*, ThürPsychKG) only concerned section 14 “Special protective and security measures”.

The new wording of section 14 complies with all constitutional requirements for the use of physical restraint:<sup>66</sup> requirement for a judicial decision, one-on-one supervision by therapeutic or care staff, comprehensive documentation and notification of the option of a subsequent judicial review. Furthermore, additional recommendations by the National Agency were also taken into account. The term “physical restraint” (*Fixierung*) was defined in such a way as to encompass all forms of physical restraint, including three-point restraints.<sup>67</sup> Finally, the Act provides for appropriate and regular medical supervision and subsequent discussion of the measure.

<sup>64</sup> Section 70 (2) “Body searches should only require patients to partially undress at any one time.”

<sup>65</sup> Section 75 (2) “Video surveillance is not permitted in sleeping, recreational or living areas, crisis intervention rooms, bathrooms or toilets.”

<sup>66</sup> Requirements set out in the judgment of the Federal Constitutional Court of 24 July 2018, file no.: 2 BvR 309/15.

<sup>67</sup> Section 14 (1) sentence 5: “restriction or deprivation of freedom of movement (physical restraint)”.

# 3 – FINDINGS AND RECOMMENDATIONS AT THE NATIONAL LEVEL

In the course of its visits, the National Agency encountered both structural and persistent problems: significant overcrowding, staff shortages, space shortages and ever-longer detention periods. Some of these shortcomings, such as the staff shortages, were confirmed by the competent ministries in their statements.<sup>68</sup> A survey by the German Society for Psychiatry, Psychotherapy and Nervous Diseases (*Deutsche Gesellschaft für Psychiatrie und Psychotherapie, Psychosomatik und Nervenheilkunde*, DGPPN) yielded comparable results that underscore the challenges currently faced by psychiatric detention facilities.<sup>69</sup>

In light of these circumstances, the recommendations issued to the forensic psychiatry facilities visited were mainly concerned with the following areas:

## 3.1 – Segregation

Cases of segregation lasting longer than 15 days were observed in nine of the forensic psychiatry facilities visited;<sup>70</sup> in some cases, patients were

<sup>68</sup> On its visits to facilities in Eberswalde (Brandenburg), Marburg (Hesse) and Reichenau (Baden-Württemberg), the National Agency noted that the staffing situation was strained. In a statement of 21 December 2022 regarding the Eberswalde visit, the Ministry for Social Affairs, Health, Integration and Consumer Protection of the *Land* of Brandenburg referred to the staffing situation as “undoubtedly one of the greatest health policy challenges in all *Länder*”, adding that “unfortunately, this is especially true of forensic psychiatry”. A similar situation is described by the Baden-Württemberg Ministry for Social Affairs, Health and Integration in a statement of 21 November 2022: “However, some clinics for forensic psychiatry and psychotherapy report difficulties in recruiting sufficiently qualified staff.”

<sup>69</sup> Results of the survey conducted in autumn 2022 of the 78 forensic psychiatry clinics in Germany, of which 60 percent responded. According to a DGPPN board member, the results are indicative of “conditions that in many cases are at the least unsatisfactory, if not downright intolerable”. This has made it “very difficult for forensic psychiatry clinics to fulfil their legal mandate in an appropriate and professional manner at all times.” <https://www.fr.de/politik/massregelvollzug-hinter-dicken-mauern-herrschen-zustaende-die-untragbar-sind-92044461.html> (accessed 19 April 2023).

<sup>70</sup> Brandenburg, Bremen, Baden-Württemberg, Hesse, Lower Saxony, North Rhine-Westphalia and Schleswig-Holstein.

segregated from others for months or even years.

For example, during the visit to the women's ward in Eberswalde (Brandenburg) it transpired that one person had been placed in a crisis intervention room<sup>71</sup> for a period of several weeks.

The National Agency subsequently noted with approval that the competent ministry emphasised in its statement<sup>72</sup> that it shared the National Agency's view that placing patients in a crisis intervention room for several weeks at a time should under no circumstances be a habitual practice.<sup>73</sup>

The National Agency is aware that many of the clinics visited face particular challenges. In a small number of cases, the reasons justifying the isolation of certain patients did in fact persist for long periods of time. In this regard, the Agency would like to highlight the multidisciplinary approaches and efforts of some clinics to ensure, insofar as possible, that these patients can benefit from human contact, meaningful activities and outdoor exercise.

The National Agency would also like to encourage facilities to explore additional avenues with a view to ensuring adequate therapeutic care and supervision. One possibility might be to consider engaging external experts to assess these issues.

Nevertheless, the Agency has serious doubts as to whether isolation over a period of weeks or months can be reconciled with the principle of proportionality.

The Federal Constitutional Court has expressed the view that the effects of isolation "can be of equivalent intensity to those of five-point or seven-point restraints", given that in the absence of sufficient monitoring,

"isolation entails a risk of considerable damage to the health of the person concerned".<sup>74</sup>

The principle of proportionality demands that any form of isolation only be imposed on the basis of an individual risk assessment and for the shortest possible period.<sup>75</sup> Segregation should be as brief as possible. Steps must be taken to ensure structured and regular human contact and sufficient supervision of the person concerned.

### 3.2 – Crisis intervention rooms

The term "crisis intervention room" is used here to refer to a room in which patients are placed to avert an acute risk of harm to themselves or others. Placement in crisis intervention rooms constitutes an especially serious form of deprivation of liberty, making it a constant focus of the National Agency's visits. During its visits to the facilities in Ravensburg and Reichenau (Baden-Württemberg), the National Agency encountered clear human rights violations directly connected to placement in crisis intervention rooms.<sup>76</sup>

Furthermore, the following findings and recommendations were made concerning crisis intervention rooms:

#### 3.2.1 – Furnishings and fittings

In twelve of the facilities visited,<sup>77</sup> crisis intervention rooms did not meet the minimum standards for humane detention.<sup>78</sup>

#### Seating

Most crisis intervention rooms were equipped only with a mattress on the floor. Appropriate seating was not provided.

Where a period of detention lasts for several

<sup>71</sup> In the present chapter, for ease of reading the general term "crisis intervention room" is used to denote all types of room in which patients are placed to avert an acute risk of harm to themselves or others. The National Agency is aware that different terms are used by individual institutions or in the legislation of each *Land*. These include "isolation room", "crisis room", "intensive treatment room" and "specially secured room".

<sup>72</sup> Ministry for Social Affairs, Health, Integration and Consumer Protection of the *Land* of Brandenburg.

<sup>73</sup> Statement on the report of the National Agency on its visit to the forensic psychiatry clinic of the Martin Gropius Hospital in Eberswalde on 13 May 2022.

<sup>74</sup> Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15, margin no. 83.

<sup>75</sup> By way of analogy, reference is made to the United Nations Standard Minimum Rules for the Treatment of Prisoners (General Assembly resolution 70/175, annex, adopted on 17 December 2015, also known as the Nelson Mandela Rules). These rules prohibit isolating prisoners for more than 15 consecutive days for at least 22 hours a day without meaningful human contact (Rule 44).

<sup>76</sup> For further details, see IV 4.1.1.

<sup>77</sup> In all of the *Länder* visited except Bavaria and Schleswig-Holstein.

<sup>78</sup> In aspects including clothing, lighting, bedclothes and window coverings.

hours or days, it is inhumane to force individuals to stand or sit on the floor.

Patients should be given the opportunity to sit in a normal position.

In other forensic psychiatry facilities,<sup>79</sup> the National Agency observed the use of foam seating or “challenging furniture”, which is strong and durable and has no sharp edges or corners.<sup>80</sup>

### Lighting

The crisis intervention rooms in most facilities visited did not have dimmable lighting.

Dimmable lighting allows healthier sleep, as well as helping occupants find their way around the room and reducing the risk of injury in the dark.

Furthermore, the light switches were located in the corridor, making it impossible for occupants to switch the lights on and off of their own volition.

In its statement of 21 December 2022, the Brandenburg Ministry for Social Affairs, Health, Integration and Consumer Protection announced plans to install lighting that can be independently operated by the occupants.

### Restraining beds

Each of the crisis intervention rooms in the clinic in Klingenstein (Rhineland-Palatinate) was equipped with a restraining bed prepared for use.

The visible presence of restraint belts can have a threatening effect, triggering feelings of insecurity and anxiety.

Restraint belts should be stored out of patients' sight.

The Rhineland-Palatinate Ministry of Science and Health deemed the “installation of restraint belts on patient beds in crisis intervention rooms to be necessary”, therefore declining to implement the recommendation.<sup>81</sup> This position seems questionable to the National Agency

for the simple reason that in none of the other forensic psychiatry facilities visited in 2022 did this “necessity” result in prepared restraint beds being on hand in crisis intervention rooms.

### 3.2.2 – CCTV monitoring

In 18 of the facilities visited, CCTV monitoring in crisis intervention rooms also covered the toilet area, which was either fully visible or insufficiently pixelated on the monitoring screen.

Monitoring patients while they are using the toilet constitutes a serious infringement of their rights of personality.

#### Visibility of toilets

For example, in both facilities visited in Bavaria, the toilet area of the crisis intervention rooms was fully visible on the CCTV monitoring screen, while in some crisis intervention rooms in Taufkirchen the toilet area was also visible from the door. After both the first visit and the follow-up visit to the facility in Merzig (Saarland), the National Agency criticised the fact that CCTV monitoring of the crisis intervention rooms included the toilet area, which was shown on the monitoring screen without pixelation. Overall, failure to pixelate CCTV monitoring of the toilet area was criticised in almost all of the facilities visited.

Privacy must also be guaranteed in forensic psychiatry clinics. This applies equally to patients in crisis intervention rooms.

CCTV cameras must be fitted in such a way that the toilet area is either not visible on the monitor at all or is pixelated. Where pixelation is already used but insufficient, the pixelated area must be adjusted accordingly. If deemed necessary in individual cases, unrestricted monitoring of a room may be acceptable if there is an acute danger of self-harm or suicide. However, any such decision should be carefully considered, reasoned and clearly documented.

In its statement in response to the National Agency's report on its visit to Taufkirchen, the Bavarian Ministry for Family, Labour and Social Affairs once again emphasised that “efforts are ongoing to find satisfactory solutions that strike an appropriate balance between privacy and

<sup>79</sup> For instance in Merzig (Saarland), Ravensburg (Baden-Württemberg) and Taufkirchen (Bavaria).

<sup>80</sup> For instance in the forensic psychiatry facilities in Taufkirchen (Bavaria) and Rheine (North Rhine-Westphalia).

<sup>81</sup> Statement of 14 July 2022 in response to the report on the visit to the Klingenstein forensic psychiatry clinic.

security in the clinic”.<sup>82</sup> The National Agency considers such reservations to be misplaced, as it regularly encounters systems that enable pixelation of the genital area while leaving the upper body of patients sitting on the toilet visible.

In this connection, in a letter dated 18 October 2022, the Saarland Ministry of Justice gave assurances that a specialist supplier had since been commissioned to upgrade the existing CCTV monitoring system with an additional module to provide automatic pixelation.

### Camera visibility

In multiple cases, occupants were unable to see whether or not the camera was in operation. An LED indicator would be one way to address this problem.

The persons concerned must be made aware in a suitable manner that CCTV 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.

A welcome development from the National Agency’s point of view is the prohibition of CCTV monitoring in crisis intervention rooms provided for in section 75 (2) of the Bremen Mental Health Act. Under this provision, “video surveillance is not permitted in sleeping, recreational or living areas, crisis intervention rooms, bathrooms or toilets.” This prohibition is complemented and reinforced by section 39 (3) for “placement in a specially secured room”: “During [such] measures, continuous monitoring by qualified care staff and the necessary degree of medical supervision must be ensured. Optical/electronic surveillance or surveillance by other technological means is prohibited.”

### 3.3 – Systematic recording of special security measures

In connection with the above-mentioned practice of segregation, the National Agency regularly highlights the importance of systematically recording special security measures. In three of the facilities visited, no

statistics were kept on special security measures. This meant that the National Agency had no access to data on the frequency with which these facilities resorted to physical restraint, placement in crisis intervention rooms or segregation or for how long.

One of the benefits of systematically recording security measures is that the corresponding orders can be then be viewed according to aspects such as the type of measure, its duration, and the reason behind it. It also enables facilities to track the frequency with which security measures are ordered over an extended period.

Clear documentation of incidents and the special security measures triggered by them, along with subsequent evaluation thereof, provides a record of these incidents and their frequency, besides helping facilities to avoid the disproportionate use of special security measures. Such documentation also provides transparency regarding measures that are often perceived as arbitrary by the persons concerned.

From a preventive perspective, the National Agency encourages detailed statistical recording and regular evaluation of security measures deployed.

### 3.4 – Information on the facility

In eleven of the facilities visited, the house rules were partly written in highly technical and legal language.

In two facilities in Thuringia, for example, plain language versions of the house rules were not available. A statement by the Thuringian Ministry for Labour, Social Affairs, Health, Women and Families of 22 November 2022 indicated that plain language versions were planned, however.

Patients in forensic psychiatric detention often suffer from psychological and/or cognitive impairments and disabilities, and may have difficulty understanding written texts. It is therefore important for them to be able to consult the house rules at any time in language they can understand.

House rules should also be easily understandable in view of the changing cultural and ethnic make-up of the patient population. Currently, a large proportion of patients have migrant back

<sup>82</sup> See for example the statement by the Forensic Psychiatry Office (*Amt für Maßregelvollzug*) of 11 November 2021 in response to the report of the National Agency on its visit to Straubing district hospital.

grounds, and many have only a very limited command of German.

In closed psychiatric facilities in particular, it is important that patients know and understand the rules and structures of the facility and that any limits set are transparent to them. This can have a de-escalating effect and help to prevent crises and conflicts (including between patients).

The house rules should be provided in the languages spoken in the clinic, as well as in plain language.

A positive example is the “*Von Patienten für Patienten*” (“By Patients for Patients”) information leaflet available in the forensic psychiatry clinic in Münster (North Rhine-Westphalia).

### 3.5 – Supervised urine screening

In nine of the facilities visited, drug testing was carried out on the basis of urine samples collected under observation.

In July 2022, the Federal Constitutional Court made it clear that the provision of urine samples under observation “involving the removal of clothing” constitutes “a serious infringement of the subject’s general right of personality”.<sup>83</sup>

An alternative method of drug screening to supervised urine sample provision should be available so that patients can choose the option they find less intrusive.<sup>84</sup>

## 4 – OVERVIEW OF FINDINGS AND RECOMMENDATIONS FOR EACH LAND

The following pages set out the forensic psychiatry facilities visited in 2022 grouped according to *Land*. In addition to the problems addressed above common to various facilities, the aim of this section is also to highlight selected positive examples, findings and recommendations. A comprehensive description of the individual facilities can be found in the

visit reports published on the National Agency's website.<sup>85</sup>

### 4.1 – Baden-Württemberg

In Baden-Württemberg, forensic psychiatry facilities were visited in Ravensburg, Reichenau, Wiesloch and Zwiefalten in 2022.

Aspects rated positively by the National Agency on those visits include the following:

- + In the forensic psychiatry clinic in Ravensburg, patients placed in the crisis intervention rooms were offered short and long-sleeve t-shirts, trousers and shorts. The clothes were rip-proof, of an inconspicuous design and made of fabric that was comfortable to wear. Some crisis intervention rooms were also equipped with clocks, which can help to defuse the distressing situation these patients find themselves in. Another positive feature were the staff profiles, some including photographs, that were displayed in the corridor. This practice can have a preventive effect, helping to dispel potential reservations or inhibitions in the interactions between patients and staff.
- + At the facilities in Zwiefalten and Wiesloch, the crisis intervention rooms were equipped with foam furniture.

In addition to the general recommendations, findings and recommendations specific to Baden-Württemberg were essentially as follows:

#### 4.1.1. – Inhumane detention conditions in crisis intervention rooms

Inhumane conditions in crisis intervention rooms were observed in both Ravensburg and Reichenau. The case of one patient in Reichenau prompted the National Agency to initiate emergency proceedings and call on the Minister<sup>86</sup> to immediately remedy the problems observed in a personal letter.<sup>87</sup> The National Agency welcomes the Minister’s swift and positive response<sup>88</sup> to the situation in Reichenau, and demands that the following practice be suspended across the board:

<sup>85</sup> <https://www.nationale-stelle.de/besuche.html> (in German).

<sup>86</sup> Baden-Württemberg Ministry for Social Affairs, Health and Integration.

<sup>87</sup> See visit on 8 June 2022, <https://www.nationale-stelle.de/besuche/laenderkommission/2022.html>.

<sup>88</sup> Letter of 21 July 2022 in response to the National Agency’s letter of 14 June 2022.

<sup>83</sup> Federal Constitutional Court, order of 22 July 2022, file no.: 2 BvR 1630/21, margin no. 27.

<sup>84</sup> As in Eberswalde (Brandenburg), for example.

Some crisis intervention rooms in the clinics in Ravensburg and Reichenau had no sanitary facilities at all. Moreover, the persons detained in these rooms were denied regular use of a toilet. As a result, they were forced to relieve themselves into basins while being monitored by a CCTV camera with no pixelation whatsoever.

This situation was all the more intolerable as detainees had to pass the basin holding their excreta to care staff via the same food hatch through which their meals were delivered.<sup>89</sup> This kind of practice is likely to trigger feelings of inferiority among patients, humiliating and degrading them.

#### 4.1.2 – Privacy

In admission ward II at the forensic psychiatry clinic in Wiesloch, peepholes were built into the walls of the toilets in patient rooms. These peepholes could be used by staff from the outside without the occupant's knowledge.

The National Agency has doubts as to the proportionality of constant monitoring using peepholes.<sup>90</sup> In its view, there is no need for this measure as the clinic has CCTV monitoring in several rooms. Furthermore, nothing can be seen through the peepholes if the light in the bathroom is not switched on.

The National Agency subsequently called for the peepholes to be removed from the bathrooms.

In a statement dated 23 December 2022, the Baden-Württemberg Ministry for Social Affairs, Health and Integration declined to remove the peepholes on the grounds that they were not freely accessible to either patients or staff and were fitted with a viewing flap with an additional cover, and stating that their use was only permitted “under specific written instructions”.

To date, the National Agency has not encountered bathrooms fitted with peepholes in any comparable facilities visited, and is therefore convinced that they can be dispensed with in spite

<sup>89</sup> In a statement dated 20 March 2023 in response to the report on the visit to the forensic psychiatry clinic in Ravensburg on 17 November 2022, the Ministry for Social Affairs, Health and Integration announced plans to install a separate hatch for the basin to be passed through.

<sup>90</sup> Cf. in this regard: Federal Court of Justice, judgment of 8 May 1991, file no.: 5 AR Vollz 39/90: The practice of ordering prisoners in closed prisons to keep peepholes in cell doors unobstructed must be assessed on a case-by-case basis.

of the “security aspects” cited in the statement.

Finally, the National Agency emphasises that monitoring patients while they are using the toilet or bathroom constitutes a serious infringement of their right to privacy. It reiterates its call for peepholes to be removed or blocked.

#### 4.2 – Bavaria

In Bavaria, forensic psychiatry facilities were visited in Taufkirchen and Wasserburg in 2022.

Aspects rated positively by the National Agency on those visits include the following:

- + In both facilities, crisis intervention rooms were equipped with challenging furniture, which allows occupants to sit in a normal position.
- + Furthermore, some crisis intervention rooms were also equipped with clocks, which can help to defuse the distressing situation these patients find themselves in.

