



NATIONAL
AGENCY
FOR THE
PREVENTION
OF
TORTURE

ANNUAL REPORT 2013

of the Federal Agency and the Joint Commission

Period under review:

1 January – 31 December 2013



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FOREWORD

The National Agency for the Prevention of Torture (National Agency) was established in 2009 on the basis of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT). Its task within the context of preventing inhuman conditions of detention is to regularly review and make recommendations for improving the conditions of detention and the treatment of persons deprived of their liberty. The National Agency has found that including the term “torture” in its designation can prove an obstacle when it comes to fulfilling this task, since its remit is then often reduced to the “prevention of torture”. In fact, no evidence of torture was found in any of the institutions visited. Nevertheless, a number of issues were identified based on which recommendations were then made.

The National Agency comprises the Federal Agency for the Prevention of Torture (Federal Agency) and the Joint Commission of the *Länder* for the Prevention of Torture (Joint Commission). Every year it submits a joint Annual Report to the Federal Government, the German Bundestag, the *Land* governments and the *Land* parliaments. This Annual Report covers the period between 1 January and 31 December 2013. For the sake of thematic consistency, the Annual Report 2013 also covers the visit to Rendsburg Pre-Deportation Detention Facility on 13 January 2014.

The National Agency visited a total of 36 facilities in 2013. These visits focused on custody pending

deportation and forced returns by air. The Report sets out the National Agency’s stance on fundamental issues around the enforcement of custody pending deportation in Germany, and it comes out in favour of enforcing such custody pending deportation only in facilities established specifically for that purpose. Chapters III and IV contain descriptions of the Agency’s visits, its recommendations and the statements provided by the supervisory authorities in response to those recommendations, as well as best practice examples.

In addition to conducting its national visits, the National Agency engaged in numerous international activities in the period under review. Further, Germany received visits from two international preventive mechanisms, the UN Subcommittee on Prevention of Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (SPT) and the European Committee for the Prevention of Torture and Cruel, Inhuman and Degrading Treatment or Punishment (CPT).

Once more, the National Agency’s financing and staffing were an important issue in the period under review. The Federal Agency was expanded by the addition of a second member, but although the Conference of Ministers of Justice of the *Länder* gave its approval for an additional member to join the Joint Commission, no decision has yet been taken on financing this position. Should its financial and human resources not be increased, the Joint Commission will not be able to fulfil some of its tasks in 2014.

LIST OF ABBREVIATIONS

CAT	Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
EHC	European Homecare
EU	European Union
HRCR	Hesse Reception Centre for Refugees
NPM	National preventive mechanism
OJ	Official Journal of the European Union
OP-CAT	Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
SPT	UN Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
UN	United Nations

**I
GENERAL
INFORMATION
ABOUT THE WORK
OF THE NATIONAL
AGENCY**

I – BACKGROUND

The National Agency for the Prevention of Torture (National Agency) is Germany's designated national preventive mechanism, and it thus operates at the interface between domestic law and the relevant international treaties, primarily the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UN Convention against Torture). Details regarding the National Agency's special status and other background information regarding its structure will be provided in the following.

I.1 – INSTITUTIONAL FRAMEWORK

The prevention of torture and ill-treatment is laid down in the Optional Protocol to the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (OP-CAT). It supplements the UN Convention against Torture of 1984 by adopting a preventive approach. In Germany, the task of prevention as set out in Article 3 of the OP-CAT is carried out by the Federal Agency for the Prevention of Torture (Federal Agency), which is responsible for facilities run at federal level, and by the Joint Commission of the *Länder* for the Prevention of Torture (Joint Commission), which is responsible for facilities at *Länder* (federal state) level. These two bodies work together under the umbrella of the National Agency. They constitute the national preventive mechanism as referred to in Article 3 of the OP-CAT.

According to Article 18 of the OP-CAT, the States Parties are obliged to guarantee the functional independence of the national preventive mechanisms and to make available the necessary financial resources.

The Federal Ministry of Justice nominates a Director and a Deputy Director to the Federal Agency. The Conference of the Ministers of Justice of the *Länder* nominates the Chair and three further members of the Joint Commission. The members of the National Agency are not subject to any technical or legal supervision and are independent in the exercise of their functions. They act on an honorary basis and may resign their office at any time. They may only be removed before the end of their term in office subject to the conditions set out in sections 21 and 24 of the German Judiciary Act. The National Agency is based in Wiesbaden. Its Secretariat is staffed with

three research assistants and an administrative assistant.

Pursuant to the Administrative Agreement between the Federal Government and the *Länder* on the National Agency for the Prevention of Torture, the Federal Agency and the Joint Commission must coordinate the planning and implementation of their activities, to which end they hold regular joint meetings. They are supported by the Secretariat.

I.2 – TASKS AND POWERS

The principle task of the National Agency is to visit those facilities in which people are deprived of their liberty ("places of detention"), to draw attention to problems and to make recommendations and suggestions to the authorities for improving the situation of detainees and for preventing torture and other ill-treatment. In accordance with Article 4 para. 1 of the OP-CAT, such places of detention are 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 explicit consent or acquiescence. Within the remit of the Federal Government, these include some 280 detention facilities of the Federal Armed Forces (*Bundeswehr*), of the Federal Police (*Bundespolizei*) and of the customs authorities. The Federal Agency is also responsible for monitoring forced returns which are accompanied by the Federal Police. However, the overwhelming majority of places of detention fall within the remit of the Joint Commission: 186 organisationally independent prisons, 1,430 *Land* police stations, 326 psychiatric hospitals, all those courts which have holding cells, seven facilities enforcing custody pending deportation, and 27 child and youth welfare facilities with closed wings. Some 11,000 homes for the elderly and nursing homes are also classed as places of detention in this sense of the meaning.

The National Agency is unable to visit all of these facilities. However, any recommendations which it has made in regard to specific problems should not only be taken up and implemented by the facilities concerned but also by all those facilities which are faced with the same problem. That is another reason why the National Agency summarises its visits in this Annual Report.

The National Agency is also called upon to make suggestions and observations regarding existing and

draft legislation. However, this has so far not been possible due to its staff and financial resources being overstretched.

Pursuant to the rules set out in the OP-CAT, the Federal Government and the *Länder* have granted the National Agency the following rights:

- Access to all information concerning the number of persons being deprived of their liberty at places of detention as defined in Article 4 of the OP-CAT, as well as the number of places of detention and their location;
- Access to all information referring to the treatment of these persons as well as their conditions of detention;
- Access to all places of detention, their installations and facilities;
- The opportunity to hold private interviews with persons deprived of their liberty without witnesses, either personally or, where deemed necessary, through an interpreter, as well as with any other persons whom the national preventive mechanism believes may supply relevant information;
- The liberty to choose the places they wish to visit and whom they wish to interview;
- To maintain contact with the UN Subcommittee on Prevention of Torture, to send it information and to meet with it.

In accordance with Article 21 para. 1 of the OP-CAT, no person who has communicated any information to the National Agency may be prejudiced in any way or subject to any sanctions. The members and staff of the National Agency are obliged to maintain secrecy beyond their term of office.

1.3 – FINANCIAL AND HUMAN RESOURCES

Given the current level of staffing and funding, the Federal Agency and the Joint Commission are unable to fulfil their official mandate of carrying out regular visits. In May 2013 the Federal Government appointed a Deputy Director to the Federal Agency, thereby doubling its membership.

Despite expanding the Federal Agency's membership, the National Agency's capacities (six members and funding for three research assistants and one administrative assistant) are insufficient.¹ The National Agency is thus unable to visit psychiatric hospitals, homes for the elderly and nursing homes. The Chair of the Joint Commission therefore

approached the then Chair of the Conference of Ministers of Justice of the *Länder* and requested that the matter of increasing funding for the National Agency be addressed.

At its Spring Conference in June 2013 the Ministers of Justice agreed the following:

"The Ministers of Justice are in favour of providing the Joint Commission of the Länder for the Prevention of Torture with additional experts in the field of the deprivation of liberty who do not fall within the responsibility of the judicial authorities. To that end they intend to increase the number of members working on an honorary basis to eight in total.

"To fund this increase the Ministers of Justice request that the Land holding the chair contact the Standing Conference of Ministers of the Interior and the Standing Conference of Ministers of Labour and Social Affairs to negotiate their financial involvement.

"The Ministers of Justice ask the Land holding the chair of the Standing Conference of Ministers of Justice to submit a recommendation for a decision."

In October 2013 the German Medical Council sent a letter to the Minister of Justice of Saarland, who at the time was chair of the Standing Conference of Ministers of Justice, to draw attention to the need to increase the resources available to the Joint Commission, a need it felt to be "urgent". Neither the Standing Conference of Ministers of Labour and Social Affairs nor the Standing Conference of Ministers of the Interior reached decisions regarding the National Agency at their autumn meetings held in November and December 2013, respectively.

The National Agency has an annual budget of EUR 300,000, of which EUR 100,000 is made available from the federal budget and EUR 200,000 from the budgets of the *Länder* on the basis of a distribution formula known as the "Königstein Key".

¹ See the National Agency's Annual Report 2012, p. 7, available in German and English at: www.nationale-stelle.de

2 – THE NATIONAL AGENCY IN AN INTERNATIONAL CONTEXT

The National Agency is Germany's national preventive mechanism pursuant to Article 3 of the OP-CAT. Each of the States Party to the OP-CAT must designate such a mechanism, which may comprise one or more bodies. As at 31 December 2013, the OP-CAT had 91 signatory states and had been ratified in 70 states, including nearly all the Member States of the Council of Europe excluding Andorra, Belgium, Finland, Greece, Iceland, Ireland, Latvia, Lithuania, Russia, San Marino and Slovakia.