In addition to the general recommendations, the following finding specific to Bavaria was noted:

#### Systematic recording of special security measures

At the preliminary meeting on its visit to Wasserburg, the National Agency requested a statistical report on measures involving physical restraint and isolation. The facility responded that it did not maintain systematic, centralised records of such measures.

One of the benefits of systematically recording security and disciplinary measures is that the corresponding orders can then be viewed according to aspects such as the type of measure, its duration, and the reason behind it. It also enables facilities to track the frequency with which security measures are ordered over an extended period. This can help avoid disproportionate use of such measures.

#### 4.3 – Brandenburg

In Brandenburg, one forensic psychiatry facility in Eberswalde was visited in 2022.

Aspects rated positively by the National Agency on this visit include the following:

- + In addition to visits, patients can now also submit requests for video calls.

- + Some crisis intervention rooms were equipped with a media wall, which can play a significant role in helping the occupant achieve a more relaxed state of mind.
- + To protect patients' privacy, drug screening was carried out using urine samples identified by means of a marker administered with their consent.

In addition to the general recommendations, the following finding specific to Brandenburg was noted, and a corresponding recommendation made:

#### Outdoor exercise

One patient was denied any opportunity to spend time outdoors, and allowed only a short period to smoke inside the facility.

Even in prisons, the law requires every person to be given the opportunity to exercise outdoors for at least one hour every day.<sup>91</sup> Outdoor exercise has unique health benefits that cannot be replicated by any other measure.<sup>92</sup>

Every person deprived of their liberty should be offered at least one hour of outdoor exercise per day.

The National Agency called on the Brandenburg Ministry for Social Affairs, Health, Integration and Consumer Protection to amend the Brandenburg Mental Health Act (*Brandenburgisches Psychisch-Kranken-Gesetz*, BbgPsychKG) to take into account the above-mentioned minimum standards, as has already been

done e.g. in Bavaria,<sup>93</sup> Berlin,<sup>94</sup> Hamburg,<sup>95</sup> Rhineland-Palatinate,<sup>96</sup> Schleswig-Holstein<sup>97</sup> and Saxony-Anhalt<sup>98</sup>.

#### 4.4 – Bremen

Following an initial visit to the forensic psychiatry ward at Bremen East Hospital in 2017 and a first follow-up visit in 2019, the National Agency visited the facility once again to establish the extent to which the problem areas found had been remedied.

Aspects rated positively by the National Agency on this visit include the following:

- + Strip-searches were conducted in two stages to ensure the process was as respectful as possible.
- + Segregation units had been equipped with improved furnishings, such as seating.

In addition to the general recommendations, findings and recommendations specific to Bremen were essentially as follows:

##### 4.4.1 – Access to files

In the course of its visit, the National Agency asked the Bremen East forensic psychiatry unit for access to the files of a person being held in segregation. However, the facility refused to allow access to the files without the patient's express consent. This made it impossible for the National Agency to gain a clear picture of their detention conditions. The circumstances of the person whose files it was unable to view were a particular cause for concern as the patient had already been held in segregation for several years.<sup>99</sup>

<sup>91</sup> Section 77 (2) of the Brandenburg Prison Act (*Brandenburgisches Justizvollzugsgesetz*, BbgJVollzG); Item 27.1 of Recommendation Rec(2006)2-rev of the Committee of Ministers to Member States on the European Prison Rules: "Every prisoner shall be provided with the opportunity of at least one hour of exercise every day in the open air, if the weather permits."

<sup>92</sup> The CPT considers that the aim should be that patients in psychiatric establishments should generally, health permitting, benefit from unrestricted access to outdoor areas during the day, unless treatment activities require them to be present on the ward. The Committee encourages the authorities of Hamburg and Saxony-Anhalt, as well of all other *Länder*, to review the existing arrangements for outdoor exercise in psychiatric establishments accordingly." CPT Report on its visit to Germany, CPT/Inf (2022) 18, paragraph 112, <https://rm.coe.int/1680a80c63>.

<sup>93</sup> Section 11 (2) of the Bavarian Act on Forensic Psychiatric Detention (*Bayerisches Maßregelvollzugsgesetz*, BayMRVG).

<sup>94</sup> Section 32 of the Mental Health Act (PsychKG).

<sup>95</sup> Section 20 (3) of the Hamburg Act on Forensic Psychiatric Detention (*Hamburgisches Maßregelvollzugsgesetz*, HmbMVollzG).

<sup>96</sup> Section 25 (2) of the Act on Forensic Psychiatric Detention (*Maßregelvollzugsgesetz*, MVollzG).

<sup>97</sup> Section 10 (1) of the Act on Forensic Psychiatric Detention (*Maßregelvollzugsgesetz*, MVollzG).

<sup>98</sup> Section 14 (2) of the Act on Forensic Psychiatric Detention of Saxony-Anhalt (*Maßregelvollzugsgesetz Sachsen-Anhalt*, MVollzG LSA).

<sup>99</sup> On the practical impossibility of complying with the requirement for patients' consent to view their files, see the CPT report on its visit to Germany in 2015, CPT/Inf (2017) 13, paragraph 9 et seqq.



The National Agency’s mandate includes a right to “access to all information referring to the treatment of [the persons concerned] as well as their conditions of detention”.<sup>100</sup> Accordingly, under Bremen’s Mental Health Act, “members [...] of the National Agency for the Prevention of Torture are entitled to inspect existing patient files (excluding details of therapy sessions) during a visit to a detention facility”.<sup>101</sup>

#### 4.4.2 – Night lock-up

In one ward, night lock-up was imposed on all patients.

In the course of its visits in 2022, the National Agency found that the majority of forensic psychiatry facilities did not impose night lock-up as an across-the-board measure.

In any event, night lock-up raises concerns when it is ordered for organisational reasons or due to staff shortages. Measures of this sort should be applied only in individual cases where no alternative is available. The decision to do so, which should be made on a case-by-case basis, must be reasoned and comprehensible.

#### 4.5 – Hamburg

The National Agency visited the Holstenglacis forensic psychiatry facility of the Central Hospital, Ward 6, which is located within Hamburg Remand Detention Facility.

Aspects rated positively by the National Agency on this visit include the following:

+ On the day of the visit, the National Agency was provided with clear and detailed documentation on all patients by the facility. Separate documentation can have a preventive effect by creating transparency regarding the imposition of measures that in many cases would otherwise be perceived as arbitrary by the patients affected.

In addition to the general recommendations, findings and recommendations specific to Hamburg were essentially as follows:

#### 4.5.1 – Application of the Act on Forensic Psychiatric Detention

Central Hospital, Ward 6 was opened within Hamburg Remand Detention Facility due to chronic overcrowding at the forensic psychiatry unit at Asklepios Klinik Nord hospital, Ochsenzoll.

##### Conditions of detention

In the National Agency’s view, it is imperative that the Hamburg Act on Forensic Psychiatric Detention is also applied at the forensic psychiatry unit in the Remand Detention Facility.

The conditions of detention should be brought into line with those customarily observed in forensic psychiatry facilities so as to ensure effective treatment of patients.

##### Visits

According to the ward rules, “visiting hours are determined by the rules of the Remand Detention Facility”. According to section 21 (1) of the Hamburg Remand Detention Act, “prisoners on remand are entitled to receive regular visits, with a total duration of at least two hours per month.”

However, section 15 (1) of Hamburg’s Act on Forensic Psychiatric Detention provides for more flexible visitation rules: “Patients are entitled to receive regular visits.”

In many forensic psychiatry facilities, the National Agency observes visitation rules allowing at least four hours per month.

Steps should be taken to ensure that persons detained at Central Hospital, Ward 6 are subject to the same visitation rules as those in place at Asklepios Klinik Nord hospital, Ochsenzoll, and are not discriminated against for organisational reasons.

#### 4.5.2 – Duration of detention

In the ward rules, Central Hospital, Ward 6 is defined as an “acute/admission ward”. With respect to duration, this means that detention in this ward should be limited.

However, at the time of the visit the majority of patients had already been in the ward for several months or longer.

<sup>100</sup> Article 20 (b) of the OPCAT.

<sup>101</sup> Section 89 of the Bremen Mental Health Act.

In many forensic psychiatry facilities visited by the National Agency, detention in acute/admission wards only lasts for a matter of weeks, until the patient is transferred to the general ward or the acute phase is over.

The National Agency has serious doubts as to whether such lengthy detention periods at Central Hospital, Ward 6 can be considered proportionate, particularly in view of the limited space available and the ward's daily routine.

#### 4.5.3 – Daily routine on the ward

The patient's ability to keep themselves occupied was severely limited by the available space on the ward, which consisted solely of the patient rooms, a corridor, a small day room (TV room) and a kitchen that was only accessible to cookery groups. Patients were allowed one hour in the yard and several hours of out-of-cell time in the corridor or, "by individual arrangement", in the day room. Due to its limited size, however, this room can only accommodate three or four people at a time.

As a rule, patients were confined to their cell for at least 15 hours a day, with only limited options to occupy themselves. They had no opportunities for work or vocational training (section 12 of Hamburg's Act on Forensic Psychiatric Detention) or study (section 13 of Hamburg's Act on Forensic Psychiatric Detention); neither were they offered sports activities of any kind.

Steps should be taken to ensure that patients have access to structured and regular activities with which to occupy themselves.

#### 4.6 – Hesse

In Hesse, forensic psychiatry facilities were visited in Haina, Marburg (juvenile facility) and Riedstadt in 2022.

Aspects rated positively by the National Agency on those visits include the following:

- + In Riedstadt, staff profiles introducing the employees were on display, some including photographs. This can help dispel potential reservations or inhibitions in the interactions between patients and staff, which in turn can impact favourably on treatment outcomes.
- + In the patient rooms of the same facility, occupants were able to operate electric

blinds on the outside of their windows themselves, allowing them to choose the amount of daylight entering the room. This helps patients adapt to the general living conditions and contributes to the daily exercise of their internationally recognised right to autonomy.<sup>102</sup>

In addition to the general recommendations, findings and recommendations specific to Hesse were essentially as follows:

#### 4.6.1 – External security staff

At the Vitos Clinic for Forensic Psychiatry in Riedstadt, 18.5 of 26 unfilled full-time institutional care positions were "compensated for" (phrasing of the clinic management) by an external security agency. These employees were perceived as "regular" ward staff by patients, performing their duties without distinctive clothing or titles.

In the National Agency's view, it is unacceptable for qualified care staff to be replaced by untrained external security personnel.<sup>103</sup>

#### 4.6.2 – Shackling

The National Agency observed that the Vitos Clinic in Riedstadt used metal handcuffs to restrain individual patients during outdoor exercise in the presence of other patients.

It is questionable whether the practice of using handcuffs or ankle cuffs to restrain patients with mental disorders in secure outdoor areas can be considered proportionate. The CPT also advises against this practice.<sup>104</sup>

In addition, the use of metal cuffs poses a high risk of injury for the individuals concerned.

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

#### 4.6.3 – Privacy

In one ward in Haina, doors to the patients' rooms were fitted with plain glass viewing

<sup>102</sup> Article 3 (a) of the Convention on the Rights of Persons with Disabilities.

<sup>103</sup> This applies in particular with regard to the statutory mandate for treatment and rehabilitation (section 6 of the Hessian Act Concerning the Execution of Measures of Correction and Prevention in a Psychiatric Hospital or an Institution for Withdrawal Treatment).

<sup>104</sup> CPT/Inf (2022) 18, paragraph 146.

windows. The main purpose of these windows was supervision of especially high-risk patients. However, they also allowed anyone in the corridor to look into the rooms and observe the occupants.

Measures should be taken to prevent visibility into patient rooms to protect the occupants' privacy.

#### 4.7 – Lower Saxony

In Lower Saxony, forensic psychiatry facilities were visited in Bad Zwischenahn (adults and juveniles), Göttingen and Hildesheim in 2022.

Aspects rated positively by the National Agency on those visits include the following:

- + Following the National Agency's visit to the forensic psychiatry facility for adults in Bad Zwischenahn, the inadequate pixelation of the toilet area in the crisis intervention room was reviewed and promptly addressed.<sup>105</sup>
- + A noteworthy development is the indoor smoking ban at the facility in Hildesheim as part of its duty of care with regard to patients' health.

In addition to the general recommendations, findings and recommendations specific to Lower Saxony were essentially as follows:

##### 4.7.1 – Reporting

During the visit to the forensic psychiatry facility for adults in Bad Zwischenahn it was noted that segregation measures were generally only reported to the supervisory authority after a period of four weeks.

Insufficient social contact due to isolation can have a negative impact on patients' mental health. Segregation should be closely monitored, especially with regard to its duration, in order to bring about a relaxation and termination of the measure as soon as possible.

Considering the severity of this measure, the four-week period before reporting becomes

<sup>105</sup> See the statement by the Lower Saxony Ministry for Social Affairs, Labour, Health and Equality of 3 January 2023.

compulsory is too long.<sup>106</sup> In the National Agency's view, it is concerning that the legal requirements for isolation are significantly lower than those for physical restraint.

Statutory regulation must not create incentives to prefer particular measures even where they do not constitute the least severe alternative in a given case.

##### 4.7.2 – Complaints management

During the visit to the facility in Göttingen, it was noted that the contact details of certain complaints bodies – including the patient advocate – were not displayed. There was also no channel for anonymous submission of complaints.

Mentally ill patients on closed wards in particular may encounter huge difficulties when trying to contact a complaints body. A patient advocate can act as an intermediary in such situations. Publishing the contact details of the patient advocate or an ombudsperson provides an opportunity for patients to lodge anonymous complaints drafted in a safe environment. Offering regular consulting hours in the facility at fixed times can also make it easier for patients to initiate contact. In similar facilities, complaints boxes are provided on the wards to allow patients to anonymously lodge complaints.

The contact details of complaints bodies should be displayed in the wards so that they are clearly visible to patients. The opportunity to lodge complaints anonymously should be provided. Moreover, complaints should be recorded centrally and evaluated on a regular basis so that any recurring issues can be identified and necessary counter-measures taken.

##### 4.7.3 – Physical restraint

The rules on physical restraint provided in the Lower Saxony Act on Forensic Psychiatric Detention (*Niedersächsisches Maßregelvollzugsgesetz*) are still incompatible with constitutional requirements, more than three years after the Federal Constitutional Court judgment of 24 July 2018.

<sup>106</sup> See for example section 32 (3) of the NRW Act on Criminal Law-related Committal on segregation measures: "Every separation pursuant to subsection (1) nos. 5 and 6 lasting more than 48 hours requires a judicial decision and must be reported to the relevant supervisory authority."

Physical restraint constitutes a serious infringement of fundamental rights and carries the risk of serious damage to health.<sup>107</sup> Persons who are being physically restrained must be observed continuously and in person by therapeutic or care staff who are in direct proximity to the individual concerned (one-on-one supervision).<sup>108</sup> A judicial decision is also required if physical restraint is to be used for more than just a short period of time.<sup>109</sup> After the measure ends, it should be discussed with the individual concerned.<sup>110</sup> The person concerned should also be informed after the measure of their right to request a court review of the lawfulness of the restraint procedure.<sup>111</sup>

*Land* legislation must be adapted in order to meet the requirements of constitutional law.

#### 4.8 – North Rhine-Westphalia

In North Rhine-Westphalia, forensic psychiatry facilities were visited in Münster and Rheine in 2022.

Aspects rated positively by the National Agency on those visits include the following:

- + Patients at the facility in Rheine were given their own keys, allowing them to lock their rooms. This enabled them to prevent unwanted visits, among other benefits.
- + At the facility in Münster, patients were actively involved in structuring day-to-day life in the clinic, e.g. with the “*Von Patienten für Patienten*” (“By Patients for Patients”) information leaflet or the initials displayed on the doors of patient rooms. This fostered an open culture and constructive culture of communication between patients and staff.

In addition to the general recommendations, the following finding specific to North Rhine-Westphalia was noted, and a corresponding recommendation made:

<sup>107</sup> Cf. Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15, margin no. 71.

<sup>108</sup> Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15, margin no. 83.

<sup>109</sup> Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15, margin no. 69.

<sup>110</sup> DGPPN [German Society for Psychiatry and Psychotherapy] (2018): “*S3-Leitlinie: Verbinderung von Zwang: Prävention und Therapie aggressiven Verhaltens bei Erwachsenen*” (accessed 19 April 2023).

<sup>111</sup> Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15, margin no. 85.

#### Patient rooms

In some of the patient rooms at the clinic in Münster, there was no way of blocking out light or obscuring visibility (in the form of either blinds or curtains), with the result that both patients and staff were able to look directly into the rooms from the courtyard at any time. This meant that patients’ privacy was not sufficiently protected. Moreover, it was impossible to fully darken the rooms at night.

During its visits to forensic psychiatry facilities, the National Agency regularly observes patient rooms fitted with curtains that comply with usual hospital specifications, besides being non-flammable and rip-proof, allowing rooms to be darkened and safeguarding occupants’ privacy.

Patients should have the opportunity to sleep in a darkened room and to assert their right to privacy.

#### 4.9 – Rhineland-Palatinate

In Rhineland-Palatinate, forensic psychiatry facilities were visited in Klingenmünster and Weißenthurm in 2022.

Aspects rated positively by the National Agency on those visits include the following:

- + Crisis intervention rooms at the clinic in Weißenthurm had large windows, and some were equipped with radios. This can help to defuse the distressing situation these patients find themselves in. The furniture consisted of seats and tables made of foam.
- + At the clinic in Klingenmünster, therapy was administered to patients who did not speak German with the help of a telephone interpreter. Given the important role of conversation in therapy, treatment options were significantly improved by this approach. In addition, patients were offered weekly German lessons, which played a key role their acquisition of German language skills.

In addition to the general recommendations, the following finding specific to Rhineland-Palatinate was noted, and a corresponding recommendation made:

### Contact with the outside world

At the facility in Weißenthurm, it was noted that the option of making video calls, introduced at the start of the pandemic as a compensatory measure, had been discontinued without replacement on data protection grounds in the course of the pandemic. The National Agency was assured that a solution to the problem was being sought.

Video calls should be restored as an additional channel of communication.

#### 4.10 – Saarland

In Saarland, the forensic psychiatry clinic in Merzig was visited in 2022. This was a follow-up visit. The National Agency visited the facility for the first time on 15 April 2019, and drew up a list of recommendations for improvements in accommodation and treatment in its report of 12 September 2019. One of the purposes of the follow-up visit was to establish the extent to which the problem areas found had been remedied.

Aspects rated positively by the National Agency on this visit include the following:

- + The staff at the facility consisted almost entirely of fully qualified care staff, which can contribute to a high quality of care.
- + Each storey of the light-filled and spacious new building had its own covered courtyard, allowing patients to spend time outdoors at any time.

In addition to the general recommendations, findings and recommendations specific to Saarland were essentially as follows:

##### 4.10.1 – Physical restraint

The facility's records show that in 2021 and 2022, physical restraint was applied for extended periods, often lasting several days. In 2019 alone, one patient had been subjected to physical restraint eleven times up to the date of the visit. The number of incidents involving physical restraint at the facility is remarkably high compared to the observations of the National Agency at similar facilities.

The National Agency recommends that steps are taken to ensure that physical restraint is only employed as a last resort and for the shortest

possible period. Measures should be taken to avoid recourse to physical restraint.

##### 4.10.2 – Private conversations

On the wards, patient telephones were located in the communal area and were not fully partitioned off. As a result, calls could not be made with complete privacy.

Steps should be taken to ensure that private telephone conversations are possible on all wards.

The National Agency was informed that partitions had been ordered to this end.

#### 4.11 – Schleswig-Holstein

In Schleswig-Holstein, the forensic psychiatry clinic in Schleswig was visited in 2022.

Aspects rated positively by the National Agency on this visit include the following:

- + Video surveillance is not used anywhere in the facility. As a result, patients enjoy a high degree of privacy.

In addition to the general recommendations, the following finding specific to Schleswig-Holstein was noted:

##### Structural conditions

In terms of its state of repair and material conditions, the old building contrasts starkly with the new clinic.

It is in need of renovations and refurbishment. Toilets and showers were not located in the ward rooms, so patients had to use sanitary facilities in the corridor. What is more, the flooring in the corridors and rooms showed signs of heavy wear.

Material conditions in forensic psychiatry facilities influence the therapeutic environment;<sup>112</sup> this includes the state of repair of living areas.<sup>113</sup> Accordingly, the National Agency has doubts about the long-term suitability of the old building for patient treatment.

#### 4.12 – Thuringia

In Thuringia, forensic psychiatry facilities were visited in Hildburghausen and Stadtroda in 2022.

<sup>112</sup> Cf. CPT/Inf (2022) 18, paragraph 111.

<sup>113</sup> Ibid.

Aspects rated positively by the National Agency on those visits include the following:

- + In Stadtroda, plans to acquire a multimedia and infotainment system designed specifically for use in prisons were noted with approval. The system allows the secure use of the telephone and internet, while also offering the opportunity to maintain social contacts. This can bring therapeutic benefits.
- + Patients on the wards in Hildburghausen were able to easily lodge complaints using request slips.

In addition to the general recommendations, the following finding specific to Thuringia was noted, and a corresponding recommendation made:

#### **Visibility of the surveillance monitor**

Video surveillance of the crisis intervention room was displayed in the main office of the Hildburghausen clinic, located on the ground floor of the building, and was fully visible through panes of glass to both staff and visitors, who regularly walked past the office. This compromised the privacy of the individuals concerned.

Appropriate steps should be taken to prevent external visibility. The privacy of the individuals concerned must be protected.

In the above-mentioned statement in response to the two visit reports, the Ministry announced that the Hildburghausen clinic would take steps to shield the monitoring area from view.



# V PRISONS



## INTRODUCTION

In 2022, the National Agency visited 17 prisons<sup>114</sup> in Bavaria, Baden-Württemberg, Brandenburg, Hamburg, Hesse, Lower Saxony, North Rhine-Westphalia, Saxony, Schleswig-Holstein and Thuringia and two prison hospitals in Hesse and North Rhine-Westphalia.

The visits to the following prisons: Bernau (Bavaria), Konstanz (Baden-Württemberg), Rockenberg (juvenile prison; Hesse), Dinslaken (North Rhine-Westphalia), Vechta (women's prison; Lower Saxony), Dresden (Saxony) and Suhl-Goldlauter (Thuringia) were repeat or follow-up visits. The purpose of those visits was in part to review progress on the implementation of previous recommendations.

This chapter summarises the information gathered by the National Agency on visits carried out in 2022. It sets out the National Agency's findings and recommendations at the national level (section 1) before looking in more detail at findings on specific *Länder* (section 2). The chapter concludes with a summary of visits to prison hospitals and outlines upcoming activities planned by the National Agency, which are to focus in particular on the problem of the growing number of prisoners with mental health issues.

## 1 – FINDINGS AND RECOMMENDATIONS AT THE NATIONAL LEVEL

Aspects rated positively by the National Agency at the national level include the following:

- + Additional communication options – such as video calls – were introduced in almost all of the prisons during the coronavirus pandemic in order to facilitate contact with the outside world. In a number of facilities, prisoners can now request video calls in addition to visits. The National Agency also found that prisons were increasingly installing telephones in the cells.
- + Using (video) interpreters can help to avoid communication problems and comprehension issues and allow prisoners to discuss private matters or matters subject to medical confidentiality. Professional interpreting also ensures that technical terms and complex subjects are correctly communicated in the other language.

In 2022 as in previous years, the National Agency encountered structural and persistent problems in many of the prisons it visited. The National Agency also found significant differences in how its standards and recommendations were being implemented; these differences are set out in more detail below.

Recommendations issued to the prisons visited mainly concerned the following areas:

### 1.1 – Special security measures

#### 1.1.1 – Segregation

Segregation refers to an individual's complete isolation from all of their fellow inmates.<sup>115</sup> Segregation for more than 24 hours constitutes

<sup>114</sup> Prisons: Konstanz, Ravensburg, Augsburg-Gablingen, Bernau, Neuruppin-Wulkow, Hamburg-Fuhlsbüttel, Rockenberg (juvenile prison), Weiterstadt, Vechta (women's prison), Dinslaken, Rheinbach, Werl, Neumünster, Dresden, Suhl-Goldlauter and Untermaßfeld; remand detention facility: Hamburg.

<sup>115</sup> Arloth/Krä, *StVollzG Kommentar*, 2021, 5. Auflage, § 88 StVollzG, margin no. 6: The authors draw a distinction between temporary segregation (section 88 (2) (3) of the Prison Act (*Strafvollzugsgesetz*, StVollzG) and solitary confinement or continuous segregation (section 89 of the Prison Act).

continuous segregation (solitary confinement),<sup>116</sup> which may only be imposed if it is absolutely necessary, i.e. if no other less severe measure can effectively be employed instead. Alternative, less severe measures available should include appropriate psychiatric care.<sup>117</sup>

The statement from one supervisory authority on this matter is particularly problematic: it seeks to play down criticism of long periods of segregation, arguing that the number of cases is “small”.<sup>118</sup> In the view of the National Agency, this is an unacceptable position, for long periods of segregation are always to be avoided where possible.

### Duration

At a number of prisons, the National Agency found cases of continuous segregation lasting months or in some instances – in Ravensburg<sup>119</sup> and Dresden<sup>120</sup> prisons – even years when it visited and inspected the records. Often, prisoners in continuous segregation are only allowed outside for one hour each day and spend the remaining 23 hours confined in cells or segregation units.

It is the view of the National Agency that long periods of segregation without significant efforts to find effective alternatives are not acceptable from a human rights perspective.

Continuous segregation places an extraordinary strain on the prisoners concerned.<sup>121</sup> The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) stresses that long periods of segregation can have a damaging effect on the mental and somatic health of the persons concerned and can in certain circumstances constitute inhuman and degrading treatment.<sup>122</sup>

Berlin Higher Regional Court has found that confining an individual to their cell for 23 hours a day can constitute a violation of their human dignity.<sup>123</sup>

Periods of segregation are to be kept to a minimum. Measures should be taken to reduce the duration and thus the negative effects of segregation on the mental and physical health of the individuals concerned.

### Activities and support

The National Agency repeatedly found instances of a lack of support for prisoners in continuous segregation and a failure to offer sufficient activities. Segregation is designed to prevent contact with other prisoners and avoid specific risks, but must not lead to the complete isolation of the individuals concerned.

Long periods of segregation are often connected to untreated mental disorders and illnesses. This is all the more alarming given that appropriate support and treatment for mental health issues is not always available in prison. For example, inmates at Hamburg Remand Detention Facility were only able to speak to a psychologist on request. The National Agency found on its visit to Weiterstadt Prison (Hesse) that psychological support had at that point yet to be provided

<sup>116</sup> Section 89(1) of the German Prison Act; Arloth/Krä, *StVollzG Kommentar*, 2021, 5. Auflage, § 89 StVollzG, margin no. 1.

<sup>117</sup> Arloth/Krä, *StVollzG Kommentar*, 2021, 5. Auflage, § 89 StVollzG, margin no. 2: “Solitary confinement is only absolutely necessary if other alternative measures cannot be employed; the facility must therefore first take all other available steps to avoid or obviate the need for continuous segregation. Such steps notably include medical and psychiatric measures.”

<sup>118</sup> Statement from the Hamburg Justice and Consumer Protection Authority of 20 March 2023 in response to the report on the visit to Hamburg Remand Detention Facility on 12 October 2022.

<sup>119</sup> Ravensburg Prison had imposed continuous segregation a total of 119 times in the period from the beginning of 2021 to the date of the National Agency’s visit in 2022. Of those 119 cases of continuous segregation, one lasted 138, one 373 and one 608 days.

<sup>120</sup> Report on the visit to Dresden Prison on 28 June 2022. One individual had been in continuous segregation for several years.

<sup>121</sup> Cf. 2010/2011 Annual Report of the National Agency; see also Feest/Lesting/Lindemann, *Strafvollzugsgesetze Kommentar*, 8. Auflage, 2021, II § 78 29, p. 684.

<sup>122</sup> CPT/Inf (2022) 18, paragraph 53, <https://rm.coe.int/1680a80c61> (accessed 19 April 2023).

<sup>123</sup> Berlin Higher Regional Court, judgment of 17 February 2015, file no.: 9 U 129/13, margin no. 38: “Confining an individual for 23 hours with no possibility to take part in work or training, no access to other group activities and no social contact in any form runs wholly counter to [statutory] sentencing objectives and prevents any kind of rehabilitation. A prison sentence enforced without a clear focus on the objective of rehabilitation is simply lock-up, violates the human dignity of the prisoner and reduces him to an object of State action.”

for prisoners in continuous segregation. *Land* regulations specify that particular care is to be taken of prisoners;<sup>124</sup> this alone seriously calls into question whether such an approach can be considered proportionate. The National Agency was also informed that prisoners only received a visit from a doctor once a week.

A considerable reduction in or total absence of social contact can have a negative impact on the mental health of the individuals concerned.

The United Nations Standard Minimum Rules for the Treatment of Prisoners<sup>125</sup> urge the avoidance of prolonged periods of solitary confinement.<sup>126</sup> Segregation for 22 hours a day or more without meaningful human contact on 15 consecutive days constitutes prolonged solitary confinement.<sup>127</sup>

Steps must be taken to ensure structured and regular human contact and sufficient support for and if necessary treatment of segregated prisoners. The individuals concerned should also be able to engage in meaningful activities.<sup>128</sup>

### 1.1.2 – Specially secured cells

Segregation in a specially secured cell represents a particularly significant infringement of an individual's rights. The isolating nature of the measure is compounded by minimal furnishings in the cells and often also by video surveillance ordered in addition to segregation, and in some cases by a withdrawal of the inmate's right to exercise outdoors.

#### Duration

The National Agency noted with concern that a number of prisoners were held in specially secured cells for periods of several weeks or even months, and that for up to 24 hours a day. For example, this was the case at Rheinbach Prison (North Rhine-Westphalia), where one individual was held in a specially secured cell for a period

of 22 days, and at Bernau Prison (Bavaria), where segregation in specially secured cells often lasted more than 15 and sometimes as long as 92 days.

In the view of the National Agency, segregation in a specially secured cell for more than just a short period of time is unacceptable if the cell is furnished in a way that does not respect the human dignity of inmates.

This is, for example, the case if the specially secured cell resembles a “glass cage”<sup>129</sup> or the size of the cell does not meet minimum standards and the cell has no windows.<sup>130</sup>

Furthermore, it is a matter of some doubt whether segregation in a specially secured cell for such a lengthy period can ever be proportionate. Such an approach is certainly at odds with the reasons given for segregation: the grave state (“*akute[r] Zustand*”)<sup>131</sup> of the individual concerned and the associated risk of self-harm or suicide or violence towards others. Steps must, in the National Agency's view, be taken to address the prisoner's state where it remains grave; for example, the prison must seek the assistance of the psychiatric services.

Long periods in specially secured cells are often connected to untreated mental disorders and illnesses. Prisoners' expressing suicidal thoughts has also increasingly been cited as a reason for their segregation.

A positive example of the approach facilities can take is the suicide prevention cell at Leipzig Prison and Prison Hospital (Saxony), where the priority is treatment and not simply preventing prisoners from harming themselves. The cell is furnished accordingly.<sup>132</sup> Similarly, the transfer of prisoners to the psychiatric unit at Vechta Women's Prison (Lower Saxony) is also aimed at enabling a rapid and targeted response to signs of mental health issues and at ensuring access to the right treatment.

<sup>124</sup> Section 50 (8) of the Hessian Prison Act (*Hessisches Strafvollzugsgesetz*, HStVollzG).

<sup>125</sup> Resolution 70/175 of the General Assembly, Annex, adopted on 17 December 2015, also known as the Nelson Mandela Rules.

<sup>126</sup> Nelson Mandela Rules, Rule 43.

<sup>127</sup> Nelson Mandela Rules, Rule 44.

<sup>128</sup> On a 2005 visit to a special security unit in which long periods of segregation were imposed, the CPT criticised the fact that no form of occupational or sports activity was on offer, calling this an “inadmissible” state of affairs (CPT (2007) 18, paragraph 88).

<sup>129</sup> This was the case in Bernau Prison (Bavaria). The detention conditions are described in more detail in the overview of findings and recommendations for each *Land*.

<sup>130</sup> This was the case at Werl Prison (North Rhine-Westphalia). The detention conditions are described in more detail in the overview of findings and recommendations for each *Land*.

<sup>131</sup> Feest/Lesting/Lindemann, *Strafvollzugsgesetze Kommentar*, 8. Auflage, 2021, II § 78 42, p. 688.

<sup>132</sup> Report of the National Agency on its visit to Leipzig Prison and Prison Hospital on 18 May 2018, published here: <https://www.nationale-stelle.de/besuche/laenderkommission/2018.html>.

## Conditions of detention

### Visibility of toilets

At eleven of the prisons visited, 24-hour CCTV monitoring in the specially secured cells included the toilet area, all of which was visible on the monitoring screen.

Constant CCTV monitoring in itself constitutes a significant infringement of constitutionally protected rights,<sup>133</sup> and observing an individual while they use the toilet a serious infringement of their rights of personality.<sup>134</sup>

CCTV monitoring should only be used in individual cases where it is essential in order to protect the individuals concerned. In such cases, the 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 pixelated. Only where there is an acute risk of self-harm or suicide might a decision to allow temporarily unrestricted monitoring of a cell potentially be acceptable; such a decision would have to be carefully considered in the individual case.

Both the North Rhine-Westphalia Ministry of Justice and the Bavarian Ministry of Justice firmly rejected the pixelation recommendation on the grounds of safety. However, as in previous years, in 2022 the National Agency observed a number of CCTV systems that allowed pixelation of an individual's genital area whilst ensuring that their upper body was visible when they were sitting on the toilet.<sup>135</sup> In some cases, there is even a statutory requirement for such an approach.<sup>136</sup> According to information from the facilities in

question, any safety or security concerns had not proved to be justified.<sup>137</sup>

### Clothing

In a number of the prisons visited, prisoners held in specially secured cells were issued with clothing that did not properly conceal their genital area. This is in the view of the National Agency demeaning, in particular in cases in which there is also 24-hour CCTV monitoring. The prisoners were issued only with a gown that did not always cover their genital area when they sat down or crouched,<sup>138</sup> with paper underwear,<sup>139</sup> or with clothing made from see-through material through which their genital area was visible.<sup>140</sup>

Prisoners should always be provided with appropriate (and if necessary rip-proof) clothing even if they are only to be held in a specially secured cell for a short time.<sup>141</sup>

The National Agency observed the use of rip-proof t-shirts and shorts in a number of the facilities visited.

### Pillows and blankets

The National Agency found a variety of approaches to the provision of pillows and blankets. At Dresden Prison (Saxony), as indeed through Saxony,<sup>142</sup> no pillows or blankets are provided even when an individual is to spend a prolonged period in a specially secured cell. This was also the case at Untermaßfeld Prison (Thuringia), but prisoners at Suhl Prison (Thuringia) were provided with a blanket at least. The prisons of Weiterstadt (Hesse) and Rheinbach (North Rhine-Westphalia) did not provide pillows.

<sup>133</sup> Federal Constitutional Court, order of 18 March 2015, file no.: 2 BvR 1111/13, margin no. 32.

<sup>134</sup> Monitoring an individual while they use the toilet is particularly demeaning. Cf. for example Regensburg Regional Court, order of 20 January 2022, SR StVK 245/21: "According to past decisions of the Federal Constitutional Court, particular sensitivity is required on the part of prison officers if they carry out their duties while prisoners are using the toilet, for in such situations there can often be an infringement of the right to privacy protected under Article 2 (1) in conjunction with Article 1 (1) of the Basic Law."

<sup>135</sup> In 2022, facilities using this system included prisons in Brandenburg, Hesse and Schleswig-Holstein and Hamburg Remand Detention Facility.

<sup>136</sup> Cf. for example section 32 (4) of the Rhineland-Palatinate Land Prison Data Protection Act (*Landesjustizvollzugsdatenschutzgesetz*).

<sup>137</sup> This was also the case at Schwäbisch-Hall Prison, which the National Agency visited in 2021. There was no CCTV monitoring of the prison's specially secured cells, and this was reportedly not a cause for safety concerns.

<sup>138</sup> Ravensburg Prison. At Konstanz Prison, the prisoners in question were issued with a rip-proof shirt that provided only very limited cover below the waist.

<sup>139</sup> Bernau Prison and Hamburg Remand Detention Facility.

<sup>140</sup> Weiterstadt Prison.

<sup>141</sup> Federal Constitutional Court, order of 18 March 2015, file no.: 2 BvR 1111/13, margin no. 31 in conjunction with ECHR, *Hellig v. Germany*, judgment of 7 July 2011, Application no. 20999/05; see also CPT/Inf (96) 28, no. 147), CPT/Inf (99) 9, no. 102 and CPT/Inf (2010) 24, no. 130.

<sup>142</sup> Statement from the Saxon Ministry of Justice and Democracy, Europe and Equality of 6 January 2023 in response to the report on the visit to Dresden Prison on 28 June 2022.

The furnishings in specially secured cells must be such as to respect the dignity of those held there. Each cell should have a mattress, a blanket and a pillow.

In its report of 14 September 2022, the CPT once again urgently called on authorities to ensure that all individuals concerned are provided with a blanket and a pillow.<sup>143</sup>

### Seating

In nearly all the prisons visited, the specially secured cells had only a mattress on the floor. There was no seating at normal seating height.

If an individual is to spend more than just a brief period in a specially secured cell, it is inhumane to force them to stand or sit on the floor.

Prisoners should be given the opportunity to sit in a normal position.

The National Agency observed the use in a number of facilities of foam seating and challenging furniture, which is strong and durable and has no sharp edges or corners. This is a way of providing a seating option even when an individual poses a risk to themselves or others. Following the National Agency's visit, Suhl Prison (Thuringia) responded to the recommendation by procuring this type of seating; it can now be placed in the specially-secured cell as appropriate.

As part of a pilot project launched by the Hessian Justice Ministry, Weiterstadt Prison is trialling the use of a covered foam seating cube.

A similar project was launched by the *Land of Brandenburg* back in 2020. Unfortunately, the competent ministry was still unable to draw any clear conclusions from that project even after two years.

### 1.1.3 – Shackling

A number of prisons used metal cuffs to restrain prisoners in certain situations where direct force was used, or in specially secured cells.

Metal cuffs pose a high risk of injury for the prisoners concerned.