Of these 70 States Party, 51 had already established a national preventive mechanism based on one of three models: Under one model, the remits of existing ombuds institutions were extended to cover the prevention of torture (e.g. in Sweden, Austria, Spain); secondly, various existing monitoring mechanisms were combined to create national preventive mechanisms (e.g. in the UK); a third groups of states, including Germany, France and Switzerland, established new national preventive mechanisms.

A preventive mechanism was also set up at the United Nations, namely the UN Subcommittee on Prevention of Torture (SPT). It comprises 25 members who are nominated and elected by the States Party. Since 2012 the SPT has shared out its regional competences amongst its members.

The SPT may visit the States Party for two reasons: First, like the European Committee for the Prevention of Torture (CPT), it can visit places of detention in the States Party with the aim of making recommendations regarding protecting persons who are being deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment. To that end it essentially has the same powers as the national preventive mechanisms. Second, it may also pay visits to States Party to support them in setting up their national preventive mechanisms and offer training and technical assistance. It paid such a visit to Germany in April 2013.²

There are other international organisations which are involved in implementing the ban on torture and ill-treatment in Germany. In December 2009, Germany sent its Fifth Periodic Report to the United Nations Committee against Torture.³ The Report was

presented to the Committee in Geneva in November 2011. The Director of the Federal Agency and the Chair of the Joint Commission took part in the presentation and also provided information about the National Agency, which had then only recently taken up its work.

The CPT visits each State Party once every five years. It can also carry out ad-hoc visits. The CPT has visited Germany six times since it was established. During these visits the CPT examined numerous places of detention from a human rights perspective. The CPT made its last periodic visit in 2010;⁴ it will return to Germany in 2015. In November 2013 it conducted an ad-hoc visit which focused primarily on preventive detention (*Sicherungsverwahrung*) and the use of physical restraints (*Fixierung*) in prisons.

In the period under review the human rights situation in Germany was also examined in the context of the United Nations Human Rights Council's Universal Periodic Review Procedure. Several states recommended that Germany improve the resources available to the National Agency.⁵

Up until 2012 the national preventive mechanisms of the Member States of the Council of Europe regularly discussed and shared experience about the focal points of their activities at conferences of the European NPM project organised by the Council of Europe. After this project was completed, a conference on custody pending detention was held independently of that in 2013 in Strasbourg. It was organised by the Council of Europe and the UK's national preventive mechanism; the National Agency took part in the conference.⁶

The National Agency was also involved in other international activities in the period under review. For example, the Chair of the Joint Commission met with, amongst other people, the Head of the Human Rights Directorate in the Australian Ministry of Justice, thus following up on a first meeting in 2010. The meeting focused on establishing a national preventive mechanism in Australia. In addition, the National Agency met with representatives of the National

² See 2.1 below

³ Federal Ministry of Justice (2009), http://www.bmjv.de/SharedDocs/Downloads/EN/5_CAT_Beric

ht.pdf?_blob=publicationFile
(last retrieved: 17 February 2014)

⁴ CPT/Inf(2012) 6

⁵ See <http://www.obchr.org/EN/HRBodies/UPR/Pages/DESession16.aspx>

(last retrieved: 17 February 2014)

⁶ See 2.2 below

Commission for the Prevention of Torture of Switzerland. This led to the idea of calling a meeting of the preventive mechanisms of Germany, Switzerland and Austria. A first meeting involving all three bodies will be held in Berlin in the course of 2014.

2.1 – VISIT OF THE UN SUBCOMMITTEE ON PREVENTION OF TORTURE

A delegation of the UN Subcommittee on Prevention of Torture (SPT) visited Germany from 8 to 12 April 2013 with the aim of advising and supporting the National Agency in carrying out its tasks. The delegation was headed by the SPT's Contact for Germany, Aisha Shujune Muhammad (Maldives), who was accompanied by Mari Amos (Estonia), Felipe Villavicencio Terreros (Peru) and Victor Zaharia (Republic of Moldova). The delegation was supported by Patrice Gillibert, Secretary of the SPT, and another member of the Secretariat, Lucas Machon.

As well as holding meetings with federal and *Länder* government representatives and with civil-society representatives on 8 and 12 April 2013, the delegation paid a visit to the National Agency in Wiesbaden from 9 to 11 April. After forwarding a list of questions regarding both the National Agency's provision with funding and its work, a first meeting was held on 9 April 2013. The delegation also accompanied the Federal Agency on its visit to Mainz Federal Police Station. On 10 April 2013 it accompanied the Joint Commission on a visit to the wing in Mannheim Prison responsible for enforcing custody pending deportation. The visit to Wiesbaden was rounded off with a final meeting on 11 April 2013, during which the delegation presented its preliminary results regarding the work of the National Agency. Following its visit the SPT forwarded one copy of its report to the National Agency and one copy to the Federal Government.⁷

2.2 – CONFERENCE ON CUSTODY PENDING DEPORTATION ORGANISED BY THE EUROPEAN PREVENTIVE MECHANISMS

A conference entitled "Immigration Detention in Europe: Establishing Common Concerns and Developing Minimum Standards" was held in

Strasbourg on 21/22 November 2013 at the invitation of the UK's national preventive mechanism and the Council of Europe. It was attended by representatives from the Joint Commission. As well as the Head of the Migration Coordination Division of the Council of Europe, representatives of the Parliamentary Assembly of the Council of Europe and of nearly all the national preventive mechanisms of the Member States of the Council of Europe attended the conference.

First, key problems of custody pending detention were identified and discussed, including access to a legal advisor, especially vulnerable groups in custody pending detention, such as women and children, health care provision, as well as safety and order. Specific challenges which the national preventive mechanisms are faced with when monitoring such facilities were also discussed.

On the second day participants discussed the need to develop minimum standards at Council of Europe level. Various bodies of rules and guidelines already exist for custody pending detention. However, it was felt to be expedient and necessary to summarise those rules and principles which were already available and to specify them more precisely. Given that most detainees awaiting deportation are deported on the basis of Dublin II from one European state to another, it was deemed necessary to harmonise existing norms and standards. Agreement was reached on the fact that a person should be deported to another state only where minimum standards are at the very least upheld in that other state. At the end of the conference, the UK's national preventive mechanism drafted a declaration to the Committee of Ministers of the Council of Europe which stressed the need to develop minimum standards for custody pending detention at Council of Europe level.

⁷ The report to the National Agency (UN Document CAT/OP/DEU/R.2.) and the National Agency's response are retrievable at: www.nationale-stelle.de.

3 – VISITS

3.1 – BASIC PRINCIPLES

The visits of the National Agency are conducted on the basis of international treaties and German law. In addition, it draws on the established practice of the Federal Constitutional Court, of the federal supreme courts and higher regional courts, as well as on international case law, including that of the European Court of Human Rights. It also incorporates the recommendations of the SPT and of the CPT into its assessments.

The National Agency applies several criteria when selecting the places of detention it wishes to visit. As a matter of principle and being tasked with adopting a preventive approach, the Federal Agency and the Joint Commission visit as many facilities with different remits as possible. The choice of places of detention they visit is geared to the size and location of the facility, possible problem areas, and reports in the media or regarding individual cases. The Federal Agency and the Joint Commission endeavour to ensure an appropriate geographical distribution of the facilities visited.

3.2 – PROCEDURE

The conduct of the National Agency's inspection visits varies depending on the type of facility and local conditions. Only a general description of the *modus operandi* applied to these visits can thus be provided in the following.

A delegation generally comprises two to four people, and the National Agency also draws on external experts. The Joint Commission generally notifies the relevant supervisory authority at short notice that it will be visiting a particular facility. Visits to police stations and prisons are conducted without prior announcement, sometimes at night or at the weekend. The Federal Agency generally announces its inspection visits less than 24 hours in advance to ensure that the relevant contacts are on hand.

An inspection visit normally begins with an initial meeting with the head of the facility. The delegation then inspects the facility or individual areas, focusing on both the facility's structural features and how detainees are treated and their deprivation of liberty is organised. The visiting delegation then holds private meetings with detainees, employees, including members of the specialist services, as well as, for example, with the works council; it chooses its interview partners itself. In addition, it inspects

detainees' personal files and other documents. It may ask to be provided with written information about the facility and about the form and organisation of the deprivation of liberty. In a final meeting with the head of the facility the delegation then discusses key results of the visit. These are also communicated to the highest supervisory authority by telephone following the visit.

Nearly all of the visits the National Agency has conducted so far have given rise to a number of recommendations for improving the conditions of detention and treatment of detained persons, some of which related to unacceptable shortcomings. A detailed list of recommendations and the responses of the supervisory authorities regarding their implementation are included in Chapters III and IV of this Report. These chapters also include reports on visits conducted in 2012 regarding which either the report or the response of the supervisory authority were not yet available at the time the Annual Report 2012 went to press. As from 2014 the National Agency will ensure that the reports concerning its visits and the comments of the relevant ministries are published promptly on its website.

II TOPICS

I – SPOTLIGHT ON CUSTODY PENDING DEPORTATION

The focus of the National Agency's activities in 2013 was on custody pending deportation and forced returns by air. Enforcement of custody pending deportation falls within the remit of the ministries of the interior of the *Länder*. Nevertheless, only Berlin, Brandenburg and Rhineland-Palatinate have specialised facilities for enforcing custody pending deportation. In the other *Länder* this form of detention is enforced in prisons by way of administrative assistance rendered by the ministries of justice. In the period under review the Joint Commission visited a total of nine facilities enforcing custody pending deportation, including the three aforementioned specialised facilities and pre-deportation detention wings in prisons. The facility responsible for enforcing custody pending deportation in Berlin-Köpenick was visited for the second time as part of a follow-up visit. In addition, the Joint Commission together with the Federal Agency visited a reception centre for foreigners at Frankfurt Airport where people are placed during the airport procedure or in preparation for their forced return.

Information requested from the *Länder* revealed that there were a total of 6,781 detainees awaiting deportation in Germany in 2011, including 87 below the age of 18. In 2012 there were still a total of 5,748 detainees awaiting deportation, including 55 below the age of 18. The number of detainees awaiting deportation dropped again in 2013 to 4,812, including only 15 below the age of 18.⁸ The National Agency welcomes this downward trend when it comes to the ordering of custody pending deportation.

1.1 – DISPUTED LEGAL BASIS

Custody pending deportation is not ordered following the commission of a criminal offence, but solely serves the preparation and safeguarding of deportation. Pursuant to Directive 2008/115/EC of the European Parliament and of the Council (Return Directive), detainees awaiting deportation must therefore be placed in specialised detention facilities. Article 16 para. 1 of the Return Directive sets out that:

“Detention shall take place as a rule in specialised detention facilities. Where a Member State cannot provide accommodation in a specialised detention facility and is

obliged to resort to prison accommodation, the third-country nationals in detention shall be kept separated from ordinary prisoners.”

This rule was implemented in German law by means of section 62a of the Residence Act:

“As a general principle, custody awaiting deportation shall be enforced in specialised detention facilities. If a Land has no specialised detention facilities, custody awaiting deportation may be enforced in other custodial institutions in that Land; in such cases the persons in detention awaiting deportation shall be accommodated separately from prisoners serving criminal sentences. If several members of a family are detained, they shall be accommodated separately from other detainees awaiting deportation. They shall be guaranteed adequate privacy.”

It is a matter of contention whether the wording of the Return Directive supports the enforcement of custody pending deportation in prisons where a particular *Land* does not have any specialised detention facilities. The Federal Court of Justice dealt with the lawfulness of the enforcement of custody pending deportation in prison accommodation in its decision of 11 July 2013 and set the following question before the European Court of Justice for a preliminary ruling:

“Does Article 16 para. 1 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ 2008 L 348/98) also result in a Member State being obliged to enforce custody pending deportation in specialised detention facilities even if such facilities are available in only some of the Member State's federal substructures but not in others?”⁹

The European Court of Justice has not yet issued its ruling on this matter. However, in the meantime numerous German courts have addressed the question, with many holding the opinion that enforcement of custody pending deportation in prisons is not compatible with Directive 2008/115/EC, since the wording refers to the Member State as a whole and not to its federal substructures.¹⁰ In Bavaria, custody pending deportation was provisionally relocated to Mühldorf am Inn Prison in

⁹ Federal Court of Justice, decision of 11 July 2013, file no. V ZB 40/11

¹⁰ See Nuremberg-Fürth Regional Court, decision of 25 September 2013, file no. 18 T 8112/13; Görlitz Regional Court, decision of 23 October 2013, file no. 2 T 102/13; Dresden Regional Court, decision of 12 November 2013, file no. 2 T 821/13

⁸ Several *Länder* chose not to separately record the number of detainees below the age of 18 in 2012 and 2013.

SPOTLIGHT ON CUSTODY PENDING DEPORTATION

late November 2013, which now has sole responsibility for enforcing the measure.

1.2 – DROP IN THE NUMBER OF CUSTODY PENDING DEPORTATION ORDERS AND CONSEQUENCES FOR THE ENFORCEMENT OF CUSTODY PENDING DEPORTATION IN PRISONS

However, the majority of the *Länder* continue to execute custody pending deportation in prison accommodation and in some cases in police stations or special police detention facilities. Enforcing custody pending deportation in prisons has its advantages, since detainees awaiting deportation can, for example, then make use of the good infrastructure available there. For instance, the specialist services (e.g. doctors and psychologists) are on hand, often there is also a good range of recreational and purposeful activities available. Placing those in custody pending deportation in a prison often also means that they are closer to their relatives. However, such detention together with the drop in the number of custody pending deportation orders creates new problems.

For instance, the Joint Commission found that in several facilities there was only one woman in custody pending deportation and that she was consequently being detained alone in that section of the facility. Even if this is an unintentional consequence, it is equivalent to solitary confinement. In addition, these women's situation is often exacerbated because they cannot communicate with staff in the facility on account of language problems, which means they have no-one at all to talk to. Some *Länder* have signed mutual cooperation agreements regarding female detainees awaiting deportation. For example, the facility enforcing custody pending deportation in Eisenhüttenstadt in Brandenburg also takes in females awaiting deportation from Schleswig-Holstein and Mecklenburg-Western Pomerania. The aforementioned problem of isolation can, nevertheless, still arise in these facilities.

Further, numerous other problems arise on account of the often limited number of people held in custody pending deportation.

In many cases the lack of a common language makes it impossible for detainees to communicate with each other. That also makes it difficult for them to engage in recreational activities together and take-up of the offers available is thus very low. Communication with members of staff is also difficult if not impossible on account of language barriers, since staff often do not speak any of the detainees' languages. This, in turn, has an impact on motivation amongst staff, and they

stop offering recreational activities because not enough people take advantage of them. Specialist services such as social workers are often only available on call, since it does not make sense to hire them on a permanent contract when the facility only caters for a few detainees awaiting deportation.

1.3 – THE ADVANTAGES OF SPECIALISED DETENTION FACILITIES

Where separate facilities are available to enforce custody pending deportation, they can take account of the specific situation which detainees awaiting deportation find themselves in. It is of no consequence whether these facilities are subject to the oversight of the department of the interior or of the department of justice. In specialised facilities detainees awaiting deportation are not subject to the restrictions and security measures specific to the penal system to the same degree as sentenced prisoners and remand prisoners, such as lock-in and unlocking times, limited yard exercise time, limited visiting times, monitoring of post and a mobile phone ban. In addition, they can be provided with more targeted support on account of staff with the relevant linguistic skills being specially selected and trained in this area. Detainees awaiting deportation can be offered more wide-ranging recreational and purposeful activities. Establishing a small number of specialised centres means that a larger number of detainees awaiting deportation can be accommodated who speak the same language and have the same cultural background. This may more effectively counteract the isolation and withdrawal which has been observed in individual detainees. Weighing up all the arguments, the Joint Commission therefore recommends creating specialised facilities for enforcing custody pending deportation which meet the specific requirements of this form of detention. Rhineland-Palatinate, Brandenburg and Berlin already have such specialised facilities. Since November 2013 Bavaria has been provisionally enforcing custody pending deportation in a central facility until the European Court of Justice issues its ruling.

1.4 – BEST-PRACTICE EXAMPLES

During its visits the Joint Commission encountered numerous successful and best-practice examples in regard to the enforcement of custody pending deportation. These will be described in summary in the following.

Special mention should be made of the general conditions of detention in Ingelheim Detention Centre for Persons Required to Leave the Country.

The detention and common rooms have been successively renovated and provided with new furnishings. They are light and friendly and the common rooms in particular are very homely. Each detention room has a completely separate wet room. The showers in the communal shower room are divided by partitions and are accessible to detainees all day.

Several facilities enforcing custody pending deportation grant detainees generous unlocking times. Examples include Ingelheim (from 7 am to 10 pm) and Eisenhüttenstadt (from 7 am to 9 pm). In Berlin-Köpenick detainees awaiting deportation are only locked in during shift change-overs. Detainees awaiting deportation in Ingelheim are also permitted to use the recreation yard all day. In the facility in Berlin-Köpenick, detainees awaiting deportation are allowed to spend periods outdoors several times each day.

A very diverse and wide-ranging programme of recreational and purposeful activities is available in the wing accommodating detainees awaiting deportation in Büren Prison, for example. Detainees awaiting deportation can take part in at least one organised recreational activity each day. Sports, music and art groups, as well as cookery courses are on offer. Detainees can also take German courses. Prayer rooms, a library and cooking facilities are also available.

Particular mention should be made of the means of communication and information available in the facilities enforcing custody pending deportation in Rendsburg and Ingelheim. Internet access is available, and detainees can use the internet to make free telephone calls; detainees awaiting deportation may also use their mobile phones. In Ingelheim they may receive visitors between 9 am and 12 noon and between 1 pm and 8 pm. The facilities enforcing custody pending deportation in Eisenhüttenstadt, Berlin-Köpenick and Büren also have very long visiting times.

The wing accommodating detainees awaiting deportation in Büren Prison applies a targeted selection procedure when it comes to its staff. Social care is provided by five employees of the company European Homecare. They are generally available in the facility on weekdays, where necessary also at weekends. They have various cultural backgrounds and therefore cover a wide spectrum of foreign languages. They have gained the trust of detainees awaiting deportation and contribute significantly to the good atmosphere in the facility. Ingelheim Detention Centre for Persons Required to Leave the Country is highly committed to finding targeted training measures for its staff through a planned

cooperation with the Treatment Centre for the Victims of Torture. These courses are to train medical staff in recognising trauma.