In order to protect prisoners' right to physical integrity, textile restraint belts should be used.<sup>144</sup>

<sup>143</sup> CPT/Inf (2022) 18, paragraph 130.

<sup>144</sup> For example Segufix hand restraint belts.

### 1.1.4 – Physical restraint

Physical restraint was used in a number of the prisons visited.<sup>145</sup> The National Agency was repeatedly told that constant one-on-one supervision by therapeutic or care staff whenever physical restraint was used could not be guaranteed. The German Prison Act only requires watchful care by "trained prison officers".<sup>146</sup>

One-on-one supervision should be provided by therapeutic or care staff in the immediate vicinity of the individual restrained because the use of physical restraint can pose particular health risks<sup>147</sup> requiring an immediate response from qualified personnel. Moreover, therapeutic or care staff can exert a de-escalating influence and thus reduce the period for which restraint is required.

Physical restraint may only be used if it does not breach constitutional requirements.

A judicial decision is also required if physical restraint is to be used for more than just a short period of time.<sup>148</sup> After the measure ends, it should be discussed with the individual concerned<sup>149</sup> and they should also be informed that they have the option of requesting a court review of its lawfulness.<sup>150</sup>

Physical restraint may only be used in compliance with the constitutional requirements set out by the Federal Constitutional Court in 2018.

At Fuhlsbüttel Prison (Hamburg), as on its first visit on 1 March 2012, the National Agency found that persons subjected to physical restraint are almost fully undressed throughout. They are merely provided with paper underwear.

This practice is demeaning and, in the view of the National Agency, constitutes degrading treat-

<sup>145</sup> CPT/Inf (2022) 18, paragraph 91: the CPT recommends abolishing the use of physical restraint in prisons.

<sup>146</sup> Section 171a (4) of the German Prison Act.

<sup>147</sup> Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15, margin no. 83.

<sup>148</sup> Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15, margin no. 69.

<sup>149</sup> DGPPN (2018): "*S3-Leitlinie: Verbinderung von Zwang: Prävention und Therapie aggressiven Verhaltens bei Erwachsenen*". Available from (accessed 19 April 2023).

<sup>150</sup> Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15, margin no. 85.

ment. It should be ended without delay.<sup>151</sup>

### 1.2 – Multiple occupancy

The multiple-occupancy cells at Bernau Prison (Bavaria) were holding up to eight prisoners and those at Untermaßfeld Prison (Thuringia) up to six.

Holding so many prisoners per cell is to be avoided as it can place a strain on prisoners and make crises and conflicts more likely, even when the cells are technically large enough.<sup>152</sup>

At the time of the National Agency's visit to Konstanz Prison (Baden-Württemberg), the ventilation system carbon filters were not working in a number of the multiple-occupancy cells. Natural ventilation was hindered by the fact that prisoners were not able to open the windows themselves.

The National Agency takes the view that single occupancy should be the general rule. Where double occupancy is unavoidable, the cells must have separate, and separately ventilated, toilets.

On its visits in 2022, the National Agency found that the following prisons had implemented in full the statutory principle of single occupancy: Augsburg-Gablingen (Bavaria), Fuhlsbüttel (Hamburg), Neuruppin-Wulkow (Brandenburg), Vechta (Lower Saxony) and Rockenberg (juvenile prison; Hesse).

### 1.3 – Protection of privacy

#### 1.3.1 – Full strip-searches

At almost all of the prisons visited, the National Agency was told that all new prisoners undergo a full strip-search upon arrival, and that strip-searches are also conducted after contact with visitors.

According to the Federal Constitutional Court, strip-searches involving a visual examination of a person's genital area represent a serious infringement of that individual's general right

of personality.<sup>153</sup> They must not be carried out routinely or in the absence of any specific grounds for suspicion.<sup>154</sup>

A reasoned decision in the specific case must be taken before any search involving the removal of an individual's clothing and a visual inspection of their genital area. Prison officers must be made aware of this.

If it is indeed necessary that the individual concerned undress fully, then the search should be conducted respectfully, for example in two stages with the individual keeping on their clothing above the waist while they are searched below the waist and vice versa.<sup>155</sup>

Despite the relevant decisions of the Federal Constitutional Court, the majority of the competent ministries maintained that full strip-searches for all new prisoners were essential. The North Rhine-Westphalia Ministry of Justice and the Baden-Württemberg Ministry of Justice and Migration also explicitly rejected, on security grounds, body searches that only required prisoners to partially undress.

At Dinslaken Prison (North Rhine-Westphalia) and the Neuruppin-Wulkow section of Brandenburg North Prison (Brandenburg), a decision is taken on a case-by-case basis whether or not to conduct a strip-search. In cases in which a strip-search is deemed necessary, the internal prison rules at Neuruppin-Wulkow state that the search is to be conducted in two stages. Security concerns such as those cited by some ministries as outlined above were not reported.

#### 1.3.2 – Showers

The communal showers at 12 prisons visited had no arrangements in place to protect prisoners' privacy, for example partitions.

<sup>151</sup> Responding on 6 March 2023 to the report on the visit to Fuhlsbüttel Prison on 9 August 2022, the Hamburg Justice and Consumer Protection Authority informed the National Agency that the practice would be continuing for safety and security reasons.

<sup>152</sup> Cf. Anna Schliehe, Ben Crewe, "Top bunk, bottom bunk: cellsharing in prisons" in *The British Journal of Criminology*, March 2022, Volume 62, Issue 2, pp. 484-500.

<sup>153</sup> Federal Constitutional Court, order of 5 March 2015, 2 BvR 746/13, margin no. 33; order of 23 September 2020, 2 BvR 1810/19, margin no. 21.

<sup>154</sup> Federal Constitutional Court, order of 10 July 2013, 2 BvR 2815/11, margin no. 16; Federal Constitutional Court, order of 23 September 2020, 2 BvR 1810/19, margin no. 22.

Cf. ECHR, judgment of 22 October 2020, Roth v. Germany, Application nos. 6780/18 and 30776/18, §§ 69, 72 – Violation of Article 3 of the Convention.

<sup>155</sup> Cf. comparable provisions of section 70(2) of the Bremen Mental Health Act (*Gesetz über Hilfen und Schutzmaßnahmen bei psychischen Krankheiten*, BremPsychKG) of 13 December 2022, which also apply to forensic psychiatry: "Body searches should only require patients to partially undress at any one time [...]."

In order to sufficiently protect the privacy of prisoners in communal showers, at least one shower should be partially partitioned off. Otherwise, prisoners should have the opportunity to take showers individually.

Contrary to safety concerns expressed, prisons that had already installed partitions between showers did not report an increase in assaults.

### 1.3.3 – Supervised urine screening

At the prisons visited in Bavaria, Brandenburg, Hamburg, Hesse and Thuringia,<sup>156</sup> all drug screening was conducted using urine samples, and sample collection was supervised.

Directly observing urine sample provision can constitute a major invasion of privacy for the individuals concerned.

At least one alternative to supervised urine screening should be available so that prisoners can choose the drug-testing method they find to be the least intrusive.

On its visits in 2022, the National Agency observed a range of different methods in use in Baden-Württemberg, Lower Saxony, North Rhein-Westphalia and Schleswig-Holstein to minimise the intrusiveness of drug testing. These methods included oral swabs, the use of markers, and finger-prick blood tests, which the prisoner can choose.<sup>157</sup>

Citing the decision of the Federal Constitutional Court of 22 July 2022,<sup>158</sup> the Hessian Ministry of Justice informed the National Agency that urine screening in Hesse's prisons was to be reviewed with a view to offering alternative methods of testing.

### 1.4 – Opioid substitution treatment

Alongside its visits, the National Agency also conducted a survey on opioid substitution treatment in prisons across all 16 German *Länder*. This was in response to a number of cases in

which prisoners with an opioid addiction had been refused access to substitution treatment.<sup>159</sup>

The survey found some instances of progress in approaches to opioid-addicted prisoners; this finding reflects that of the CPT.<sup>160</sup> However, the survey also found that striking differences remained between the various *Länder* when it came to substitution treatment.<sup>161</sup> Substitution treatment levels amongst addicted prisoners across the *Länder* ranged from 19% to 90%. Major differences between individual prisons were also observed, due not least to the different approaches taken by the various different prison doctors.

The National Agency will continue to monitor this issue given its scale and significance.

## 2 – OVERVIEW OF FINDINGS AND RECOMMENDATIONS FOR EACH LAND

### 2.1 – Baden-Württemberg

In Baden-Württemberg, the National Agency visited Konstanz Prison (second visit)<sup>162</sup> and Ravensburg Prison in 2022.

Aspects rated positively by the National Agency on those visits include the following:

- + Konstanz Prison had set up an open section with a capacity of 15. Each prisoner in that part of the facility had their own key and unrestricted access to the communal showers.
- + At Ravensburg Prison, televisions and kettles are part of the standard amenities provided in the reception wing, and this can help to reduce the stress of the situation for

<sup>156</sup> Suhl-Goldlauter Prison offers an alternative drug-screening method; Untermaßfeld Prison only has supervised urine screening.

<sup>157</sup> Federal Constitutional Court, order of 22 July 2022, file no.: 2 BvR 1630/21, margin nos. 37-41.

<sup>158</sup> Statement from the Hessian Ministry of Justice of 22 August 2022 in response to the report on the visit to Rockenberg Prison on 2 April 2022.

<sup>159</sup> For a similar case, see ECHR, *Wenner v. Germany*, judgment of 1 December 2016, Application no. 62303/13 – Violation of Article 3 of the Convention; the matter is still pending before the Committee of Ministers of the Council of Europe (available from: link; accessed 19 April 2023). Germany submitted a new action report on 28 February 2022.

<sup>160</sup> CPT/Inf (2022) 18, paragraph 73.

<sup>161</sup> Cf. CPT/Inf (2017) 13, paragraph 61. These observations were confirmed by a study by the Research Services of the German Bundestag on substitution treatment in the prison system (available from: Link; accessed 20 April 2023).

<sup>162</sup> First visit: 1 June 2013.

prisoners at the beginning of their sentence.

- + The specially secured cells are fitted with dimmable night lighting to allow prisoners to sleep whilst ensuring that they can find their way around in the dark.

In addition to the general recommendations, findings and recommendations specific to Baden-Württemberg were essentially as follows:

### 2.1.1 – Structural issues

Although some work had been done at Konstanz Prison, the structural issues found on the first visit to the facility had still not been satisfactorily dealt with nine years later.

For example, there are still opaque sheets of plexiglass in front of the windows in all the cells. Although the plexiglass lets in the light, it prevents prisoners from seeing outside. As the Baden-Württemberg Justice Ministry itself recognised in its statement of 24 September 2013, this places a serious strain on the prisoners concerned.<sup>163</sup>

Overall, the condition of the cells in the part of the prison that had not been renovated appeared extremely unsatisfactory. Some of the wooden floors were damaged and had holes in them, posing a hazard.

### 2.1.2 – Overcrowding

In 2022 once again, the National Agency found overcrowding to be a systemic problem in the prisons it visited in Baden-Württemberg. Not least given the difficult staffing situation, overcrowding can restrict prisoners' activities and lead to a greater risk of violence amongst prisoners.

The National Agency is aware that the difficult occupancy situation poses particular challenges. Nonetheless, overcrowding must not result in a failure to ensure human rights are safeguarded and minimum standards are met.

There were up to three inmates per cell. The cells at Konstanz Prison did have separate toilets, but the carbon filters in a number of the cells were not working at the time of the visit. Natural ventilation was hindered by the fact that prisoners were not able to open the windows themselves.

<sup>163</sup> Statement from the Baden-Württemberg Justice Ministry of 24 September 2013 in response to the report on visits to Konstanz Prison and the unit at Mannheim Prison for custody pending deportation in 2013.

The Baden-Württemberg Ministry of Justice and Migration informed the National Agency that the faulty carbon filters would be replaced soon.<sup>164</sup>

The National Agency takes the view that single occupancy should be the general rule. Where double occupancy is unavoidable, the cells must have separate, and separately ventilated, toilets.

Moreover, many of the cells with double occupancy at Ravensburg Prison had a floor space of only 9 m<sup>2</sup>. This does not meet minimum standards in the view of the National Agency.

For detention conditions to be humane, a single-occupancy cell must have a floor space of at least 6 m<sup>2</sup>,<sup>165</sup> excluding the sanitary facilities. For multiple occupancy, a further 4 m<sup>2</sup> of floor space must be added to this figure for each additional person, excluding the area of the sanitary facilities.

### 2.2 – Bavaria

In Bavaria, the National Agency visited Augsburg-Gablingen Prison and Bernau Prison (second visit)<sup>166</sup> in 2022.

Aspects rated positively by the National Agency on those visits include the following:

- + The recently built Augsburg-Gablingen Prison is modern and designed to allow single occupancy. The entire facility has colour-coding to make it easier for prisoners to find their way around.
- + Each of the prisons visited provided its prison rules in multiple different languages. This ensures that even prisoners with limited German are aware of and understand the facility's rules and structures and the boundaries that these set.

In addition to the general recommendations, findings and recommendations specific to Bavaria were essentially as follows:

<sup>164</sup> Statement from the Baden-Württemberg Ministry of Justice of 9 December 2022 in response to the report on the visit to Konstanz Prison on 9 June 2022.

<sup>165</sup> The minimum standard is 6 m<sup>2</sup>. In the National Agency's view, cells that are smaller than this violate Article 1 of the German Basic Law (*Grundgesetz*, GG). Any legal requirements that go beyond this must, of course, also be observed, and are welcomed.

<sup>166</sup> First visit: 5 May 2011.



### Inhumane detention conditions in specially secured cells

Specially secured cells at Bernau Prison were used to hold prisoners for days, weeks or even months (up to 92 days), and the prisoners in question were locked up for 24 hours a day for the entire period.<sup>167</sup> The specially secured cells had, at the most, a mattress on the floor; some prisoners were not even given a mattress for days or even weeks. Often, the only clothing issued to the prisoners concerned was paper underwear; this practice is demeaning, particularly when the prisoner is subject to 24-hour CCTV monitoring.

The above approach is, without exception, inadmissible whenever the condition of the cells and the furnishings provided violate human dignity.

This last applies to the specially secured cells in block 1 at Bernau Prison, which resemble a glass cage. Prisoners are held behind a glass wall that is so thick that it is difficult to understand anything they say. To communicate with the delegation, a prisoner held in one of the specially secured cells had to lie on the floor and talk through the food hatch – the floor-level hatch through which inmates receive their daily food rations. These circumstances are degrading for the affected prisoners, and constitute inhumane detention conditions.

The specially secured cells in Building 1 are therefore to be taken out of use immediately.

### 2.3 – Brandenburg

In Brandenburg, the National Agency visited the Neuruppin-Wulkow section of Brandenburg North Prison in 2022.

Aspects rated positively by the National Agency on this visit include the following:

- + Decisions on whether to conduct full strip-searches are taken on a case-by-case basis. If a full strip-search is deemed necessary, the facility's internal rules state that it is to be carried out in two stages to ensure the procedure is as respectful as possible.
- + A cell media system is gradually being rolled out that allows prisoners access to telephones

<sup>167</sup> The CPT has repeatedly called for prisoners held in specially secured cells for 24 hours or more to be offered at least one hour of outdoor exercise per day (CPT/Inf (2014) 23, paragraph 48).

in the cells. This facilitates regular contact with the outside world and makes it easier for prisoners to hold private conversations.

In addition to the general recommendations, findings and recommendations specific to Brandenburg were essentially as follows:

#### 2.3.1 – Seating in specially secured cells

The specially secured cells in Neuruppin-Wulkow had no seating. The National Agency found exactly the same situation on its visit to Brandenburg an der Havel Prison on 21 August 2020.

The National Agency is aware that Brandenburg an der Havel and Cottbus-Dissenchen prisons are already trialling the use of foam-covered seating cubes. However, even after two years of that trial, prisoners in specially secured cells are still not being provided with seating at normal seating height. The National Agency finds this inexplicable, not least as it has frequently observed the use of foam seating and challenging furniture in other facilities.

#### 2.3.2 – Peepholes

Many of the cells had peepholes in the doors that you could still see through. The delegation was unable to establish whether or not the peepholes were still being used and if so, for what purpose.

Being aware that you could be being observed by others at any time can be a major source of stress.<sup>168</sup>

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

The Brandenburg Ministry of Justice informed the National Agency that the peepholes had all been taken out of use.<sup>169</sup>

### 2.4 – Hamburg

In Hamburg, the National Agency visited Hamburg-Fuhlsbüttel Prison (including the preventive detention facility; second visit)<sup>170</sup> and Hamburg Remand Detention Facility in 2022.

<sup>168</sup> Federal Court of Justice, judgment of 8 May 1991, file no.: 5 AR Vollz 39/90.

<sup>169</sup> Statement of 2 November 2022 in response to the report on the visit to Brandenburg North Prison (Neuruppin-Wulkow site) on 24 May 2022.

<sup>170</sup> First visit: 1 March 2012.

Aspects rated positively by the National Agency on those visits include the following:

- + All cells have been single-occupancy since 2012.
- + Telephone access in the cells at both facilities facilitates regular contact with the outside world and makes it easier to hold private conversations.
- + The National Agency also welcomes the “*Hausordnung in Bildern für Inhaftierte ohne Kenntnisse der deutschen Sprache oder Schrift*” (“Facility rules in pictures for inmates without knowledge of (written) German”) at Hamburg Remand Detention Facility. An understanding of the rules and structures of the facility and the boundaries that these set can have a de-escalating effect and prevent crises and conflicts.

In addition to the general recommendations, findings and recommendations specific to Hamburg were essentially as follows:

#### 2.4.1 – Documentation of special security measures

The only documentation of segregation from the two facilities was handwritten records for 2021 and 2022. Those records do not clearly indicate whether or not and how many prisoners were segregated repeatedly. The National Agency was also informed that there was no systematic central documentation of the use of such measures.

Clear documentation of incidents and the measures they necessitated, along with subsequent evaluation, not only ensures there is a record of the incidents and the frequency with which they have occurred, it also helps facilities to avoid the disproportionate use of special security measures.

#### 2.4.2 – Placement under section 126a of the Code of Criminal Procedure

As a result of overcrowding at Asklepios Klinik Nord hospital Ochsenzoll in Hamburg, seven people for whom placement under section 126a of the Code of Criminal Procedure had been ordered were being accommodated in the remand detention facility at the time of the National Agency’s visit. In some cases, this was for a period

of several weeks or even months.<sup>171</sup>

On its visit and from the documentation, the National Agency found that Hamburg Remand Detention Facility did not have a sufficient psychiatric care infrastructure and therefore was not able to provide appropriate care and support for the persons concerned.

Persons placed under section 126a of the Code of Criminal Procedure may only be placed in a remand detention facility if that facility can provide adequate psychiatric care.

### 2.5 – Hesse

In Hesse, the National Agency visited Rockenberg Juvenile Prison (second visit)<sup>172</sup> and Weiterstadt Prison in 2022.

Aspects rated positively by the National Agency on those visits include the following:

- + At Rockenberg Juvenile Prison, no prisoners were sharing cells at the time of the visit. Prisoners were assigned to small residential groups and this helped improve their daily life.
- + Good social work staffing levels in the juvenile prison system allowed effective supervision and support for the young people.
- + Weiterstadt Prison provides a story booklet for families with children who are visiting prisoners. The story and illustrations are designed to give families a better understanding of the site and thus address potential fears about visiting the facility.

In addition to the general recommendations, findings and recommendations specific to Hesse were essentially as follows:

#### 2.5.1 – Seating in specially secured cells

The specially secured cells at Rockenberg Prison each only had a mattress on the floor. Weiterstadt Prison is currently running a pilot project to test the suitability of foam-covered seating cubes. Management informed the National Agency that there were not enough seating cubes for use in all specially secured cells.

<sup>171</sup> Cf. Hamburg Regional Court, order of 27 April 2021, file no.: 615 KLs 3/21: In this case, Hamburg Regional Court found that long-term placement in remand detention against the will of the individual in question was unlawful.

<sup>172</sup> First visit: 3 July 2015.

The furnishings in specially secured cells must be such as to respect the dignity of those held there.

### 2.5.2 – Physical restraint

In 2021 and 2022, physical restraint was used at Weiterstadt Prison a total of 12 times, in four cases for longer than five hours and in two further cases for 20 hours.

The Hessian Prison Act (*Hessisches Strafvollzugsgesetz*, HStVollzG) does not comply with the requirement set down by the Federal Constitutional Court<sup>173</sup> for constant one-on-one in-person supervision by therapeutic or care staff. Furthermore, compliance with that requirement would not appear feasible given the lack of care staff.<sup>174</sup>

### 2.6 – Lower Saxony

In Lower Saxony, the National Agency visited Vechta Women's Prison (second visit)<sup>175</sup> in 2022.

Aspects rated positively by the National Agency on this visit include the following:

- + Vechta Prison has its own psychiatric unit with 10 spaces.
- + Support in terms of psychology and psychiatric provision is good; the National Agency noted in particular that a partner hospital provides a psychiatrist, who works 30 hours a week solely for the prison.

### 2.7 – North Rhine-Westphalia

In North Rhine-Westphalia, the National Agency visited Dinslaken Prison (second visit),<sup>176</sup> Rheinbach Prison and Werl Prison (including the preventive detention facility) in 2022.

Aspects rated positively by the National Agency on those visits include the following:

- + The National Agency welcomes the residential groups and treatment units at Rheinbach Prison for older inmates and for prisoners who have addiction or violence issues. Those groups and units help make it

possible to provide prisoners with the right support and the right treatment.

- + All the specially secured cells at Rheinbach Prison have large windows and therefore natural light. This is a positive aspect.
- + At Dinslaken Prison, decisions on whether to undertake strip-searches are taken on a case-by-case basis.

In addition to the general recommendations, findings and recommendations specific to North Rhine-Westphalia were essentially as follows:

#### 2.7.1 – Unacceptable structural issues with specially secured cell

The total area of specially secured cell 1 in Building 1 at Werl Prison is just 4.7 m<sup>2</sup>. This includes the sanitary facilities, which are not partitioned off. The cell is in the basement and has no windows, and therefore no natural light. This is particularly problematic given that prisoners and persons in preventive detention who are placed in specially secured cells are always held there for 24 hours a day.

The National Agency recommends not placing any individuals in specially secured cell 1 in Building 1.

In its statement of 6 February 2023 in response to the National Agency's report on its visit to Werl Prison, the North Rhine-Westphalia Ministry of Justice stressed that specially secured cell 1 in Building 1 was only to be used when all other options had been exhausted.

In the view of the National Agency, conditions in specially secured cell 1 in Building 1 are unacceptable and the cell should not be used.

#### 2.7.2 – Furnishings and fittings of specially secured cells

The specially secured cells at the three facilities visited each only had a mattress on the floor.

In its statement of 6 February 2023 in response to the National Agency's report on its visit to Werl Prison, the Ministry wrote that it was testing the use of seating cubes as standard furnishings in specially secured cells at one of the state's prisons.

The National Agency found that prisoners at Rheinbach Prison were not provided with

<sup>173</sup> Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15.

<sup>174</sup> The CPT recommends abolishing the use of physical restraints in prisons (CPT/Inf (2022) 18, paragraph 91).

<sup>175</sup> First visit: 21 July 2016.

<sup>176</sup> First visit: 3 August 2016.

pillows, even when held in a specially secured cell for a prolonged period of time.

### 2.8 – Saxony

In Saxony, the National Agency visited Dresden Prison (second visit) in 2022.<sup>177</sup>

Aspects rated positively by the National Agency on this visit include the following:

- + The prison has a telephone system for the cells with 20 numbers.
- + The National Agency also welcomes the prison's digital information terminal, which the prisoners can use themselves for shopping, for example.

In addition to the general recommendations, findings and recommendations specific to Saxony were essentially as follows:

#### Shackling in specially secured cells

In some cases, prisoners held in specially secured cells were restrained with metal cuffs. Metal cuffs pose a high risk of injury to the individuals concerned.

In order to protect prisoners' right to physical integrity, textile restraint belts should be used.<sup>178</sup>

The Saxon Ministry of Justice and for Democracy, Europe and Equality has informed the National Agency that it is currently assessing the use of restraints with no metal components.<sup>179</sup>

### 2.9 – Schleswig-Holstein

In Schleswig-Holstein, the National Agency visited Neumünster Prison in 2022.

Aspects rated positively by the National Agency on this visit include the following:

- + Neumünster Prison has its own psychiatric unit, allowing a targeted response to mental health issues and access to appropriate treatment.
- + Most of the cells have their own telephone.

In addition to the general recommendations, findings and recommendations specific to

Schleswig-Holstein were essentially as follows:

#### 2.9.1 – Storage of restraints

At the time of the National Agency's visit, a mattress with restraints lay in the area outside a specially secured cell and was clearly visible to anyone held in the cell.

The visible presence of restraint belts can be threatening, triggering feelings of insecurity and anxiety.<sup>180</sup>

Restraints should therefore be stored out of the sight of prisoners.

#### 2.9.2 – Physical restraint

The National Agency was informed that one-on-one supervision during the use of physical restraint was not provided by therapeutic or care staff. Section 108 (8) sentence 2 of the Schleswig-Holstein Prison Act (*Landesstrafvollzugsgesetz Schleswig-Holstein*, LStVollzG SH) states that trained staff are to maintain a direct line of sight to prisoners being physically restrained and to keep them under constant, in-person observation. This does not meet the constitutional requirement that one-on-one supervision during a period of physical restraint be undertaken by therapeutic or care staff.

#### 2.9.3 – Use of pepper spray

Items such as pepper spray were being stored in the facility's main office for use against prisoners in the event of incidents.

In light of the significant health risks involved, the use of pepper spray in confined spaces is not a proportionate measure and is therefore to be avoided.

### 2.10 – Thuringia

In Thuringia, the National Agency visited Suhl-Goldlauter Prison (second visit)<sup>181</sup> and Untermaßfeld Prison in 2022.

Aspects rated positively by the National Agency on those visits include the following:

<sup>177</sup> First visit: 28 July 2011.

<sup>178</sup> For example Segufix hand restraint belts.

<sup>179</sup> Statement of 6 January 2023 in response to the National Agency's report on its visit to Dresden Prison on 28 June 2022: the Ministry reports that "Bonowi" restraints are being tested.

<sup>180</sup> Cf. CPT/Inf (2022) 18, paragraph 90: "In the CPT's view, such an arrangement is wholly inappropriate and may easily be perceived by the prisoners who are being brought to the security cell as a threat."

<sup>181</sup> First visit: 8 November 2012.

- + The National Agency welcomes the availability of telephones in the cells at Untermaßfeld Prison.
- + The specially secured cells at Suhl-Goldlauter Prison have large windows facing the outside.

In addition to the general recommendations, findings and recommendations specific to Thuringia were essentially as follows:

### Physical restraint

The National Agency was informed that one-on-one supervision during the use of physical restraint was provided by general prison staff at both facilities visited.

The National Agency also noted that the provisions of the Thuringian Prison Code (*Thüringer Justizvollzugsgesetzbuch*, ThürJVollzGB) do not fulfil the requirements set out in the Federal Constitutional Court judgment of 24 July 2018.<sup>182</sup> The requirement for a judicial decision is not enshrined in statute, nor is the need for constant, in-person one-on-one supervision by therapeutic or care staff.

The National Agency therefore issued an urgent recommendation to amend the Thuringian Prison Code to bring it into line with the requirements set down by the Federal Constitutional Court.

## OUTLOOK

### Prison hospitals visited in 2022

In 2022, the National Agency visited the prison hospitals in Fröndenberg (North Rhine-Westphalia) and Kassel (Hesse).

Many issues the National Agency has previously raised were also found on these visits. For example, the toilet area in the specially secured cells was not pixelated on the monitoring screens; the specially secured cells had no seating; and some had no windows either. All new arrivals were strip-searched, and strip-searches included a visual examination of individuals' genital area.

A particularly problematic aspect in the National Agency view is the fact that prisoners were locked up in their rooms for 23 hours a day. They were only allowed outside for one hour each day and otherwise only let out of their cells to shower.

### Prisoners with mental health issues

Recent studies have found that increasing numbers of prisoners in German prisons – currently between 40 and 70% – are suffering from mental health issues.<sup>183</sup> The fact that adequate treatment in prison is not always available makes a difficult situation all the more concerning.

In the course of its visits, the National Agency – like the CPT<sup>184</sup> – has observed individuals with mental health issues being held in isolation for months or even years and the corresponding lack of adequate support or treatment.

The Agency therefore sees prison hospitals and psychiatric units – in particular in open settings – as key for the psychological and psychiatric treatment of prisoners.

That is why the National Agency is seeking to increase its number of visits to prison hospitals and to prisons with hospitals or psychiatric units in order to gain a clearer picture of the overall situation.

<sup>182</sup> Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15.

<sup>183</sup> See for example *Justizministerium Baden-Württemberg (2015): Umgang mit psychisch auffälligen Gefangenen. Abschlussbericht der Expertenkommission*. [Mental health issues in prison. Final report from the investigating commission.] Stuttgart.

<sup>184</sup> CPT/Inf (2022) 18.

**VI  
PLACEMENT OF  
CHILDREN AND  
JUVENILES INVOLVING  
THE DEPRIVATION  
OF LIBERTY**

## INTRODUCTION

Children and juveniles are vulnerable and closed facilities for individuals at that age therefore have a particularly responsible task. This became very clear during the coronavirus pandemic.<sup>185</sup> That is why, back in early 2021, the National Agency sent a questionnaire to all of the child and youth welfare facilities that it had visited since its establishment. The aim of the questionnaire was to obtain information about conditions at the facilities as regarded the human rights of the individuals held there, specifically in light of pandemic restrictions.<sup>186</sup>

In 2022, the National Agency focused in particular on visiting closed child and youth welfare facilities that employ measures entailing a deprivation of liberty.<sup>187</sup> The Agency visited a total of eight facilities in five different *Länder*.<sup>188</sup> It also visited four facilities for child and youth psychiatry in three different *Länder*.<sup>189</sup>

The two types of facility are addressed together in this chapter as the National Agency has found that minors in individually adapted (partially) closed child and youth welfare facilities have often previously had experience of child and youth psychiatry units.

Visits to two juvenile forensic psychiatry facilities are not addressed further here. Unlike orders for placement in child and youth welfare or child and youth psychiatry facilities, which are governed by guardianship and custodianship law, orders for placement in juvenile forensic psychiatry facilities are governed by criminal law and therefore differ in many respects. The relevant areas are covered under “Focus: forensic psychiatric detention”.<sup>190</sup>

<sup>185</sup> See for example the German Ethics Council's Ad Hoc Recommendation of 28 November 2022, “Pandemic and Mental Health. Attention, Assistance and Support for Children, Adolescents and Young Adults in and after Societal Crises” (German version accessed 19 April 2023)

<sup>186</sup> For the questionnaire findings, see: 2021 Annual Report, III 1.5., pp. 34 ff.

<sup>187</sup> See information from the working group “Arbeitskreis GU14plus”, <https://www.gu14plus.de/> (accessed 19 April 2023).

<sup>188</sup> Baden-Württemberg, Bavaria, Lower Saxony, North Rhine-Westphalia and Thuringia. Since starting its work in 2010, the National Agency has visited almost all closed child and youth welfare facilities in Germany.

<sup>189</sup> Bavaria, Berlin and Thuringia.

<sup>190</sup> For further details, see IV Focus: forensic psychiatric detention.

## 1 – GENERAL FINDINGS AND RECOMMENDATIONS

Two aspects of general relevance emerged from the visits to child and youth welfare and child and youth psychiatry facilities. Firstly, the National Agency found a range of shortcomings that need to be addressed relating to furnishings in and monitoring of time-out rooms where these are still in use. The fact that ever fewer facilities are using use time-out rooms is seen by the National Agency as a positive development. A number of facilities already employ alternative, less severe methods that are by no means less effective. Secondly, children and young people are not receiving sufficient information about their rights. Although some facilities were making a considerable effort to provide comprehensive information, others provided insufficient or verbal information only.

### 1.1 – Time-out rooms

Visits to child and youth welfare facilities Bavaria and Thuringia found that time-out rooms there were used on a regular basis. The same was true for the time-out room at a child and youth psychiatry facility in Bavaria and the specially secured cells at a hospital in Thuringia.

#### 1.1.1 – Furnishings and fittings

At one Bavarian child and youth welfare facility, the entire time-out room was tiled.

Time-out rooms are intended to be used when a child or young person is in a state of extreme emotion. Rage or tension may be expressed in physical actions, for example hitting the wall. The tiled walls of the time-out room therefore presented a considerable risk of injury to any child or young person placed there.

Any potential risk of injury must always be minimised. In this case, one option would be to cover the walls and floor with soft material.

At a visit to a facility in Thuringia, the National Agency suggested fitting some form of permanent clock. Giving an individual an awareness of time can help to defuse a stressful situation.

In its statement on 19 January 2023 in response to the report on the visit conducted

on 1 September 2022, the Thuringian Ministry of Education, Youth and Sport reported that a clock had been fitted in the time-out room following the National Agency's visit.

#### **1.1.2 – Seating**

The actively used time-out rooms in child and youth welfare facilities in Bavaria and Thuringia had no seating at normal height for the children and juveniles in question.

If an individual is to spend more than just a brief period in the time-out room, it is inhumane to force them to stand or sit on the floor.

On its visits, the National Agency frequently sees facilities using foam seating or challenging furniture, which is strong and durable and has no sharp edges or corners. These are ways of providing a seating option even when an individual poses a risk to themselves or others.

In its statement of 19 January 2023, the Thuringian Ministry of Education, Youth and Sport reported that seating cubes had been ordered immediately following the visit from the National Agency and were now available.

#### **1.1.3 – CCTV monitoring**

All actively used time-out rooms in child and youth welfare facilities, the time-out room at a Bavarian child and youth psychiatry unit and the specially secured cells at a clinic in Thuringia had CCTV monitoring.

Placing an individual in a space with continuous CCTV monitoring constitutes a serious infringement of constitutionally protected rights.

CCTV monitoring of children and juveniles should as a rule be avoided. Under no circumstances is CCTV monitoring a substitute for the presence of members of staff. The reasons for the use of CCTV monitoring should be documented.

A person in the time-out room could not see whether the CCTV was on or off. An LED indicator would be one way of addressing this.

The persons concerned must be informed in a suitable manner that CCTV 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.

In its statement of 19 January 2023, the Thuringian Ministry of Education, Youth and Sport reported that this recommendation was being implemented.

#### **1.1.4 – Visibility of toilets**

In one Bavarian child and youth welfare facility, the toilet in the time-out room was not partitioned off. The entire toilet area appeared on the CCTV monitor and it was not pixelated.

Staff members should indicate their presence before entering the room. The person in the room might be using the toilet and should be given the opportunity to indicate this.

CCTV cameras must be fitted in such a way that the toilet area is either not visible on the monitor at all or is pixelated.

#### **1.2 – Information on rights and rules**

At all three child and youth welfare facilities in Bavaria visited by the National Agency, children and juveniles were informed of their rights and of the general rules and procedures upon arrival. However, conversations during the visits indicated that this information was either not clearly presented to or not discussed at sufficient length with new arrivals.

It is the National Agency's position that comprehensive written information on the rights and obligations of an individual in a closed facility is absolutely essential. For children and juveniles, information must be provided in an age-appropriate way.

Clear information can help to make young people more independent and can also lead to greater acceptance of restrictive measures.

In its statement of 29 September 2022, the Bavarian Ministry for Family, Labour and Social Affairs gave its assurance that the district government care home inspectorates would work to ensure implementation of participatory and complaints structures within child and youth welfare facilities.

In Bavaria, patients being admitted to in-patient child and youth psychiatry facilities received only a verbal notification of their rights and obligations.



In closed psychiatric facilities in particular, it is important that patients know and understand the rules and structures of the facility and that there is clarity and transparency on the boundaries that apply. This can have a de-escalating effect and help to prevent crises and conflicts between patients.

- + One good example of how information can be provided is the leaflet “*Was ist denn schon normal?*” (“What is ‘normal’ anyway?”) produced by the child and youth psychiatry and psychotherapy department at Ulm University Hospital.<sup>191</sup>

Following these general findings on how children and juveniles are accommodated across all facilities, section 2 takes a closer look at child and youth welfare facilities and section 3 at child and youth psychiatry facilities.

## 2 – CHILD AND YOUTH WELFARE

Across 28 child and youth welfare facilities, Germany has a total licensed capacity of 306 places in closed units.<sup>192</sup> Of those 306 places, 264 were occupied. In other types of facility, in particular forensic psychiatric detention facilities, the National Agency found overcrowding. In contrast, there are in fact some spaces in child and youth welfare facilities; this is because of staff shortages.

Placement in a child and youth welfare facility in accordance with sections 34 and 35a of Book VIII of the Social Code is undertaken by the youth welfare offices. A decision to place a child or young person in a closed facility must also be approved by the family court pursuant to section 1631b of the German Civil Code (*Bürgerliches Gesetzbuch*, BGB). It is worth noting that only seven of the *Länder* operate facilities with closed units.<sup>193</sup>

Aspects rated positively by the National Agency on its visits include the following:<sup>194</sup>

- + One Thuringian facility had a strong culture of communication and of welcoming all new admissions. A pack including a cuddly toy was placed on the bed for each new arrival, and a notice introducing them was displayed on the notice board in the hall before they came. The facility also had a leaflet about itself that was tailored to young readers.
- + Single rooms at a Bavarian facility each had their own sanitary facilities. The doors to the rooms also had a knob on the outside and a lever handle on the inside so that residents could prevent unwanted visits from other residents, providing them with as much privacy as possible.
- + The National Agency welcomes the fact that a number of the time-out rooms that are still in place but no longer in use are to be permanently repurposed.<sup>195</sup>
- + It is notable that in facilities with no time-

<sup>191</sup> Available here, for example: <https://mindmattersschule.de/news-zum-thema/broschuere-was-ist-denn-schon-normal.html> (accessed 19 April 2023).

<sup>192</sup> As at 01 August 2022. Information provided to the National Agency by the German Youth Institute (DJI).

<sup>193</sup> Baden-Württemberg, Bavaria, Brandenburg, Hesse, Lower Saxony, North Rhine-Westphalia and Thuringia.

<sup>194</sup> Reports on visits to child and youth welfare facilities are not published.