The Joint Commission regards the free legal advice provided in the facility in Büren Prison, which is organised by the local lawyers' association and is funded by the *Land* government, as exemplary when it comes to the provision of support and legal advice. The facility enforcing custody pending deportation in Eisenhüttenstadt offers the possibility of one-off free legal advice which is funded by the Government of Brandenburg. In the facility in Berlin-Köpenick the Republican Lawyers' Association offers free legal advice once a week. At Ingelheim Detention Centre for Persons Required to Leave the Country detainees awaiting deportation are supported in asserting their rights by a member of the *Diakonisches Werk Hesse-Nassau* employed by the facility. Further, non-governmental organisations such as the Jesuit Refugee Service and Amnesty International provide advice and support in Eisenhüttenstadt, Ingelheim and in the wing in Mannheim Prison accommodating detainees awaiting deportation.

Emphasis should also be given to the activities of the *Land* advisory council in Rendsburg Pre-Deportation Detention Facility. The advisory council visits the facility once a week, advises the *Land* department of justice and makes suggestions for improvements, and is thus involved in improving the conditions of detention and support provided to detainees awaiting deportation.

1.5 – RECOMMENDATIONS OF THE JOINT COMMISSION CONCERNING THE ENFORCEMENT OF CUSTODY PENDING DEPORTATION

The Joint Commission would like its activities to contribute to the establishment and dissemination of common standards. As stated in the above, it advocates enforcing custody pending deportation in specialised facilities. Custody pending deportation should only be ordered as a means of last resort when deportation cannot be guaranteed by any other means. Analogous to the enforcement of custody for non-criminal reasons (*Zivilhaft*), detainees awaiting deportation should only have those restrictions imposed on them over and above the deprivation of liberty as are necessary to avert a threat to security or order in the facility.

Especially taking account of the standards set by the CPT¹¹ and the 20 directives on forced returns of the

¹¹ Cf. CPT/Inf/E (2002) 1 - Rev. 2010

Committee of Ministers of the Council of Europe,¹² in the opinion of the Joint Commission the following standards should be established pertaining to the enforcement of custody pending deportation:

Legal basis

A separate legal basis should be created for the enforcement of custody pending deportation which is tailored to this specific form of detention. It should also include an appeals procedure.

Each detainee awaiting deportation must undergo an initial medical examination. It must be ensured that trauma and other mental illnesses are reliably diagnosed when detainees begin their period in detention. For that reason, the resolution of the 114th German Medical Assembly in 2011 included the call for “sick and traumatised detainees awaiting deportation to be examined at the beginning of their period custody pending deportation by specially trained doctors.”¹³ A professional interpreter should always be involved in the initial examination where language difficulties arise. For reasons of confidentiality, using other detainees as interpreters is inappropriate.

The facility should also ensure that where there are relevant indications a psychologist or a psychiatrist visits the person in question, immediately if need be.

Admission meeting

In addition to the initial medical examination an admission meeting should be held with each new person taken into custody pending deportation. Detainees should be told the reason for their being taken into custody and they should be given comprehensive information about their rights. As is the case during the initial medical examination, particular attention should be paid during the admission meeting to diagnosing mental illnesses, and, where indicated, a psychologist or psychiatrist should be called in. That is why the members of staff who are responsible for these meetings should have undergone specialist training so as to be able to diagnose trauma and other mental illnesses. Where language difficulties arise a professional interpreter should also be involved in the admission meeting.

Staff

Regardless of whether they are part of the general prison service or of a private security firm, staff employed in facilities enforcing custody pending deportation should be specially selected and trained to

work in this area and they should both be culturally sensitive and aware of the specific problems associated with custody pending deportation. In addition, those employed in the enforcement of custody pending deportation should have the relevant language skills and various cultural backgrounds. Supervision could prove useful.

Legal advice

Detainees awaiting deportation should be able to have the lawfulness of the custody pending deportation order issued against them subject to legal review. To that end they first need to be given comprehensive information about available legal remedies, and that information must be provided in a language they can readily understand. Since those affected are usually not familiar with the German legal system and may have difficulties, for example, making contact with non-governmental organisations or with lawyers while in the detention facility, they are especially reliant on help in asserting their rights. In some cases the Joint Commission found that detainees awaiting deportation were not clear about why they were in detention. In such cases the question arises of whether they were given sufficient information during the court proceedings.

Children and juveniles under the age of 18

In line with the UN Convention on the Rights of the Child, when taking the decision to place children and juveniles under the age of 18 in custody, priority must be given to the child’s or juvenile’s best interests.

There are fundamental concerns as to whether placing minors together with adult detainees awaiting deportation is in the child’s or juvenile’s best interests. Given that those in custody pending detention generally find the situation particularly stressful, there is, for example, an increased risk of self-harm or suicide. This can lead to traumatisation especially in minors or it can exacerbate existing traumas when they witness such incidents or resistance against the enforcement of others’ forced return.

Therefore, minors should as a matter of principle not be placed in custody pending deportation but, where necessary, in facilities of the youth services. Should minors who are placed in custody pending deportation be detained in a wing in a prison or youth detention facility, like adults in custody pending deportation, the spatial and qualitative distinction between custody pending deportation and the penal system must be guaranteed. Further, regardless of the type of detention ordered, minors in custody pending deportation should always receive targeted support from the specialist services.

¹² *Committee of Ministers of the Council of Europe, CM(2005)40 final*

¹³ *German Medical Council (2011), 114th German Medical Assembly, Resolution, p. 125*

Communication and information

Where possible, detainees awaiting deportation should be given the opportunity to receive unrestricted visits from relatives and non-governmental organisations. In order to maintain or establish contact with their families and their home country and to facilitate their return, they should also be permitted to use mobile phones and should be given access to the internet.

Purposeful and recreational activities

Those in custody pending deportation should be given the opportunity to use their time sensibly on a daily basis. They should be offered the possibility of doing sports, a variety of group activities and, where possible, of engaging in ancillary employment. They should be able to prepare their own meals, and a common room and a prayer room or chapel should be available for their use. Further, detainees awaiting deportation should have access to daily news and reading material.

Clothing

Detainees awaiting deportation should be permitted to wear their own clothes and given access to facilities for washing those clothes where security reasons do not pose an obstacle in the individual case.

Deportation after serving a prison sentence

Some detainees awaiting deportation who are serving a prison sentence are not deported at the end of the prison sentence, but are taken into custody pending deportation until their deportation. The competent authorities should ensure that in such cases deportations are carried out at the end of the prison sentence in order to avoid further unnecessary deprivations of liberty in custody pending deportation.

1.6 – MONITORING RETURN FLIGHTS

In 2013 the Federal Agency for the first time accompanied two collective returns. It first monitored a measure from Düsseldorf Airport to Macedonia and Serbia organised by Frontex and later a national measure from Dresden Airport to Poland.

Forced returns are carried out against people who are required to leave Germany. These may be people whose residence permit has expired and who have not voluntarily left the country within the time-limit set, people who are refused entry or are deported at the border, failed asylum-seekers and refugees, as well as criminals who are deported immediately after serving their prison sentence.

The Federal Police are responsible for the majority of forced returns by air (6,919 in 2012). However,

people may also be handed over at land borders (722 in 2012) and at ports (10 in 2012).¹⁴ Forced returns by air are regulated in a confidential document entitled “Provisions Concerning the Forced Return of Foreign Nationals by Air” drawn up by the Federal Ministry of the Interior.

The Federal Police do not, however, accompany all forced returns by air. Rather, the majority of returnees (4,865 in 2012) leave unaccompanied. That means that the Federal Police accompany them to the aeroplane but they then take the scheduled flight unaccompanied. Only around one sixth of all forced returns in 2012 was accompanied, the majority of them constituting collective returns. Collective returns are either organised with the support of the EU or by Germany alone. Germany is sometimes involved in forced returns organised by other EU states. A doctor and a professional interpreter are always involved in accompanied forced returns.

The Federal Police are generally responsible for delivering returnees to the *Land* authorities at the airport of departure. Several boarding areas are available at large airports for processing collective returns. This is where the hand-over formalities take place, in the context of which the *Land* authorities must also inform the Federal Police of any known mental or physical illnesses or other circumstances which might possibly affect the person in question’s ability to fly. Returnees then check in their luggage, complete the normal boarding procedure and wait to board the plane. They are guarded by the Federal Police throughout this entire time up until they board the plane. They are given food and drink and then a food package for the flight. Returnees are handed over to the target country’s authorities at the target airport.

Forced returns at Frankfurt, Düsseldorf and Hamburg airports are regularly monitored by church organisations, although they have no right to inspect the files and may also only monitor the measure on the ground. Forums have been established in which the authorities and deportation monitors regularly share experience regarding deportation, critical cases and possible improvements. The Federal Agency is in regular contact with these organisations so as to be able to reach agreement on monitoring standards. When carrying out monitoring activities at the aforementioned airports the Federal Agency always tries to organise a meeting with the monitors. In addition, in 2012 and 2013 it took part in meetings held by these organisations; there are plans to continue this regular exchange of experience. In

¹⁴ The following statistics all refer to the year 2012 and were quoted in *Bundestag Printed Paper 17/12442*.

SPOTLIGHT ON CUSTODY PENDING DEPORTATION

contrast to these specialised monitors, the Federal Agency can only accompany forced returns on a random basis, although it then gains a better insight into the circumstances of each measure since it has the full right to inspect the files and has access to other official documents and can accompany the measures as far as the destination.

From the point of view of the prevention of ill-treatment, those forced returns which were observed were carried out satisfactorily. The Federal Agency only had to make very few recommendations for improvements. Both times the Federal Agency accompanied a measure are described in Chapter III.