<sup>195</sup> In one facility in Bavaria and one facility in Lower Saxony.

out rooms<sup>196</sup> conflicts are resolved with other, less severe methods. For example, staff use discussion – in some cases outside the building – or distraction methods to deal with crises. Time-out rooms or other severe measures are then no longer necessary. As an alternative to a time-out room, one facility in Thuringia had a Snoezelen multi-sensory environment.<sup>197</sup> Its furnishings, with soft cushions and soft lighting, are designed to create a soothing atmosphere and in crisis situations, for example, to avert the need for other, harsher measures.

Recommendations issued to the child and youth welfare facilities visited in 2022 mainly concerned the following areas:

### 2.1 – Ombudspersons

The Act to Strengthen the Rights of Children and Young People (*Kinder- und Jugendstärkungsgesetz*) that entered into force on 10 June 2021 amended Book VIII of the Social Code, section 9a of which requires there to be independent ombudspersons (*Ombudsstellen*). The provision states that the *Länder* are to ensure that young people and their families can turn to an independent ombudsperson for advice, mediation and conflict resolution in connection with child and youth welfare services under section 2 of Book VIII of the Social Code and the provision of those services by state and recognised non-state providers, and that the independent ombudsperson's offices set up to this end to meet the needs of young people and their families shall be independent.

Approaches to implementing this requirement have differed between the *Länder*.

#### 2.1.1 – Bavaria

The National Agency learned of a number of pilot projects for setting up ombudsperson's offices. At the time of the National Agency's visits to facilities in Bavaria, however, the requirement under section 9a of Book VIII of the Social Code had yet to be translated into *Land* law.

Children and juveniles must be able to submit complaints to a suitable complaints

body. In addition to contact persons within the facility, section 9a of Book VIII of the Social Code provides for the establishment of offices of ombudspersons, to which young people and families can turn for advice and conflict resolution. The necessary framework for this needs to be created under *Land* law.

Responding on 29 September 2022 to a report on a visit to a facility on 8 March 2022, the Bavarian Ministry for Family, Labour and Social Affairs stated that a decision on "action required and next steps" would be based on research findings from the pilot projects and would not be taken until after the end of the pilot phase (31 December 2023).

The National Agency requested that the Bavarian Ministry for Family, Labour and Social Affairs keep it informed of amendments to *Land* law and involve it in the process in accordance with Article 19(c) of the OPCAT.<sup>198</sup>

#### 2.1.2 – North Rhine-Westphalia

The National Agency welcomed the fact that children and juveniles in the facility that it visited in North Rhine-Westphalia received comprehensive information upon arrival about their rights and about the complaints procedure. The establishment of an ombudsperson's office was also welcomed.

The young people were aware that there was an ombudsperson; however, information on how to contact the office was not included in the complaints forms.

Children and juveniles must be able to contact their competent ombudsperson easily and in confidence. The complaints channels and all necessary contact details should be set out in a child-friendly information leaflet or in the facility's house rules, and explained to new arrivals when they are first admitted to the facility.

### 2.2 – Contact with the outside world

In one facility in Baden-Württemberg, the National Agency was told that the young people were only allowed telephone contact with their parents or legal guardians, and that twice a week

<sup>196</sup> Bavaria, Baden-Württemberg and Thuringia.

<sup>197</sup> More information is available at <https://gedankenwelt.de/kennst-du-den-snoezelenraum/> (accessed 20 April 2023).

<sup>198</sup> "The national preventive mechanisms shall be granted at a minimum the power to submit proposals and observations concerning existing or draft legislation."

from a landline. Other telephone contact, with friends and acquaintances, was apparently not possible.

One facility in Bavaria followed a phased procedure for each young person. During an initial period of at least four weeks while children and young people were settling into the residential group, direct contact with their parents or legal guardians was not permitted.

Exceptions to limits on contact with the outside world had to be justified and were only to be allowed on a case-by-case basis. Facilities need to come up with rules and systems that avoid cutting off children and juveniles from their parents or legal guardians or other important figures in their lives for prolonged periods of time.

### 2.3 – Accommodation

On visits to facilities in Bavaria and Baden-Württemberg, the National Agency found that the windows in the bedrooms did not open. When asked, the facilities responded that this was to do with the air conditioning, which had been installed to ensure a reasonable room temperature in summer as well as winter.

In summer in particular, it is important to ensure that rooms get enough fresh air. An awareness of the outside world – through smells, fresh air and sounds – is an important element that can contribute to young people’s wellbeing.

It must be possible to open the windows.

Similar facilities have addressed this need by, for example, fitting very narrow windows or skylights.

In one facility in Lower Saxony, each new child or young person was initially accommodated in what was known as a “reception room”. The National Agency discovered that the lighting in the reception room could not be dimmed, and that a bedside lamp was only provided after a considerable period of time and only on request. A young person in the room could therefore only choose between complete darkness and very bright light.

All types of room must have adjustable lighting to facilitate rest in the evenings and a better quality of sleep whilst ensuring enough light for

people to find their way around and avoid injuring themselves in the dark.

### 2.4 – Supervised urine screening

All drug screening at the Bavarian facilities used urine samples provided under the supervision of members of staff. Directly observing urine sample provision constitutes a major invasion of privacy for the young people concerned.

The National Agency found that other facilities were using a range of methods to help protect the individuals’ privacy. Alternatives such as oral swabs and the use of markers mean that staff do not have to supervise urine sample provision.

To respect the young people’s human dignity, they should be offered at least one alternative to supervised urine sample provision for drug testing so that they can choose the method they find to be the least intrusive.

In its statement of 29 September 2022 in response to a report on the visit to a facility on 1 June 2022, the Bavarian Ministry for Family, Labour and Social Affairs reported that it was assessing the potential use of other methods.

## 3 – CHILD AND YOUTH PSYCHIATRY

In 2022, the National Agency visited two child and youth psychiatry facilities in Bavaria, a clinic in Berlin and a clinic in Thuringia.<sup>199</sup>

Aspects rated positively by the National Agency on those visits include the following:

- + A clinic in Bavaria had its own on-site de-escalation officer, who could be called upon in any conflict situation.
- + A hospital in Bavaria gave patients unlimited access to their mobile phones during certain set times. The National Agency welcomes this opportunity for patients to contact family, friends and acquaintances.
- + In Thuringia, an extensive garden adjoined each ward in the child and youth psychiatry unit. The gardens had playground and exercise equipment that patients could use whenever they had free time. This is to be welcomed as there is no substitute for the health benefits of outdoor exercise.

Recommendations issued to the child and youth psychiatry facilities visited mainly concerned the following areas:

### 3.1 – Effective exercise of the National Agency’s mandate

The National Agency found that although the Bavarian Ministry of the Environment and Public Health endorsed most of the National Agency’s recommendations, it did not believe it had a mandate to ensure their implementation.

The National Agency calls for the necessary measures to be taken to protect the human rights of children and juveniles in Bavarian hospitals.

How effectively the National Agency works depends in part on the cooperation of the facilities it visits. Just as a Hamburg child and youth psychiatry facility had done in 2021,<sup>200</sup> a Bavarian clinic questioned the delegation’s right to talk to minor patients without the consent of parents or guardians.

<sup>199</sup> Reports and statements on the visits to child and youth psychiatry facilities are published on the National Agency website at: <https://www.nationale-stelle.de/aktuelles/stellungnahmen-zu-gesetzentwerfen.html>.

<sup>200</sup> Visit on 1 December 2021, <https://www.nationale-stelle.de/besuche/laenderkommission/2021.html>.

To ensure that the National Agency can fulfil its mandate to protect children and juveniles from torture and other cruel, inhuman or degrading treatment, it has the right to have private interviews with persons deprived of their liberty.<sup>201</sup>

The facility ultimately gave the delegation the opportunity to talk to the minor patients after examining the matter in detail.

### 3.2 – Complaints management

At a clinic in Bavaria, there was a mechanism in place at the time of the visit for patients to make verbal complaints about those involved in their treatment, but not anonymously.

To ensure that patients are able to lodge complaints anonymously, an information sheet with the contact details of patient advocates or ombudspersons, if necessary with photos, should be clearly displayed in each closed ward. A complaints box on the closed wards can also offer children and young people an anonymous way of submitting complaints. Complaints should be recorded centrally and evaluated on a regular basis so that any recurring issues can be identified and necessary counter-measures taken. It can also be useful for a patient advocate to run regular surgeries on the wards at fixed times to make it easier for patients to contact them.

### 3.3 – Special security measures

#### 3.3.1 – Physical restraint

The delegation’s interviews and an inspection of the records at a Bavarian child and youth psychiatry facility established that one court order had approved the repeated use of physical restraint on the same individual for up to six weeks. During this time, there was no additional regular external examination of the legality of this measure.

The use of physical restraint 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.<sup>202</sup> Judicial authorisation to use physical restraint must not lead to a departure from the fundamental objective, which is to avoid the use of such a measure as far

<sup>201</sup> Article 20(d) of the OPCAT.

<sup>202</sup> Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 502/16, margin nos. 73 and 80.

as possible. 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”.<sup>203</sup> Otherwise, the Court has found, the courts would be able to make blanket decisions that would be applicable beyond the period of acute necessity. The constitutional requirement for judicial authorisation must thus not be undermined by the ordering of physical restraint beyond the necessary period simply in order to avoid having the court that issued the order decide on the matter again.<sup>204</sup>

In its information leaflet for individuals in forensic psychiatric detention (“*Hinweise für untergebrachte Personen im Maßregelvollzug*”), the Bavarian Centre for Family and Social Affairs states that physical restraint may only be ordered for a limited period of no longer than 24 hours; that period may be extended, but only upon renewed application to the court.<sup>205</sup>

Physical restraint may only be used in compliance with the constitutional requirements set out by the Federal Constitutional Court in 2018.

Any physical restraint applied for more than just a short period of time requires a judicial decision.<sup>206</sup> Judicial authorisation of physical restraint for a disproportionate period of time is not compatible with constitutional requirements. The facilities in question have a duty to ensure compliance with those requirements.

### 3.3.2 – Documentation of special security measures

In its form for ordering and documenting special security measures, a hospital in Bavaria did not have a section for detailing what less severe measures had previously been employed and why they had failed.

Clear documentation of incidents and the special security measures they necessitated not only ensures that there is a record of the

incidents and the frequency with which they have occurred, it also helps facilities to avoid the disproportionate use of special security measures.

The reasons for special security measures should be documented in writing. That written record should include what less severe measures had already been tried and an explanation of why they failed.

### 3.4 – Outdoor exercise

At a hospital in Berlin, the delegation was told that patients were in general allowed to spend at least one to two hours outside each day, but that this depended on staffing levels and the minimum requirement of one hour could sometimes not be met.

At a hospital in Bavaria, the only opportunity for outdoor exercise was in an outdoor area some considerable distance from the wards, which, for safety and security reasons, patients were only allowed to visit when accompanied by members of staff. As a result, patients frequently spent periods of up to 14 days and in some cases months without any time outside. The facility told the delegation that planning was under way for a new building with a roof terrace to improve the situation. This was confirmed by the Bavarian Ministry of the Environment and Public Health in its statement.<sup>207</sup> There was as yet no date for the completion of construction work.

Even in prisons, it is a legal requirement that each person have the opportunity to spend at least one hour each day outdoors and be able to exercise there.<sup>208</sup> Outdoor exercise has unique health benefits that cannot be replicated by any other measure, and it is crucial to young people’s development. Similar facilities have a secure outdoor area or ensure sufficient staff are available for supervision to make outdoor exercise possible.

Every person deprived of their liberty should have the opportunity for at least one hour of

<sup>203</sup> Federal Constitutional Court, order of 19 March 2019, file no.: 2 BvR 2638/18, margin no. 30.

<sup>204</sup> Ibid.

<sup>205</sup> p. 38, section 6.4, available from: link (accessed 19 April 2023).

<sup>206</sup> Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 502/16, margin no. 69.

<sup>207</sup> Statement of the Bavarian Ministry of the Environment and Public Health of 1 August 2022.

<sup>208</sup> Section 73(2) of the Berlin Prison Act (*Berliner Strafvollzugsgesetz*, StVollzG Bln); Number 27.1 of Recommendation Rec(2006) 2-rev of the Committee of Ministers to member States on the European Prison Rules: “Every prisoner shall be provided with the opportunity of at least one hour of exercise every day in the open air, if the weather permits.”

outdoor exercise per day. That period should be considerably longer for children and juveniles.

### **3.5 – Protection of privacy**

#### **3.5.1 – Private telephone calls**

The telephones for patients at one hospital in Berlin were located in the communal area. There were no booths or partitions, and it was therefore very difficult, if not impossible, for patients to have private telephone conversations.

Patients must be able to make private calls.

#### **3.5.2 – Storage for personal belongings**

At the facilities visited in Berlin and Thuringia, the National Agency was told that there was no secure storage available for personal belongings on the wards.

It must be possible to store personal belongings somewhere where they cannot be accessed by others.

Secure storage options include lockers and storage in a room to which other patients have no access.



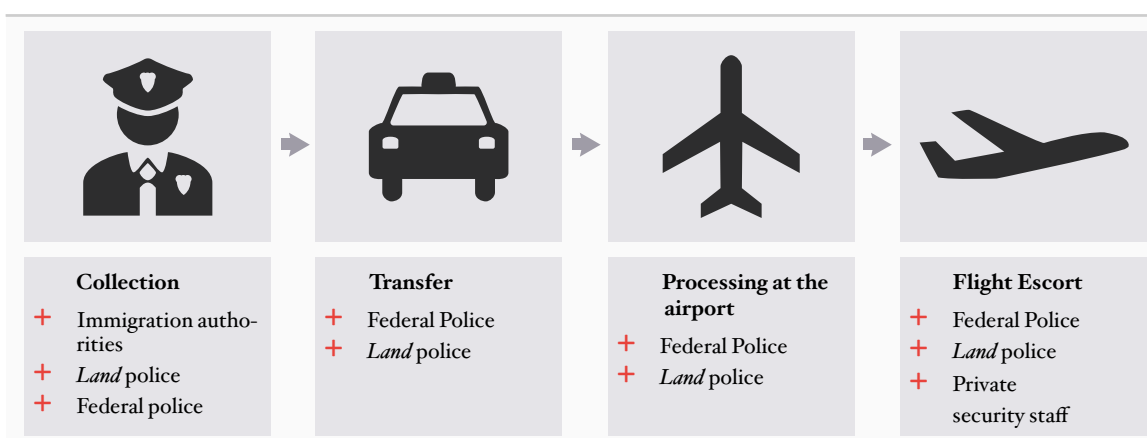
# VII VISITS



## 1 – DEPORTATION

On 24 August 2022, the National Agency held its annual exchange with the Federal Ministry of the Interior and Community (BMI) to work towards nationwide implementation of its recommendations and to discuss potential areas of disagreement. The National Agency also took part in an escort leaders conference run by the Federal Police on 21 September 2022. Alongside the effective exercise of its mandate, the National Agency focused in particular on constantly recurring findings and recommendations on strip-searches and the use of coercive measures.

To ensure the effective exercise of its mandate at a *Land* level, the National Agency once again sent a delegation to a meeting of the working group on integrated return management (*Arbeitsgemeinschaft Integriertes Rückkehrmanagement*) on 27 April 2022. The working group acknowledged in full the National Agency's mandate to examine the entire deportation process from the time individuals are collected until the point at which they are handed over in the country of destination.



Responsibility for deportations lies with the immigration authorities of the relevant *Länder*; the measures are carried out by a number of different actors. Deportees are generally picked up by the immigration authorities and/or *Land* police and taken to the airport. Originally the preserve of the Federal Police, the processing of individuals at the airport in Bavaria and Baden-Württemberg is increasingly being undertaken by the *Land* police on their own. In both these *Länder*, private security staff from the airline Air Bulgaria are charged with escorting deportees during their flight and until they are handed over in the country of destination. The National Agency observed a charter flight organised by the *Land* at Karlsruhe/Baden-Baden Airport.<sup>209</sup>

The variety of actors involved in deportation procedures makes uniform implementation of the National Agency's recommendations and standards more difficult.

Procedures such as avoiding collection at night, transferring persons together with their luggage and issuing a cash lump sum should be implemented in the same way throughout Germany in line with the standards set by the National Agency.

In 2022, the National Agency observed four deportation procedures.

24 January: From Karlsruhe/Baden-Baden to Kosovo and Albania

17 February: From Hanover to Moscow (Russia)

26 April: From Munich to Islamabad (Pakistan)

20 October: From Berlin to Tbilisi (Georgia)

<sup>209</sup>Processing at the airport was carried out exclusively by officers from the Baden-Württemberg *Land* Police Force. On the flight, the deportees were escorted by private security staff employed by the airline Air Bulgaria.

Aspects of those procedures rated positively by the National Agency include the following:

- + The police officers involved in processing individuals at the airport demonstrated a high degree of professionalism and sensitivity in how they dealt with the deportees. Good communication and the officers' calm approach clearly reduced the need for the direct use of force.
- + During the procedures observed, deportees were only searched by the police following a review of the specific circumstances and thus only in exceptional cases. No full strip-searches were carried out during the deportations from Karlsruhe to Kosovo and Albania (Baden-Württemberg *Land* Police Force) or from Berlin to Georgia (Federal Police).
- + At Munich Airport, every effort had been made to implement recommendations from previous National Agency reports relating to measures on the ground. For example, the documentation of coercive measures employed during the deportation observed, including the grounds given, was clear and complete.

The National Agency's recommendations mainly concerned the following areas:

### 1.1 – Collection at night

Early transfers in all of the deportation procedures observed meant that the deportees were collected at night. In several cases, the deportees were in the car park outside the building before the admission process began and had to wait in the car. The deportees included families with minor children. In general, the National Agency has found that collection at night continues to be common across the board.

This practice is, in the National Agency's view, unacceptable. Collection at night is to be avoided in order to minimise the strain on deportees, especially families with children.

Collection at night constitutes an infringement of deportees' fundamental rights, and one that is all the more serious given that collection and transfer to the airport alone create a particularly stressful situation for the individuals concerned. For young children in particular, besides causing a severe disruption of their normal sleep pattern,

being picked up at night can result in trauma when processing the events experienced.

Collections at night are to be avoided, and must never be used when children are being deported.

In its statement of 13 May 2022, the Federal Ministry of the Interior and Community announced that it had requested a review of whether and to what extent the Federal Police could influence the matter.<sup>210</sup> For deportations from Berlin, efforts are already made to adjust the time slots in such a way as to avoid night-time collection where possible. In Lower Saxony, too, there are now increasing efforts to schedule deportations to ensure that deportees do not need to be collected before 6:00 a.m.<sup>211</sup>

### 1.2 – Lack of means

The National Agency has repeatedly observed cases in which deportees do not have sufficient financial means to pay for onward travel in the destination country from the airport to their final destination or for meals they need during that journey. The National Agency is critical of the approach taken by a number of *Länder*, especially as all *Länder* have agreed a cash payment of 50 euros per person for deportees with no funds. For example, for the deportation from Berlin to Tbilisi (Georgia), six of the people transferred from Saxony, who included a family with an infant, had no cash on them when they were handed over to officials at the airport in Berlin.<sup>212</sup>

It is the view of the National Agency that the Federal Police are responsible for the humane enforcement of a deportation procedure from the moment they take charge of the deportees at the airport. One aspect of a humane process is ensuring that all deportees have sufficient funds.

<sup>210</sup> Available on the National Agency website at: <https://www.nationale-stelle.de/besuche/bundesstelle/2022.html>.

<sup>211</sup> Legal information and procedural requirements for the organisation and implementation of return and repatriation processes (deportation) and applications for custody pending deportation (Circular on return) [*Rechtliche Hinweise und verfahrensmäßige Vorgaben zur Organisation und Durchführung des Rückführungs- und Rücküberstellungsvollzugs (Abschiebung) und zur Beantragung von Abschiebungshaft (Rückführungserlass)*], Circular of the Lower Saxony Interior Ministry dated 7 July 2021, 63–12231-1-00.

<sup>212</sup> Following intensive discussions, the individuals were issued with a set cash payment from the Federal State of Brandenburg.

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.

In the event that a deportee without the necessary means is handed over to the Federal Police, he or she should be given a sufficient set amount of cash within the framework of a binding regulation, without the officers on the ground having to advance the costs of this payment.

### 1.3 – Shackling

#### 1.3.1 – Proportionality

In 2022 as in previous years, a large number of deportees were transferred to the airport in cuffs. Given that coercive measures were in some cases taken for largely preventive reasons, the National Agency once again stresses that restraint should be used no more than is absolutely necessary.

#### 1.3.2 – Shackling system

The National Agency observed the use of “body cuffs” (a fabric harness with metal cuffs for the wrists and ankles).

The use of metal handcuffs can cause injury. The same is true for disposable plastic cuffs and cuffs with hook-and-pile fasteners.

Where shackling is necessary, it is the responsibility of the police to avoid injuring the persons concerned and to protect their right to physical integrity. To this end, any shackling should be carried out using adjustable textile hand restraint belts, which should be available at all times.<sup>213</sup>

In its statement of 13 May 2022, the Federal Ministry of the Interior and Community reported to the National Agency that a number of metal-free models had been reviewed and a Europe-wide invitation to tender was upcoming.<sup>214</sup>

### 1.4 – Weapons

During the deportations from Karlsruhe/Baden-Baden Airport to Kosovo and Albania, every one of the officers from Baden-Württemberg *Land* Police Force involved in processing

<sup>213</sup> One example is the model used by FRONTEX on deportation flights.

<sup>214</sup> Available on the National Agency website at: <https://www.nationale-stelle.de/besuche/bundesstelle/2022.html>.

deportees at the airport was armed. The National Agency is of the view that this poses an increased risk.

Officers involved in deportation procedures should not carry weapons.

When observing deportation procedures carried out by or involving the Federal Police, the National Agency has found that officers generally do not carry weapons when processing deportees at the airport or conducting ID checks, or during the flight.

### 1.5 – Private security staff as flight escorts

For the deportations from Karlsruhe/Baden-Baden Airport to Kosovo and Albania, Air Bulgaria security personnel acted as escorts for the deportees during the flight and until they were handed over in the country of destination. The National Agency was given access to the aircraft. However, no information was forthcoming at that point on what training the security personnel had received, on the conditions on board or on the general possibility of independent monitoring.

While the escorting of deportees by an airline’s security staff is, in principle, compatible with Article 8 of the EU Return Directive, this does not mean that the deporting state can evade its general duty of supervision.<sup>215</sup>

The use of private security personnel must not result in a lower security standard. To ensure that the necessary standards are maintained, there should be at least one official representative of the deporting country on board the aircraft.<sup>216</sup> An effective deportation monitoring system also must be in place.<sup>217</sup>

The statement from the Baden-Württemberg Minister of Justice and Migration of 25 July 2022 is particularly problematic as regards the need for an effective deportation monitoring

<sup>215</sup> 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/MalagaRegConf/20\\_Guidelines\\_Forced\\_Return\\_en.pdf](https://www.coe.int/t/dg3/migration/archives/Source/MalagaRegConf/20_Guidelines_Forced_Return_en.pdf):

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

<sup>216</sup> Cf. Common Guidelines on Security Provisions for Joint Removals by Air in the Annex to Council Decision 2004/573/EC.

<sup>217</sup> Article 8(6) of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008.

system: the Minister merely refers the National Agency to a Federal Ministry of the Interior and Community plan that is supposed to result in better monitoring, and states that she does not wish to anticipate it.

The absence of an effective mechanism for monitoring forced returns, as called for in the EU Return Directive, was criticised back in 2020 during the Schengen evaluation of Germany.<sup>218</sup>

Independent monitoring conducted by the welfare organisations Diakonisches Werk and Caritas at Frankfurt am Main Airport, Hamburg Airport, Leipzig/Halle Airport and Berlin Brandenburg Airport and at airports in North Rhine-Westphalia is still limited to processing at the airport. Beyond that, what areas the monitoring bodies evaluate is set out in individual agreements for each airport. There is no standard national statutory basis.

The National Agency would like once again to emphasise that independent deportation monitoring<sup>219</sup> is essential.

## 2 – CUSTODY PENDING DEPORTATION

In 2022, the National Agency visited Glückstadt holding centre for immigration detainees (Schleswig-Holstein). Aspects rated positively by the National Agency include:

+ Under a pilot scheme, the individuals held in the centre were allowed to use their own mobile phones, the only restriction being that for privacy reasons they could not use the phone cameras, which were securely covered. The National Agency emphatically welcomes this approach as it allows detainees to remain in contact with family members and to hold private conversations without staff looking on.<sup>220</sup>

+ Video calls were also possible using laptops provided to the detainees, and the centre also set up Wi-Fi for them.

Recommendations issued by the National Agency mainly concerned the following areas:

### 2.1 – Differentiation requirement

A striking feature was the extensive structural security measures; these included bars on the windows and barbed razor wire both around the perimeter of the centre and around each of the courtyards.

On its previous visits to holding centres for immigration detainees, the National Agency has repeatedly stressed that it finds such extensive security measures unacceptable, as they are tighter than the security measures in many prisons. It would appear doubtful that “the constraint imposed on the third-country nationals concerned is limited to what is strictly necessary in order to ensure an efficient removal”.<sup>221</sup> The sole purpose of the deprivation of liberty in this case is to prepare for and ensure deportation; detainees are not being deprived of their liberty because they have committed a criminal offence, for example.

Such extensive security measures also run counter to the case law of the Court of Justice of the European Union, according to which custody pending deportation should, as a matter of principle, differ significantly from prison in terms of detention conditions, the restrictions of liberty that are specific to a prison sentence, and security measures.<sup>222</sup> The conditions of detention should also be “designed in such a way that the rights guaranteed by the Charter of Fundamental Rights of the European Union and the rights enshrined in Article 16(2) to (5) and Article 17 of [...] [the Return] [D]irective are respected”.<sup>223</sup> According to Opinion of the Advocate General, “making men, women and children awaiting removal look like criminals [...] by treating them

<sup>218</sup> Schengen evaluation mechanism (Regulation (EU) No. 1053/2013 of 7 October 2013). This is the mechanism used for verifying the effective implementation of the Schengen acquis. Cf. II 6.2.

<sup>219</sup> The purpose of deportation monitoring is to identify structural deficiencies, to contribute to the protection of fundamental and human rights and to make the process and implementation of deportations more transparent.

<sup>220</sup> This can help to prevent or reduce stress and anxiety (CPT/Inf (2016) 35, paragraph 23).

<sup>221</sup> CJEU, judgment of 10 March 2022, file no.: C-519/20, paragraph 54.

<sup>222</sup> CJEU, judgment of 17 July 2014, file no.: C-473/13 and C-514/13; CJEU, judgement of 10 March 2022, file no.: C-519/20, paragraph 54.

<sup>223</sup> CJEU, judgment of 10 March 2022, file no.: C-519/20, paragraphs 57 and 104.

as such” is, in itself, prejudicial to human dignity.<sup>224</sup>

The conditions of detention for individuals in custody pending deportation or custody to secure departure must differ significantly from detention conditions for individuals serving prison sentences.

## 2.2 – Specially secured detention rooms

### 2.2.1 – Seating

No seating at normal seating height is available in the specially secured detention rooms; they just have mattresses on the floor.

Where a period of detention lasts for several hours or days, it is inhumane to force individuals to stand or sit on the floor. On its visits to other facilities, the National Agency has observed the use of foam seating or challenging furniture, which is strong and durable and has no sharp edges or corners.

Detainees should be given the opportunity to sit in a normal position.

### 2.2.2 – Daylight

The specially secured detention rooms had no windows and therefore no daylight.

According to the CPT, “cells used for solitary confinement should meet the same minimum standards as those applicable to other prisoner accommodation”.<sup>225</sup> Those minimum standards include access to natural light.<sup>226</sup>

All specially secured detention rooms should receive natural light.

## 2.3 – One-on-one supervision during the use of physical restraint

Glückstadt holding centre for immigration detainees has not used physical restraint at any point since it opened. However, the National Agency was informed that in the event physical

restraint was used, the centre could not guarantee constant one-on-one supervision by therapeutic or care staff, particularly not at night. Section 16 of the Schleswig-Holstein Act on custody pending deportation (*Gesetz über den Vollzug der Abschiebungshaft in Schleswig-Holstein*) merely provides that staff are to maintain a direct line of sight to detainees and keep them under constant observation for the whole time they are physically restrained.

One-on-one supervision should be provided by therapeutic or care staff in the immediate vicinity of the individual restrained because the use of physical restraint can pose particular health risks<sup>227</sup> requiring an immediate response from qualified personnel. Moreover, therapeutic or care staff can exert a de-escalating influence and thus reduce the period for which restraint is required.

Physical restraint may only be used if it does not breach constitutional requirements. Persons who are being physically restrained must be observed continuously and in person by therapeutic or care staff in direct proximity to the individual concerned (one-on-one supervision).<sup>228</sup>

*Land* legislation must meet the requirements of constitutional law.

## 2.4 – Psychological and psychiatric care

Psychologists from Itzehoe Hospital visit the centre for two hours each day. It would appear doubtful to the National Agency that this is sufficient.

As detainees awaiting deportation have frequently had traumatic experiences both before and while fleeing their country of origin, and deportation back to that country often produces feelings of fear and anxiety, the need for psychological support in such facilities is generally high.

Adequate psychological or psychiatric support must be provided where there is evidence of mental health problems.

<sup>224</sup> Opinion of the Advocate General Yves Bot of 30 April 2014 in joined cases C-473/13 and C-514/13 and in case C-474/13, paragraph 94.

The Advocate General made it clear that in order to respect the human dignity and fundamental rights of migrants, detention conditions during custody pending deportation must differ considerably from conditions during the execution of a prison sentence (ibid., paragraph 99).

<sup>225</sup> CPT, Standards – Solitary confinement of prisoners (2011), p.6, paragraph 58.

<sup>226</sup> Ibid.

<sup>227</sup> Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15, margin no. 83.

<sup>228</sup> Ibid.

### 3 – RESIDENTIAL CARE AND NURSING HOMES

Elderly people and people requiring care who live in care and nursing homes are particularly vulnerable, and they are having to deal with the loss of their independence, with limits on their social life and activities, and with increasing dependency on others. They have an absolute and undeniable right to the requisite support and care. That care and support must allow them as much personal independence and as good a quality of life as possible.

The National Agency examines how residential care and nursing homes respect the human rights and protect the dignity of their residents. In 2022, it visited two homes in Lower Saxony and one in Baden-Württemberg.

As the legalities surrounding naming privately-run facilities are still unclear, the residential care and nursing homes visited are not named in this report. This reduces the effectiveness of the National Agency's work.<sup>229</sup> However, the National Agency has sought to set out recommendations that should be implemented not only in the facilities it visited but in all facilities across Germany. To ensure that implementation is rapid and effective, there must be communication and collaboration with the competent ministries.

+ Hesse's Ministry of Social Affairs and Integration has kept the National Agency updated on progress in implementing recommendations issued following a visit on 13 September 2021.<sup>230</sup>

Aspects rated positively by the National Agency on its visits in 2022 are as follows:

+ Both facilities had facilitated access to specialist medical care for their residents. For example, residents in one facility were able to see a range of doctors (ophthalmologist, general practitioner, ear specialist, neurologist, etc.) on site. Another

facility organised on-site dental check-ups every six months.

- + One facility visited had its own palliative care team so that terminally ill residents were able to remain in a familiar environment with the right end-of-life care, and ultimately to die with dignity.
- + Couples are able to live together at one of the facilities visited, with a separate living room-bedroom to give them more privacy.

Recommendations issued by the National Agency mainly concerned the following areas:

#### 3.1 – Accessibility

In one facility, on the closed ward for people with dementia, there was a step between the bedrooms and the bathrooms. Steps pose a particular trip hazard for people who are unsteady on their feet.

Residents should be able to live as independently as possible, without the obstruction of physical barriers. There must be barrier-free access to all areas of the facility that are intended to be used by residents.

The competent supervisory authority informed the National Agency that accessibility requirements were based on the relevant DIN standards,<sup>231</sup> but that existing buildings were only remodelled in compliance with those standards to the extent feasible and reasonable in the light of structural and financial constraints. It is the view of the National Agency that such restrictions on the guarantee of accessibility are not acceptable.

#### 3.2 – Accessing advice and lodging complaints

On its visits to two of the facilities, the National Agency noted that the contact details of the competent supervisory authority and relevant external advisory and complaints bodies were not on display.

To effectively protect residents from violations of their rights, it should be possible for them, their family members and their legal representatives to contact not just the facility management but also external bodies to find out about their rights

<sup>229</sup> This was also criticised by the UN Committee against Torture, for example in 2019 in its consideration of the sixth State party report from the Federal Republic of Germany (CAT/C/DEU/6, available from: [link](#), accessed 19 April 2023).

<sup>230</sup> The relevant supplement to the Ministry's statement is available on the website of the National Agency.

<sup>231</sup> <https://www.dguv.de/barrierefrei/grundlagen/gesetze/standards/din18040/index.jsp> (accessed 19 April 2023).

and about aspects of the running of the facility that concern them, and to lodge complaints if necessary. They should therefore be made aware of complaints channels in an appropriate manner. The contact details of the supervisory authority and external advisory and complaints bodies should be readily available in an accessible format. Assistance should also be provided to residents to help them make verbal or written complaints, and to do so anonymously if they wish.

The response of one supervisory authority on this point is particularly problematic: although it recognised that the National Agency's position reflects the generally accepted view in the relevant literature, it nonetheless rejected the recommendation that it ensure complaints can be lodged anonymously.

### 3.3 – Bed rails

In two facilities visited, the National Agency found that all beds were fitted with two-part bed rails. This was despite the fact that the facilities only had legally valid consent or a judicial decision allowing bed rails for just a few of the residents. Fitting bed rails may constitute a deprivation of liberty.

Bed rails may only be used where legally valid consent has been given to measures involving a deprivation of liberty or a court order to that effect has been issued.

Availability and easy access to bed rails can mean they are used more than necessary, particularly when a facility is short-staffed. In addition to the above concerns, the sight of bed rails can trigger anxiety and unsettle residents.

Bed rails should be removed unless there has been legally effective consent to their use.

### 3.4 – Staff

#### 3.4.1 – Staffing

In all the facilities visited, residents told the National Agency that staffing levels needed to be improved, and that the current staffing situation was causing considerable problems. For example, residents reported, poor staffing levels on the night shift meant it often took care staff a long time to respond to the call button; an unacceptable situation, particularly when they wanted to go to the toilet at night. In one facility,

there were reportedly not always enough staff on duty to help residents wash in the mornings either.

The competent supervisory authorities did inform the National Agency that staffing levels met social welfare requirements and the conditions set by the regulatory agency (staffing; proportion of specialist care staff). However, this on its own does not address shortcomings in care, for example failings in the provision of personal care; hygiene issues; long waits for a response to residents' emergency calls; the absence or unreliable provision of necessary services.

#### 3.4.2 – Care staff with geriatric psychiatry qualifications

One of the facilities visited had a separate living area for residents with dementia. The facility did not, however, have any care staff qualified specifically in that field.

Residents with dementia are vulnerable. Care and support must be tailored to their particular needs both to respond to that vulnerability and to ensure respect for their rights.

#### 3.4.3 – Fire safety procedures

If a facility needs to be evacuated, for example in the event of a fire or a build-up of smoke, non-mobile residents are to be carried out of the building using evacuation mattresses or evacuation sheets. Low staffing levels, particularly at night, would make it difficult, if not impossible, to ensure the safe and rapid evacuation of non-mobile residents in an emergency in this way.

The competent supervisory authorities informed the National Agency that all of the facilities visited had the requisite fire safety procedures in place to ensure the evacuation of their residents in the event of a fire.

Given the central importance of emergency procedures, the National Agency stresses once again that every facility must be in a position to evacuate all of its residents safely and rapidly in an emergency, and that at any time of the day or night. This must be taken into account both at the planning stage and in the approval process for residential care and nursing homes. Facilities also have a duty to ensure sufficient staffing levels.

## 4 – FEDERAL AND LAND POLICE

### 4.1 – Conduct of the police at major events

During the G7 Summit, the National Agency observed the protest that was held at Schloss Elmau on 27 June 2022. The National Agency visited the central temporary holding facility in Garmisch-Partenkirchen and a mobile temporary holding unit. Both the *Land* police force and the Federal Police used these temporary custody facilities.

The central holding facility consisted of 50 “portable custody cells” (four of which had video surveillance) and was designed to hold a total of 150 people (three per cell). A total of 15 people were held there over the course of the G7 Summit (26-28 June 2022).

The mobile holding units set up between Munich and Garmisch-Partenkirchen,<sup>232</sup> which consisted of tents and a number of police vehicles, were used for taking people’s details and reviewing incidents in which they had potentially been involved. Once people had been processed, they were either released or taken to the central holding facility. The National Agency rated the following aspects particularly positively:

- + Where they could demonstrate that they had a legitimate interest in a deviation from the rule that strip-searches be carried out by an officer of the same sex, those in custody could specify the sex of the officer who was to search them. A separate search room was set up for non-binary people.
- + Persons released after an identity check and review of an incident could ask for transport from the police to a town of their choice in the surrounding area, greatly facilitating their journey back.

Recommendations issued by the National Agency mainly concerned the following areas:

#### 4.1.1 – Furnishings and fittings of custody cells

The police records showed that persons held in the central temporary custody facility were not

<sup>232</sup> Twelve mobile holding units were operated during the day and nine at night.

always provided with a mattress or blanket and pillow. This was despite the fact that the persons concerned were held overnight.

The National Agency had already criticised a similar approach at Neuland central temporary custody facility back in 2017 when it observed procedures during the G20 Summit in Hamburg.<sup>233</sup>

In its report of 14 September 2022, the CPT once again urgently called for immediate steps to implement the long-standing recommendation that all persons held overnight in police custody be provided with a clean (and, if necessary, washable) mattress and clean blankets.<sup>234</sup>

The custody cells had no windows to let in the daylight and some people were held there for several hours (up to 18).

The furnishings in custody facilities must be such as to respect the dignity of those held there. Each custody cell should, for example, have a mattress, a blanket and a pillow and a source of natural light.

#### 4.1.2 – Strip-searches

Officers from Bavaria’s *Land* police force told the National Agency that persons taken into custody were allowed to keep their underwear on during strip-searches. However, when the National Agency examined the records, it found that “full strip-search” (“*Durchsuchung mit vollständiger Entkleidung*”) was noted in the records for a number of individuals.

Strip-searches involving a visual examination of a person’s genital area represent a serious infringement of that individual’s general right of personality.<sup>235</sup>

Whether or not there are specific grounds to warrant a strip-search is a matter to be decided on a case-by-case basis.<sup>236</sup> If it is indeed necessary for the person in question to undress fully, the reasons justifying a full strip-search must be documented. Furthermore, the search should be carried out as respectfully as possible, for example in two stages with the person keeping on their clothing above

<sup>233</sup> Visits on 6 and 7 July 2017, <https://www.nationale-stelle.de/besuche/laenderkommission/2017.html>.