2 – VIDEO SURVEILLANCE AND PEEPHOLES

During its visits the National Agency repeatedly noted detention rooms which were fitted with optical surveillance devices. In September 2013 it asked the competent federal ministries and the ministries in the *Länder* to provide it with information regarding the use of peepholes and video surveillance in the case of measures involving the deprivation of liberty.

Surveillance is conducted either by means of peepholes or CCTV cameras, sometimes by means of a combination of the two. Many facilities use the peepholes in the doors to the detention rooms for monitoring purposes or to protect staff against surprise attacks when entering a detention room. CCTV cameras are in particular used in specially secured rooms or in observation rooms, for example in infirmaries or in remand detention. Detention rooms fitted with CCTV cameras are also time and again found in police custody, for example when they are used to hold drunk persons. The main objective of such monitoring of the detention rooms is to prevent the detained person committing suicide or self-harming. Normal detention rooms are generally not fitted with CCTV cameras, a matter which is explicitly regulated in the prison laws of many of the *Länder*.

The provision of decent conditions of detention to persons deprived of their liberty necessitates the taking of measures to protect their privacy. The aforementioned enquiry showed that only few of the *Länder* have explicitly regulated the protection of privacy in prison or in police custody. An awareness that one may possibly be being observed by others at any time can be a source of major psychological stress.

Numerous *Länder* informed the Joint Commission that when building or refurbishing facilities they decided not to fit doors with peepholes. In addition, any peepholes which were already fitted were no longer used or were covered with a screw joint which only staff can open. Where this is not the case, the majority of prisoners agree to the peepholes being covered up, unless their use is necessary in the context of general or special precautions. The Federal Court of Justice has ruled that a case-by-case assessment must be carried out before ordering that the peephole be kept clear. The possibility of unrestricted monitoring of prisoners did not result from the nature of the penal system, it ruled.¹⁵

In addition, privacy may have been violated where surveillance by means of a camera or through a peephole means the toilet area is in full view, as is, for example, the case in specially secured rooms. According to the Bavarian State Ministry of Justice, the monitoring of the entire detention room, including the toilet area, is necessary in order to effectively protect the life and health of prisoners and, where necessary, to be able to intervene in good time.

Some *Länder*, by contrast, believe that unrestricted video surveillance of the toilet area even in specially secured rooms is not permissible on account of its violating human dignity. That is why in prisons in Lower Saxony, for example, the images depicting the toilet areas are pixellated. However, the Joint Commission established that other *Länder* also pixellate certain areas to protect prisoners' privacy, for instance in custody pending deportation in Frankfurt Prison. The Joint Commission saw that pixellation can be used to protect privacy and at the same time to show the affected person's actions in outline. Staff are thus able to quickly recognise and prevent suicidal acts.

The Council of Europe has regulated the protection of privacy in the European Prison Rules. No. 19.3 of these Rules states: "Prisoners shall have ready access to sanitary facilities that are hygienic and respect privacy."¹⁶

On the occasion of its visits, the CPT has repeatedly emphasised that privacy when using the toilet or looking after personal hygiene must be guaranteed.¹⁷ This also applies to so-called "high-security cells", which are comparable to an observation room or specially secured room.¹⁸ Sanitary facilities must at least be partially shielded.

After analysing the requested documents, the international legal situation and on the basis of its experience during its visits, the National Agency recommends that privacy must be appropriately protected in all places where measures involving the deprivation of liberty are enforced. Where video surveillance is being used, this can, for instance, be done by pixellating the sanitary area. If need be, it may be conceivable, in a carefully considered, substantiated and documented individual case, to permit unrestricted monitoring of a detention room where there is an acute danger of self-harm or suicide.

¹⁵ Federal Court of Justice, decision of 8 May 1991, file no. 5 AR Vollz 39/90

¹⁶ Council of Europe, Recommendation CM/Rec(2006)2, No. 19.3

¹⁷ Cf. CPT/Inf (2009) 5, margin no. 109

¹⁸ Cf. CPT/Inf (2010) 16, margin no. 17

VIDEO SURVEILLANCE AND PEEPHOLES

The person concerned must at any rate be informed of the fact that optical surveillance is in operation. The surveillance must be recognisable or at least perceivable; covert video surveillance is not permissible.

3 – ENQUIRIES BY INDIVIDUALS

In the period under review the National Agency received individual enquires regarding 43 separate cases, although some of these did not refer to places of detention. The remaining enquiries referred exclusively to facilities which fall within the Joint Commission's area of responsibility. Half of the individual enquiries referred to prisons, the other half to psychiatric hospitals or facilities implementing measures of reform and prevention.

Since the National Agency does not operate as an ombuds institution, it is not authorised to remedy or offer legal advice regarding individual enquiries. Reference is explicitly made to this fact in the replies sent to those submitting enquiries and on the National Agency's website. Nevertheless, information regarding concrete incidents are of great practical

relevance for the work of the National Agency. It provides background information for inspection visits and can draw attention to specific problems. In addition, concrete information and tips can have an influence on which facilities the National Agency visits and on the priorities set during the visit as a result.

Where an enquiry provides indications of serious problems, the National Agency will, with the consent of the person submitting the enquiry, contact the competent authority. In one case this led to someone being examined by the prison doctor a second time to establish whether he was fit to be detained. Where an enquiry indicates that there is a risk of suicide or that someone is a danger to others, the National Agency will also contact the head of the facility in question.

III
VISITS BY THE
FEDERAL AGENCY

I – FEDERAL POLICE AND CUSTOMS AUTHORITIES

Superior authority	Station/office visited
Koblenz Federal Police Regional Office	Mainz Federal Police Station Goldene Bremm Federal Police Station, Saarbrücken, Neunkirchen Duty Room
Munich Federal Police Regional Office	Nuremberg Federal Police District Office Waidhaus Federal Police District Office Weiden Federal Police Station
Stuttgart Federal Police Regional Office	Mannheim Federal Police Station Karlsruhe Federal Police District Office
Pirna Federal Police Regional Office	Ludwigsdorf Federal Police District Office Görlitz Federal Police Station Erfurt Federal Police District Office
Frankfurt am Main Federal Police Regional Office	Frankfurt am Main Airport V Federal Police District Office
Munich Customs Investigation Office	Nuremberg Office

In the period under review the Federal Agency visited 12 Federal Police stations and one office of the Customs Service. Except for Mainz Federal Police Station and Ludwigsdorf Federal Police District Office, none of the Federal Police stations or the Customs Service was detaining anyone at the time of the visit.

1.1 – FEDERAL POLICE STATIONS

1.1.1 – Positive findings

Personal commitment

During its visits the Federal Agency time and again met officers who are personally committed to trying to ease the difficult situation detainees find themselves in. One example is their treatment of persons who have entered Germany illegally. For instance, staff went beyond the call of duty to make the consequences of the deprivation of liberty more bearable at least for families. Families were given clothing or toys donated by private individuals, and family members were driven to the facility enforcing custody pending deportation for a visit. The Federal Agency would like to explicitly praise their commitment in this regard.

Specific initiatives

Positive mention must also be made of the initiative taken by some facilities when it comes to the provision of toiletries. No. 4.4 of the Federal Police Custody Regulations provides that toiletries be made

available to those with no money at their disposal. Nevertheless, during its previous visits the Federal Agency has hardly come across any facilities which have not provided toiletries where required. It wishes to praise those facilities which have put together a range of products on their own initiative comprising disposable toothbrushes, toothbrush cups, toothpaste, disposable face cloths, soap and shampoo. The Federal Agency recommends that all facilities across Germany have toiletry sets at the ready so that they can be handed out quickly and without fuss to those who need them.

1.1.2 – Recommendations of the Federal Agency and response of the Federal Ministry of the Interior

Fittings and furnishings in custody rooms

As in previous years, the Federal Agency made numerous recommendations in 2013 as regards the fixtures, fittings and furnishings in custody rooms. The Federal Agency takes positive note of the fact that the Federal Police are increasing efforts to adapt these to the recommendations of the Federal Agency and that they are aiming to standardise them.

The Federal Agency has repeatedly pointed out that it believes that fire alarms need to be fitted in custody rooms. Custody rooms should also be equipped with night lighting so that, for example, the emergency call button can be easily located without the source of light then preventing the detained person from sleeping. Likewise, custody rooms should be fitted

with intercoms, especially when they are located in remote parts of the building.

Response: *The Federal Ministry of the Interior notified the Federal Agency that the facilities concerned would be successively retrofitted with fire alarms.*

Further, the Federal Agency pointed out the need for natural ventilation in custody rooms. In addition, the temperature in custody rooms should not exceed 22°C.

Response: *The Federal Ministry of the Interior gave its assurance that the ventilation system in question had been examined to see whether it may possibly be malfunctioning.*

During a visit to the Neunkirchen Duty Room the Federal Agency's attention was drawn to the lack of fire alarms and night lighting and to the lack of ventilation in the custody rooms. In response to the corresponding recommendations of the Federal Agency, these custody rooms were taken out of operation. The Federal Ministry of the Interior informed the Federal Agency that it was not economical to implement the recommendations since the rooms were used only infrequently.

Documentation

Officers should make detailed records in the custody record book of checks carried out on persons taken into custody. In addition to the precise times of the checks, the name and signature of the officer checking on the person in his/her custody room should always be included.

During its visit to Mainz Federal Police Station the Federal Agency found that it kept no custody record book. Instead, the custody record book is kept at the Federal Police District Office in Kaiserslautern. Officers record relevant data on occupancy sheets and transfer them to the custody record book at a later date. This does not, however, apply to visual checks and the provision of meals.