<sup>234</sup> CPT/Inf (2022) 19, paragraph 24.

<sup>235</sup> Federal Constitutional Court, order of 5 March 2015, file no.: 2 BvR 746/13, margin no. 33.

<sup>236</sup> Cologne Administrative Court, judgment of 25 November 2015, file no.: 20 K 2624/14.



the waist while they are searched below the waist and vice versa.

#### 4.2 – Custody in police stations

The National Agency visited four Federal and *Land* police stations in 2022, including the Dresden (Saxony), Landau (Rhineland-Palatinate) and St. Ingbert (Saarland) district police stations and the Federal Police district station at Berlin Brandenburg Airport.

Aspects rated positively by the National Agency on those visits include the following:

- + The National Agency had no significant complaints to raise following its visit to the Federal Police district station at Berlin Brandenburg Airport. Recommendations for changes that could be made on the ground were implemented immediately.
- + At Dresden and Landau district police stations, textile hand restraint belts were used<sup>237</sup> to protect, as far as possible, the physical integrity of anyone who was being restrained.
- + At all the police stations visited, all information relating to custody was clearly recorded and the entries in the records were signed. Clear and comprehensive records help those involved to recollect incidents and ensure that infringements of fundamental rights can be reviewed.
- + At the police stations visited, strip-searches were only carried out in isolated cases where there were clear grounds to do so. Care was taken to conduct any strip-searches as respectfully as possible.
- + The custody cells at Landau district police station each had a dimmable lamp so that individuals held there could sleep if they wished, did not injure themselves in the dark, and were able to find their way around the room.

Recommendations issued to the stations visited mainly concerned the following areas:

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<sup>237</sup> The station in Dresden used hand restraint belts from Segufix.

#### 4.2.1 – Furnishings and fittings of custody cells

Three custody cells in St. Ingbert had no windows, only small air ducts with mesh covers, and this greatly reduced the amount of natural light. It was not possible to see outside. Natural light was also extremely limited in the Federal Police custody cells at Berlin Airport.

Every custody cell, even those intended for short-term custody, should have a source of a natural light.

On its visit to Landau district police station, the National Agency found that there was only one mattress for four custody cells.

All custody cells should have washable, non-flammable mattresses.

In its statement of 9 June 2022, the Rhineland-Palatinate Ministry of the Interior and Sport announced that it would provide additional mattresses for Landau district police station without delay.

Finally, three multiple-occupancy custody cells at Dresden district police station that were each designed for a maximum of 16 persons allowed a floor space of only 2 m<sup>2</sup> per person, which is not enough.

Multiple-occupancy custody cells must have a floor space of at least 3.5 m<sup>2</sup> per person.

#### 4.2.2 – Shackling

At Dresden district police station, individuals in multiple-occupancy custody cells were secured to a bench to prevent them from attacking staff.

Tying people to the wall or to other objects violates their human dignity and must be avoided in all situations.

#### 4.2.3 – Privacy

At Landau district police station, telephone calls by individuals in custody as a rule take place in the presence of staff. The National Agency was informed that individuals were allowed privacy for calls with their lawyers on a case-by-case basis.

In the view of the National Agency, privacy must at the very least be provided for

conversations subject to medical confidentiality and for conversations between individuals and their lawyers, unless security concerns dictate otherwise.

#### 4.2.4 – Personal hygiene and sanitary products

Neither Landau nor St. Ingbert police station kept supplies of basic personal hygiene items such as toothpaste and toothbrushes or of sanitary products.

Police stations should keep a supply of basic personal hygiene and sanitary products to be provided to individuals as required.

The Rhineland-Palatinate Ministry of the Interior and Sport and the Saarland Ministry of the Interior, Construction and Sport notified the National Agency of the immediate implementation of this recommendation.

## 5 – THE FEDERAL ARMED FORCES

In 2022, the National Agency visited the detention facilities at Otto Lilienthal Barracks in Roth and at Cochem/Büchel Air Base.

The National Agency also ran a training session at Knüll Barracks in Schwarzenborn on 8 November 2022<sup>238</sup> and took part in an inspection of Julius Leber Barracks in Berlin on 13 June 2022. The purpose of the inspection was to decide whether or not to put the barracks' detention cells back into use. A number of recommendations from the National Agency had been implemented, including the recommendation that only individuals who were to be on day shift should be held in detention cells with frosted windows. The National Agency was also assured that individuals' time outdoors on days when they were not on duty was to be significantly increased.

The National Agency rated the following aspects particularly positively on its visits in 2022:

<sup>238</sup> On its visit to Knüll Barracks in 2021, the National Agency had recommended offering more training for guard duty specifically in disciplinary confinement and military imprisonment situations (report available from: link).

- + At both of the facilities visited, medical examinations were conducted to establish fitness for detention. This procedure, which the National Agency recommends, is to be highlighted in particularly positive terms: it ensures that the health of the individuals in question is assessed and any need for medical treatment can be identified, and that any signs of psychological or other stress are detected.
- + After studying the report from the National Agency on its visit to Federal Armed Forces facilities on 25 and 26 August 2020, the Territorial Tasks Command decided to take all specially secured detention cells at Federal Armed Forces detention facilities out of use. Where an individual is at acute risk of suicide or presents a risk to others, disciplinary confinement is immediately ended.

Recommendations issued by the National Agency mainly concerned the following areas:

#### 5.1 – Six-month period of military imprisonment

As well as disciplinary confinement (*Arrest*),<sup>239</sup> the National Agency also observed the enforcement of a six-month period of military imprisonment (*Strafarrest*)<sup>240</sup> at Cochem/Büchel Air Base, which it considered particularly problematic. The detention plan provided for the individual in question to be locked up for around 23 hours a day. The plan did not allow for that individual to discharge any of their duties or to take part in any training sessions. All meals were to be taken in the detention cell under the supervision of the duty officer. In short, the individual was to be completely isolated for six months.

<sup>239</sup> Disciplinary confinement under section 26 of the Military Disciplinary Code (*Webrdisziplinarordnung*, WDO) can be imposed for a maximum period of 21 days.

Disciplinary confinement differs in a number of ways from detention in prisons and in custody facilities operated by the police or the customs authorities.

<sup>240</sup> This was imposed in accordance with section 9 of the Military Criminal Code (*Webrstrafgesetz*, WStG):

(1) Short-term military imprisonment may be imposed for a maximum of six months; the minimum term shall be two weeks. (2) Short-term military imprisonment shall be executed as deprivation of liberty. During short-term imprisonment, the soldier shall, if possible, be given the chance to participate in training. (3) The limitation period for the execution of short-term military imprisonment shall be two years.

Berlin Higher Regional Court has found in the case of remand detention that confining an individual to their cell for 23 hours a day can constitute a violation of their human dignity.

Such segregation means insufficient social contact, and that, together with the constant isolation generally, has a negative impact on an individual's mental health.

To combat isolation, appropriate supervision is to be ensured and the individual is to be given the opportunity for social contact. The individual should be able to spend a reasonable part of the day engaged in meaningful activities of a varied nature (work, education, sport and recreation).

Under no circumstances may short-term military imprisonment put an individual in a worse position than they would be if they were serving a prison sentence.

To compound matters, detention conditions did not meet the applicable standards. For example, the detention cell (7.36 m<sup>2</sup>), which contained a toilet area that was not partitioned off, was 4.46 m long and just 1.65 m wide.

In the view of the National Agency, there should be at least 2 m between opposite walls to ensure that individuals can move freely about the cell.

Detention cells that do not meet that minimum requirement should not be used.

The National Agency takes an extremely critical view of prolonged terms of detention at Federal Armed Forces sites during which individuals are not able to participate in everyday activities.

## 5.2 – Furnishings and fittings of detention cells

### 5.2.1 – Lighting

The light switches for the detention cells at all the facilities visited are in the corridor; individuals in the cells therefore cannot switch the light on and off themselves. The plans announced by the Federal Ministry of Defence to fit detention cells with light switches<sup>241</sup> had yet to be implemented.

Individuals should have access to a light switch

<sup>241</sup> The relevant statement by the Federal Ministry of Defence is available on the National Agency website at <https://www.nationale-stelle.de/besuche/bundesstelle/2020.html>.

to allow them to sleep and to see their way about the cell as required, and to reduce the risk of injury in the dark.

### 5.2.2 – Windows

The window in the detention cell at Cochem/Büchel Air Base is too high up to see out of. The detention cells at Otto Lilienthal Barracks have patterned glass windows, reducing the amount of daylight and preventing a clear view of the outside.

Federal Armed Forces detention cells should have natural light and offer a clear view of the outside.

A clear distinction must be made between situations in which an individual is still on duty and situations in which this is not the case. A lack of natural light in the detention cell is particularly serious if the individual is spending their days there because they are not carrying out duties. The same applies to detention at the weekend when it is not possible for an individual to engage in shared duties.

## 5.3 – Documentation

The records by detention enforcement officers of disciplinary confinement at Otto Lilienthal Barracks are clear and informative. Supervisors verify at regular intervals whether the records are being kept correctly.

However, the checks on individuals in confinement, in particular the checks on their health and their mental state, should also be recorded.

In order to protect both the individuals held and the soldiers in charge of them (detention enforcement officers), all information related to disciplinary confinement or short-term military imprisonment must be recorded in full.

# VIII APPENDIX

## 1 – LIST OF VISITS IN 2022

Date	Details
24 January	Otto Lilienthal Barracks, Roth
24 January	Observation of deportation Karlsruhe/Baden-Baden Airport – Kosovo and Albania
17 February	Observation of deportation Hanover Airport – Moscow (Russia)
8 March	Child and youth welfare facility, Bavaria
9 March	Child and youth psychiatry facility, Bavaria
16 March	Landau district police station, Rhineland-Palatinate
17 March	Klingenmünster forensic psychiatry facility, Rhineland-Palatinate
17 March	Dinslaken Prison, North Rhine-Westphalia
23 March	Neumünster Prison, Schleswig-Holstein
29 March	St. Ingbert district police station, Saarland
30 March	Merzig forensic psychiatry facility, Saarland (second visit)
30 March	Child and youth psychiatry facility, Berlin
4 April	Child and youth psychiatry, Thuringia
13 April	Taufkirchen forensic psychiatry facility, Bavaria
21 April	Residential care and nursing home, Lower Saxony
22 April	Residential care and nursing home, Lower Saxony
26 April	Observation of deportation Munich Airport – Islamabad (Pakistan)
26 April	Cochem/Büchel Air Base
28 April	Rockenberg Juvenile Prison, Hesse (second visit)
29 April	Juvenile forensic psychiatry facility, Hesse
12 May	Stadtroda forensic psychiatry facility, Thuringia
13 May	Hildburghausen forensic psychiatric facility, Thuringia
23 May	Eberswalde forensic psychiatry facility, Brandenburg
24 May	Neuruppin-Wulkow Prison, Brandenburg

<b>Date</b>	<b>Details</b>
<b>1 June</b>	Child and youth welfare facility, Bavaria
<b>8 June</b>	Reichenau forensic psychiatry facility, Baden-Württemberg
<b>9 June</b>	Konstanz Prison, Baden-Württemberg (second visit)
<b>10 June</b>	Residential care and nursing home, Baden-Württemberg
<b>10 June</b>	Zwiefalten forensic psychiatry facility, Baden-Württemberg
<b>14 June</b>	Bremen-East forensic psychiatry facility, Bremen (third visit)
<b>15 June</b>	Juvenile forensic psychiatry facility, Lower Saxony
<b>15 June</b>	Bad Zwischenahn forensic psychiatry facility, Lower Saxony
<b>27-28 June</b>	Police custody and demonstration at Schloss Elmau during the G7 Summit, Bavaria
<b>28 June</b>	Dresden Prison, Saxony (second visit)
<b>29 June</b>	Dresden district police station, Saxony
<b>12 July</b>	Wiesloch forensic psychiatry facility, Baden-Württemberg
<b>21 July</b>	Werl Prison, North Rhine-Westphalia (second visit)
<b>22 July</b>	Fröndenberg Prison Hotel, North Rhine-Westphalia
<b>9 August</b>	Fuhlsbüttel Prison, Hamburg
<b>16 August</b>	Rheine forensic psychiatry facility, North Rhine-Westphalia
<b>16 August</b>	Schleswig forensic psychiatry facility, Schleswig-Holstein
<b>17 August</b>	Münster forensic psychiatry facility, North Rhine-Westphalia
<b>17 August</b>	Glückstadt Holding Centre for Immigration Detainees, Schleswig-Holstein
<b>25 August</b>	Berlin Airport Federal Police Station
<b>1 September</b>	Child and youth welfare facility, Thuringia
<b>13 September</b>	Vechta Prison, Lower Saxony (second visit)
<b>14 September</b>	Child and youth welfare facility, Lower Saxony
<b>27 September</b>	Suhl-Goldlauter Prison, Thuringia (second visit)

<b>Date</b>	<b>Details</b>
<b>28 September</b>	Untermaßfeld Prison, Thuringia
<b>5 October</b>	Haina forensic psychiatry facility, Hesse
<b>6 October</b>	Kassel Prison Hospital, Hesse
<b>12 October</b>	Hamburg Remand Detention Facility
<b>12 October</b>	Forensic psychiatry ward at a remand detention facility, Hamburg
<b>19 October</b>	Child and youth welfare facility, Bavaria
<b>19 October</b>	Weißenthurm forensic psychiatry facility, Rhineland-Palatinate
<b>20 October</b>	Observation of deportation Berlin Airport – Tiflis (Georgia)
<b>20 October</b>	Child and youth psychiatry facility, Bavaria
<b>20 October</b>	Hildesheim forensic psychiatry facility, Lower Saxony
<b>21 Oktober</b>	Göttingen forensic psychiatry facility, Lower Saxony
<b>27 October</b>	Rheinback Prison, North Rhine-Westphalia
<b>3 November</b>	Child and youth welfare facility, North Rhine-Westphalia
<b>16 November</b>	Ravensburg Prison, Baden-Württemberg
<b>17 November</b>	Ravensburg forensic psychiatry facility, Baden-Württemberg
<b>21 November</b>	Weiterstadt Prison, Hesse
<b>22 November</b>	Riedstadt forensic psychiatry facility, Hesse
<b>23 November</b>	Child and youth welfare facility, Baden-Württemberg
<b>24 November</b>	Child and youth welfare facility, Baden-Württemberg
<b>29 November</b>	Augsburg Prison, Bavaria
<b>1 December</b>	Bernau Prison, Bavaria (second visit)
<b>2 December</b>	Wasserburg forensic psychiatry facility, Bayern

## 2 – STATEMENT ON EXISTING LEGISLATION

Date	Details
28 October	Evaluation of the North Rhine-Westphalia Act on Criminal Law-related Committal ( <i>Strafbezogenen Unterbringungsgesetzes NRW, StrUG NRW</i> )

## 3 – MEMBERS OF THE FEDERAL AGENCY

Name	Title	Since	Position
Ralph-Günther Adam	Senior civil servant and prison director (retd)	June 2013	Director
Sabine Thureau	President of the Hesse <i>Land</i> Criminal Police Office (retd)	April 2021	Deputy Director

## 4 – MEMBERS OF THE JOINT COMMISSION

Name	Official/professional title	Since	Position
Rainer Dopp	State Secretary (retd)	September 2012	Chair
Petra Heß	Former Member of the Bundestag	September 2012	Member
Dr Helmut Roos	Senior civil servant (retd)	July 2013	Member
Dr Monika Deuerlein	Psychologist	January 2015	Member
Margret Osterfeld	Psychiatrist and psychotherapist (retd)	January 2015	Member
Petra Bertelsmeier	Senior public prosecutor (retd)	January 2019	Member
Dr Werner Päckert	Senior civil servant and prison director (retd)	January 2019	Member
Friedhelm Kirchhoff	Senior civil servant and prison director (retd)	January 2022	Member



## 5 – SECRETARIAT STAFF

Name	Official title/profession	Position
Dr Sarah Teweleit	Lawyer (LL.M.)	Director (since 2022)
Christian Illgner	Lawyer (Mag. iur.) and criminologist (M.A.)	Director (on parental leave since May 2022)
Jutta Jung-Henrich	Healthcare training specialist (M.A.)	Research assistant
Pascal Décarpes	Criminologist (M.A., LL.M.)	Research assistant
Maximilian Acosta Schultze	International social work specialist (M.A.)	Research assistant (since May 2022)
Oliver Reichenauer	State-certified educator	Staff member
Katja Simon	Public administration specialist	Administration
Judith Bene	Travel agent	Secretariat

## 6 – ACTIVITIES IN THE PERIOD UNDER REVIEW

Date	Location	Details
18 January	online	Meeting with the Central Customs Authority
27 January	online	Meeting with the North Rhine-Westphalia deportation observer
31 January	online	Participation in the Loccum psychiatry conference (Part 1)
22 February	online	Participation in the Loccum psychiatry conference (Part 2)
1 March	online	Participation in the Loccum psychiatry conference (Part 3)
7 March	Wiesbaden	Meeting with a delegation from the Estonian deportation observation organisation and Frankfurt deportation observers
17-18 March	Paris	Advice on and participation in the symposium <i>Les ressources de la privation de liberté</i> , Panthéon-Sorbonne University
22-24 March	Neumünster/ Bremen	Study visit from the French NPM ( <i>Contrôleur général des lieux de privation de liberté</i> )
27 April	Mainz	Presentation on the National Agency's mandate in the area of deportations; <i>Arbeitsgemeinschaft Integriertes Rückkehrmanagement</i>
13 June	Berlin	Visit to Julius-Leber-Barracks
14 June	online	Participation in SPT Webinar: "The Role of NPMs in Monitoring Places where Migrants are Deprived of Liberty"
20-21 June	Berlin	Participation in the 22nd. <i>Berliner Symposium zum Flüchtlingsschutz</i>
23 June	online	APT/ODIHR Webinar "Preventing torture and ill-treatment in the context of public assemblies"
28 June	Schwerin	Meeting with the Mecklenburg-West Pomerania Ministry of Justice, Equality and Consumer Protection
23 August	Berlin	Meeting with the Federal Ministry of Justice
24 August	Berlin	Meeting with the Federal Ministry of the Interior
24-25 August	Warsaw	5th APT/ODIHR Meeting for NPMs and CSOs
6-8 September	Berlin	Annual conference of Aktion Psychisch Kranke e.V.

Date	Location	Details
21 September	Fuldata	Presentation on the mandate of the National Agency; escort leaders conference (Federal Police)
4-6 October	Strasbourg	Participation in the European NPM Conference “Monitoring the rights of specific groups of people deprived of their liberty“
19 October	Berlin	Meeting with the Federal Ministry of Justice
27 October	online	Participation in the Webinar “ <i>Das Recht, sich über die Polizei zu beschweren. Beschwerden als Probleme und Chancen.</i> ”
8 November	Schwarzenborn	Presentation on the mandate of the National Agency at the Federal Armed Forces training course, Knüll Barracks
9-11 November	Vienna	Meeting of German-speaking NPMs
23-26 November	Berlin	DGPPN conference - attendance and presentations
1-2 December	Frankfurt	Seventh <i>Gefängnis-Medizin-Tage</i> prison health care conference