It should be possible to read and understand the custody record book without the need to consult other documents. It should be possible to verify whether checks have been carried out and not to first have to consult an occupancy sheet which may possibly be located elsewhere. That is why the custody record book should always be kept in the vicinity of the custody rooms.

Response: *Shortcomings as regards keeping custody record books properly up to date have been recognised and will be addressed in training courses. In addition, the federal police regional office in question has directed that one custody record book should be kept in each facility.*

Visibility of toilets through peepholes

During its visits the Federal Agency found peepholes both in the doors of those detention rooms

with integrated sanitation and in the doors of separate toilets. The entire toilet areas are in full view as a result. Human dignity demands that privacy in the performance of bodily needs must always be guaranteed. An exception can at most be considered admissible in a well-founded and documented situation involving an acute risk of suicide or self-harm.

Immediately following the Federal Agency's visit G6rlitz Federal Police Station stopped using the peephole fitted into the door of a separate toilet.

Response: *The Federal Police attaches great importance to respecting detainees' privacy. The use of peepholes is necessary in individual cases to protect the detainee or for reasons of staff safety. This applies both to detention rooms and separate sanitary areas.*

Visibility of toilets in rooms with CCTV cameras

The Federal Agency noted that custody rooms in Mannheim Federal Police Station are equipped with CCTV cameras. The cameras are fitted into the ceiling light and can thus not be identified as such. The entire toilet area is in full view as a result.

Human dignity demands that where video surveillance of a detention cell, including the toilet, is carried out, the detainee's genital area must be obscured on the screen. Unrestricted monitoring of the detention room can at most be considered based on a carefully weighed up, well-founded and documented decision in an individual case where there is an acute risk of suicide or self-harm.

In addition, video surveillance in custody suites is no substitute for regular, direct checks, and it can at most be carried out in addition to those checks.

Response: *The CCTV equipment in Mannheim Federal Police Station can only be operated by hand and cannot be used to make recordings. It is not used as a substitute for the regular checks provided for under police regulations. Stuttgart Federal Police Regional Office is planning to hold an additional training course for staff working in custody suites. Suitable measures to protect detainees' privacy will be addressed in that course.*

Information about rights

People detained in police custody must be immediately informed about their rights. Sheets containing this information should therefore be available in various languages. They should at the very least provide information about the fact that anyone taken into custody has the right to be examined by a doctor, to consult a lawyer and to notify a trusted third party and, where necessary, their home country's consulate. It is not enough to simply inform those taken into custody about their right to contact a

trusted third party. Rather, it must be made clear to them that access to legal advice constitutes a separate right. These rights are accorded to those in custody without regard to the legal grounds for their being taken into custody.

When such information has been provided, this fact should, further, be recorded in the police custody book so that officers can see clearly after a shift change-over when this information has not been provided for a specific reason.

Response: A standardised sheet is currently being produced and translated into 46 languages. Afterwards it will be made available in the Federal Police's electronic custody procedure system; it is envisaged that this work will be completed in the first quarter of 2014.

Cooperation between the Federal Police and other agencies

During its visit to Frankfurt am Main Airport V Federal Police Regional Office, the Federal Agency took part in the Joint Commission's inspection visit to the Hesse Reception Centre for Refugees, which is also located at the airport.

The representatives of the church advisory services explicitly praised the Federal Police's cooperation and responsiveness. However, they also reported individual cases in which in their opinion better coordination between the facility's staff, the Federal Office for Migration and Refugees and the Federal Police could have avoided specific individuals suffering personal hardship. This applied, for example, to communicating the outcome of the physical and psychological/psychiatric examination, which might have an influence on whether a detainee is returned and on the timing of the forced return.

The church advisory services therefore suggested that the Federal Police take part in the regular monthly meetings that were being held. These meetings are used to exchange relevant information about individual returnees.

In the interests of the decent treatment of asylum-seekers and other affected groups of people, the Federal Agency feels it is necessary for those involved (specifically the Federal Police and the Federal Office for Migration and Refugees) to network more effectively and share information promptly.

During the final meeting the deputy head of the Federal Police Directorate promised the Federal Agency that it would discuss whether it would in future take part in these meetings.

Hearings

Staff of the church advisory services at the Hesse Reception Centre for Refugees told the Federal

Agency that detainees were sometimes addressed in a harsh tone of voice by some of the officers during hearings conducted by the Federal Police and the Federal Office for Migration and Refugees. This had an unsettling effect and caused those concerned unnecessary stress. However, the advisory services were also aware of cases in which interpreters had taken sides and overstepped their remit. For example, some people had reported that they had been put under pressure by interpreters when describing their transit routes.

Detainees should always be dealt with humanely and in a culturally sensitive manner during the required questioning. This applies in particular to hearings conducted by the Federal Office for Migration and Refugees, since they form the basis for a subsequent decision on whether asylum will be granted or not.

1.2 – ACCOMPANYING FORCED RETURNS

In 2013 the Federal Agency accompanied two forced return measures, one of which was carried out by Frontex.

1.2.1 – Düsseldorf to Skopje and Belgrade

On 5 March 2013 the Federal Agency accompanied a forced return procedure carried out by the Federal Police during which detainees were taken from Düsseldorf Airport to Skopje and Belgrade. The measure was organised jointly by the German authorities and Frontex. The Federal Agency monitored the entire forced return procedure, from when the returnees were brought in to when they were handed over to the authorities at their destination. It also held a meeting with the deportation monitor at Düsseldorf Airport on this occasion.

The Federal Police have their own rooms at Düsseldorf Airport in which collective returns are processed. The airport procedure is described in II.1.6.

The measure involved the forced return of 89 people from Germany. They were accompanied by 39 officers. In addition, 17 people were also returned from Sweden and 10 from Finland, accompanied by officers from those respective countries. During the flight to Skopje, which lasted around two hours, the airline provided its standard service, i.e. drinks and a snack. Drinks and a snack were also served during the around one-hour connecting flight to Belgrade. Sufficient meals were therefore provided to the returnees throughout the entire procedure.

A doctor and an interpreter were on hand throughout the entire procedure. The deportation monitor from *Diakonie Rheinland* (the Rhineland

branch of the social welfare organisation of the Protestant Church in Germany) talked to the returnees, gave them a mobile phone with which they could make calls and gave them money. The returnees interviewed during this monitored return procedure said they had been given the money provided for by law.

Positive findings

The accompanying doctor actively examined the returnees throughout their entire stay at Düsseldorf Airport to check for signs of illness. He also examined returnees during the flight whenever he was asked to do so. In the case of known illnesses, the doctors commissioned by the *Land* foreigners' authority gave him the necessary documents and medications for the flight and, where necessary, for the following four weeks. The doctor personally checked each person notified to him in this way and talked to them about their state of health. One child had a raised temperature and it could not be ruled out that he was suffering from scarlet fever, which is why the doctor decided to call off the return only ten minutes before boarding commenced although that meant the boy's family's entire luggage had to be unloaded from the aeroplane as a result and the flight was thus delayed by around half an hour. The Federal Agency regards this as a sign of the doctor's professional independence.

In addition, the Federal Agency takes a positive view of the fact that sometimes there was a table in the waiting room with cakes, sweets, fruit, coffee and drinks for the returnees. Returnees therefore did not have to use up their packed lunch. The Federal Agency would welcome this practice continuing in the context of future return procedures.

Recommendations of the Federal Agency and response of the Federal Ministry of the Interior

The medical examination room in the area reserved for return flights at Düsseldorf Airport has neither a defibrillator nor oxygen apparatus. This was criticised by the doctor on duty. Given how extremely tense returnees are during this procedure, health complications can often arise in this part of the airport. The Federal Agency therefore recommends buying the relevant equipment.

Response: The representative of the Federal Police Headquarters, who was also present, promised on the day of the return procedure that the equipment will be bought. The Federal Ministry of the Interior responded that the Federal Police's Medical Service had been instructed to examine whether automatic external defibrillators can be installed in the facilities. Until this has been done, the airport fire brigade, which is located nearby, will be notified as a precautionary measure whenever forced returns are being

carried out. This will guarantee first-aid provision in an emergency.

Returnees have to hand in their mobile phones when they are handed over to the Federal Police. What is why, while they are waiting at the airport, they can only make telephone calls using work telephones provided by the Federal Police or the deportation monitor. The deportation monitor reported that returnees were not always informed about this possibility. In addition, often their contacts' numbers are stored in their mobile phone, which is why they cannot make any calls once they have handed in their own phone. The possibility of using a work phone was at any rate not mentioned. The Federal Agency therefore suggests examining whether a public telephone can be installed in the waiting area in the return terminal. Otherwise, returnees should be better informed, ideally in writing in their mother tongue, of the possibility of using the Federal Police's work phones to make calls. In addition, they should be notified in writing that they must hand in their own mobile phones and should therefore write down any contact numbers they may need.

Response: Return measures are coordinated in writing ahead of time with the foreigners' authorities. The relevant letters will in future include information about making telephone calls and having to hand in own mobile phones. Returnees will thus be informed ahead of the return flight by those bringing them in that they will have to hand in their mobile phones during check-in. This will give them the opportunity to make telephones at the airport before having to hand in their mobile phones. A work phone will still be available for any calls which may be necessary after own mobile phones have been handed in. Unfortunately, it is not possible to install a public telephone in the Federal Police's departure building.

1.2.2 – Dresden to Warsaw

On 13 August 2013 the Federal Agency accompanied the Federal Police's forced return measure from Dresden Airport to Warsaw Airport. In the context of this national measure approx. 65 Russian nationals from Chechnya were returned to Poland under the Dublin II Regulation. The returnees were all families. The Federal Agency monitored the families while they were being brought in, during check-in, the security check and boarding procedure. In Warsaw it monitored the returnees being handed over to the Polish authorities. It spoke to a representative from Federal Police Headquarters, the accompanying doctors, a representative of Saxony's foreigners' authority, and various Federal Police officers. In addition, it talked to several returnees through the

interpreter who had been brought in by the Federal Police.

Dresden Airport has no infrastructure specifically for collective returns. Instead, an empty terminal building was provisionally equipped for this accompanied measure. That was why the security checks were carried in a container with partition walls and mobile toilets. The returnees waited to be transported to the aeroplane on normal airport seating in an area separated off with bars. The conditions on the day the measure was carried out were, however, on the whole acceptable.

Positive findings

The atmosphere during the entire procedure was calm and relaxed both on the part of the officers and returnees. Various measures undertaken by the Federal Police contributed to this. For example, each of the families to be returned was accompanied by an officer who escorted and supported them from when they were brought in by the *Land* foreigners' authority to when they were handed over to the Polish authorities. Likewise, the officers had provided toys for the children. A further indication of the considerate manner in which the returnees were treated was that the Federal Police reacted spontaneously to the fact that the weather on that day was much colder than it had previously been and provided the returnees with disposable blankets.

During the personal meeting none of the returnees complained about their treatment by the Federal Police. They merely criticised the accommodation in Chemnitz Reception Centre, where conflicts had arisen with other detainees.

Recommendations of the Federal Agency and response of the Federal Ministry of the Interior

The Federal Agency once again pointed out that returnees should also be informed about the fact that they have to hand in their mobile phones when they are handed over to the Federal Police and that these will not be returned until after arrival at their destination at the earliest. Returnees should also be reminded to write down contact numbers stored in their phones if they wish to make calls using the Federal Police's work phone. This information should also be given to returnees in Dresden early enough and in a language they can understand.

Response: The foreigners' authorities will in future include information on using mobile phones and making telephone calls in letters detailing the return procedure. This information will in future be provided by those bringing returnees in.

As described in the above, the return procedure took place in a part of the airport's departure building

which is not yet fully furnished. The building was not heated; in addition, returnees were exposed to a constant draft through the gates which were open whilst they were being brought in. The Federal Police provided disposable blankets at short notice. However, if these measures are to continue when the weather gets colder, special attention should be paid to ensuring that the building is sufficiently heated.

Response: It is only during the summer months that forced returns are processed in that part of the airport which has not yet been fully fitted and furnished. During future measures special attention will be paid to closing the gates in good time and providing disposable blankets.

Although the returnees had been informed in writing in Russian by the *Land* foreigners' authority of the reason for their expulsion and of their destination, some of them said they were not clear about where they were being taken. Especially in the case of Dublin II procedures which typically affect people who have only been in Germany a short time and who it can be assumed are not familiar with European asylum policy, it is important to ensure that returnees are given sufficient information about why they are being returned and where to.

Response: It is the responsibility of the foreigners' authorities to provide returnees with information about their destination and the reasons for their expulsion. Representatives of the foreigners' authorities are generally on hand at the airport. In addition, interpreters are always present during charter flights organised by the Federal Police.

1.3 – CUSTOMS AUTHORITIES

In 2013 the Federal Agency visited the Nuremberg Office of Munich Customs Investigation Office.

1.3.1 – Recommendations of the Federal Agency and response of the Federal Ministry of Finance

Fire protection

In the Federal Agency's opinion, custody rooms must be fitted with fire alarms to guarantee that detainees are protected in the event of a fire.

Response: The custody rooms will shortly be fitted with fire alarms.

Night lighting

The Federal Agency also recommends fitting custody rooms with night lighting (e.g. either a dimmable light or a night light).

Response: The custody rooms will shortly be fitted with night lighting.

Visibility of toilets

The Federal Agency believes that the fact that the toilet area in custody rooms is in full view violates a person's privacy. Human dignity demands that privacy in the performance of bodily needs must always be guaranteed. An exception can at most be considered admissible in a well-founded and documented situation involving an acute risk of suicide or self-harm.

Sanitary facilities must at least be partially shielded. The Federal Agency recommends taking measures to protect detainees' privacy.

Response: Protection of the physical integrity of those in custody is of the utmost importance. That is why the whole of the inspected detention rooms is visible from the outside. Possibilities for fitting a partial privacy shield so as to fulfil the right to protection of privacy when performing bodily needs are currently being examined. As well as preventing self-harm and suicidal acts, attention also has to be paid to protection against vandalism. As soon as an adequate solution has been found the Federal Authority for Real Property will be tasked with implementing this measure.

Custody record book

The custody record book must be kept so that all the relevant circumstances (e.g. checking times) can be reviewed at any time. It should be possible to read and understand the custody record book without the need to consult other documents. The customs offices' practice of noting checking times in a separate document is not recommended, especially since the retention times for the different types of documentation vary. There is a risk that when a legal review is carried out at a later date it will not be possible to establish whether and how often the required checks were carried out by staff.

Response: The recommendation that checking times be included in the custody record book will be enforced when the new custody record book is introduced. The new custody record book will document all those facts which are of relevance to admission and the enforcement of custody, the measures carried out, including the outcome and other incidents connected with those taken into custody, as well as release from custody. Checking times will be included. The custody record books must be retained for five years. This guarantees that if a legal review is conducted at a later date it will be possible to reliably trace back all the incidents and measures pertaining to the person taken into custody.

Custody regulations

The Federal Agency believes that custody regulations should be issued which are binding on all customs authorities who detain persons within their jurisdiction.

Response: Custody Regulations entered into force for the Federal Customs Authority by decree of 17 June 2013; the Customs Criminological Office was tasked with giving notice thereof. Notification will shortly be given of the Custody Regulations, including the new custody record book.

2 – FEDERAL ARMED FORCES

<i>Land</i>	<i>Base</i>
Thuringia	Löberfeld Barracks, Erfurt Henne Barracks, Erfurt Friedenstein Barracks, Gotha
Saarland	Graf Haeseler Barracks, Lebach Graf Werder Barracks, Saarlouis

In the period under review the Federal Agency visited five Federal Armed Forces barracks. No-one was being held in detention (*Arrest*) during any of the Federal Agency's visits.

The suspension of compulsory military service in Germany in 2011 has led to a massive reduction in the number of people in detention enforced by the Federal Armed Forces. In addition, the structural reform has led to numerous detention facilities being closed. The Federal Agency therefore sent an enquiry to the Federal Ministry of Defence in which it asked to be sent figures on the number of detainees for 2013. Plans for future visits will be drawn up on the basis of these data.

2.1 – POSITIVE FINDINGS

The Federal Agency is pleased to note that the current version of the regulations applicable to the Federal Armed Forces (Joint Service Regulation 14/10) as amended in July 2013 now also contain a reference to the right to unrestricted visits by members of the Federal Agency, of the CPT and of the SPT. Based on a previous recommendation of the Federal Agency, the information leaflet containing key provisions of the regulations (Annex 6/1 to Joint Service Regulation 14/10) has been amended to include a reference to the right to make contact with and to receive a visit from a legal advisor.

2.2 – RECOMMENDATIONS OF THE FEDERAL AGENCY AND RESPONSE OF THE FEDERAL MINISTRY OF DEFENCE

Fire protection

The Federal Agency once again pointed out the need for fire alarms in the Federal Armed Force's detention rooms.

Response: Retrofitting has in some cases been completed, in some cases it is still ongoing. The Ministry has determined how many smoke detectors need to be installed in the Federal Armed Force's detention facilities and the prescribed procedure for fitting them has been initiated. It is envisaged

that the fire alarms will be fitted in the detention rooms in Lebach and Saarlouis by March 2014.

Visibility of toilets through peepholes

The detention rooms at Henne Barracks and Friedenstein Barracks, as well as the specially secured detention room in the Graf Werder Barracks have a toilet which is fully visible through a peephole. Human dignity demands that privacy in the performance of bodily needs must always be guaranteed. The visibility of the toilet area through a peephole should be restricted by, for example, affixing a rubber cover in order to protect the privacy of detained soldiers. An exception can at most be considered admissible in a well-founded and documented situation involving an acute risk of suicide or self-harm.

Response: Each detention facility of the Federal Armed Forces must have a specially secured detention room ("besonders gesicherter Arrestraum"). This specific detention room is used to hold soldiers who have violated regulations pertaining to detention or who endanger their own safety. Soldiers are detained in the room only temporarily, generally no longer than 24 hours. That is why different structural requirements are made of the specially secured detention room than of other detention rooms. These include the use of a wide-angle peephole so as to be able to monitor the entire room. The use of a wide-angle peephole in the specially secured detention room in the Graf Werder Barracks conforms to regulations.

Night lighting

In the reporting year 2012 the Federal Agency had already recommended fitting all detention rooms with night lighting. The objective was to help detained soldiers find their way around the detention room at night. The Federal Ministry of Defence declined to follow the Federal Agency's recommendation.¹⁹ It made reference, amongst other things, to the fact that the improper use of electricity could pose a danger to others and to the detained soldier. In addition, the Ministry said, this would frustrate both the intended

¹⁹ National Agency, Annual Report 2012, p. 34 (English version)

educational effect of regular sleep at night and the purpose of the detention. In the Ministry's opinion the light which falls through the peephole, the air vent to the corridor and possibly through the window, which is not blacked out, was sufficient.

The Federal Agency rejects this line of argumentation. The amount of residual light can vary from building to building, which at any rate does not obviate the need for a night light. The Federal Agency cannot understand how electricity can supposedly be used improperly, since the dimmable light is regulated from outside the room and can therefore not be operated by the soldiers themselves or be "used improperly". The disciplinary approach to sleep which the Federal Armed Forces applies is outdated and has already been abolished in other types of facilities.

During its visits to Federal Armed Forces barracks in 2013 the Federal Agency again recommended equipping the detention rooms with night lighting (e.g. dimmable lights or a night light).

***Response:** In the course of its restructuring the Federal Armed Forces will be significantly reducing the number of available detention facilities based on regional needs and the available infrastructure. The matter of retrofitting night lights will be assessed against this backdrop. The detention facilities in Saarlouis and Leback are to be closed by 2015 at the latest. No night lights will therefore be fitted there.*

IV
VISITS BY THE
JOINT
COMMISSION

I – PRE-DEPORTATION DETENTION FACILITIES

Recommendations were made concerning	Ingelheim Detention Centre	Eisenhüttenstadt	Mannheim Prison	Berlin-Köpenick [*]	Bützow Prison	Büren Prison	Hanover Prison, Langenhagen Unit	HRCR, Frankfurt Airport Branch	Frankfurt I Prison	Rendsburg
Healthcare provision				x						
Psychological/psychiatric care	x	x		x					x	x
Staff	x		x				x			
State of repair	x	x	x	x	x					x
Sanitary facilities	x			x	x	x	x			
Daily routine	x	x	x	x	x			x		x
Principle that prisoners and detainees awaiting deportation must be held separately			x		x	x				x
Female detainees	x	x					x			
Admission meeting	x	x								
Information/information about rights		x	x	x			x	x	x	
Rights/advice/lawyer	x		x	x	x		x			
Interpreter			x		x		x		x	
Cooperation with judicial/home affairs authorities			x							
Purposeful/recreational activities		x		x	x		x	x		x
Catering				x						

^{*} Follow-up visit

1.1 – INGELHEIM DETENTION CENTRE FOR PERSONS REQUIRED TO LEAVE THE COUNTRY

The Joint Commission visited Ingelheim Detention Centre for Persons Required to Leave the Country on 25 February 2013.

The Joint Commission inspected the closed wing, several open wings, sanitary facilities, an observation room, common rooms, the recreation yard and prayer rooms. It held a meeting in private with two detainees awaiting deportation being held in an open wing. It also asked to hold a meeting with a prison chaplain, a psychologist or the facility's ecumenical counsellor. However, no such persons were on hand at the time of the visit.

Ingelheim Detention Centre for Persons Required to Leave the Country can hold 77 detainees; at the time of the visit it was holding five detainees awaiting deportation, including one woman.

1.1.1 – Positive findings

The "Runder Tisch Ingelheim" Working Group set up by the Ministry for Integration of Rhineland-Palatinate took up its work in August 2011. As well as the Ministry for Integration of Rhineland-Palatinate, the working group included representatives of non-governmental organisations and the churches. Its task was to examine both the conditions of custody pending deportation and its enforcement and to make suggestions for improving detention in the facility from the humanitarian perspective. An alternative concept for the facility's future structure was to be developed and adopted by late 2012. In addition, immediate measures were agreed which were to be implemented in a timely fashion independently of the future use to which the detention facility was to be put.

The Joint Commission explicitly welcomes the establishment of a round table which looked into improving the conditions of detention and that it consulted experts. It was able to inspect a few of the immediate measures which have already been implemented. The results of the round table and its recommendations have been posted (in German) on the website of the Rhineland-Palatinate Working Group on Asylum.²⁰

The Joint Commission takes a positive view of the preliminary medical examination which takes place before someone is taken into detention to check that they are fit to be detained. Any (mentally) sick

detainees awaiting deportation are then generally not booked into the facility, but are transferred to a clinic, for example. The admission procedure described by the head of the social services is satisfactory in the eyes of the Joint Commission, since detainees awaiting deportation are given comprehensive information about all the procedures in the facility, about their rights and available offers. Emphasis should be given to the offers available in the facility, especially the ecumenical advice centre and the weekly, free legal advice provided by the *Diakonisches Werk Hessen und Nassau* (a branch of the social welfare organisation of the Protestant Church in Germany).

The Joint Commission also welcomes the fact that the detention facility does not apply *Fixierung* (physical restraint) and that in an emergency highly agitated individuals are taken to hospital.

Unlocking times in the detention facility are generous, from 7 am to 10 pm. During this time detainees are free to go into the recreation yard at any time. A number of structural improvements have also been made in the detention facility. Some of the detention and common rooms which the Joint Commission inspected already had new furnishings and had been repainted. The rooms were light and friendly. Each detention room also had a completely separate wet cell. The showers in the communal shower room were each separated by means of partitions.

The Joint Commission especially welcomes the planned cooperation with the Treatment Centre for the Victims of Torture in the context of which training staff in the detention centre in how to recognising traumatisation is being considered. Such training courses should be carried out soon and not only with the medical staff in the detention facility, but also with all staff who regularly come into contact with detainees awaiting deportation. Since it is not always obvious that detainees awaiting deportation are traumatised, this cannot always be ruled out during the preliminary medical examination carried out to establish whether someone is fit to be detained.

1.1.2 – Recommendations of the Joint Commission and response of the Ministry for Integration, Family Affairs, Children, Youth and Women of Rhineland-Palatinate

Solitary confinement and segregation are particularly drastic measures and cause those concerned extraordinary levels of stress. That is why the facility must make every effort to keep segregation as short as possible and to take measures to mitigate the extreme psychological burden it places on detainees.

²⁰ <http://wp.asyl-rlp.org/?cat=5> (last retrieved: 17 February 2014) (only available in German)

The Joint Commission learned of one detainee who had been kept constantly segregated in an observation room for 10 days. The observation room is equipped in the same way as a specially secured room containing no dangerous objects. It contained no furniture and only had a mattress on the floor, a toilet built into the floor and a wash basin. The person concerned was subsequently deported after being released from segregation. The documents presented to the Joint Commission indicate that the person concerned was visited on a daily basis by the prison doctor, though an external psychiatrist examined him only once over the course of the 10 days. The Joint Commission is of the opinion that, for example, regular meetings with a psychologist should have been used in an attempt to influence the person concerned's behaviour. This case makes it clear just how important the regular attendance of a psychologist is.

Further, it is incomprehensible why the Prison Regulations determine that segregated detainees awaiting deportation are not given any reading material apart from the Bible or the Qur'an. This rule cannot be based on security considerations. Since segregated detainees may not have any contact with anyone outside the facility, may not engage in any work nor use a TV or radio, this means that they spend 23 hours every day in the specially secured room with nothing at all to do. For those placed in a separate room for any length of time this represents a disproportionate measure which can have an additional negative impact on the person concerned's general condition and resembles punishment. The Joint Commission recommends at least giving segregated detainees awaiting deportation more reading material.

Response: The Prison Regulations have already been amended such that detainees held in segregation must also be given sufficient reading material (books and newspapers).

The detention facility does not have its own psychologist. Where required, appointments are arranged with a psychiatrist in general practice in Ingelheim. However, it is not always possible in every case to get an appointment at short notice. The head of the facility reported about one detainee awaiting deportation who was being held in the closed wing at the time of the visit and who was to be presented to the psychiatrist on account of his peculiar conduct. However, it was not possible to get an appointment with the psychiatrist until the day after the detainee's deportation.

The Joint Commission in particular regards the psychological support provided to the detainees awaiting deportation in the detention facility as insufficient. The Joint Commission was informed that employing a psychologist was already being

considered, since the ministry was aware of the need. The Joint Commission recommends establishing the position of psychologist for the detention facility. In view of the fact that only few detainees awaiting deportation are held in the facility, a part-time post will no doubt initially suffice and hours can be increased if need be.

Response: As explained during the Joint Commission's visit, there are already plans to create the position of psychologist in the facility. A psychologist qualified in treating trauma is being sought to work on an hourly basis. Provision has been made for four hours per week (fixed) and between four to six hours per week on call.

A request has already been sent to the Institute for Trauma Treatment in Frankfurt am Main in this regard to enquire whether the Institute is interested in taking on the psychological treatment and whether it can provide the names of any psychologists working in the Ingelheim area.

Further, talks are being held with the Treatment Centre for the Victims of Torture in Berlin about the planned training course on "Traumatisation" for all those members of staff who regularly come into contact with detainees.

At the time of the visit only one woman was being detained in the facility. According to the head of the facility, this was often the case on account of the low occupancy rates. The detained woman was, thus, inevitably alone in the wing and had no contact with other detainees awaiting deportation. This is equivalent to solitary confinement. The Joint Commission recommends fundamentally rethinking the conditions of detention for women and considering ways of cooperating with other facilities so that female detainees awaiting deportation could be placed together with other women.

Response: When female detainees awaiting deportation who are travelling alone are placed in detention and no other women are being held in the same facility, the social service cooperates with a non-governmental organisation to provide intensive support over and above what is normal. In addition, the detainee is given the opportunity to have regular contact with people in the detention facility who speak the same language. The possible cooperation referred to is currently being examined.

1.1.3 – Further suggestions by the Joint Commission for improving the conditions of detention and response of the Ministry for Integration, Family Affairs, Children, Youth and Women of Rhineland-Palatinate

When a person awaiting deportation is booked in, any money he or she is carrying is taken into safekeeping by the competent authorities. In many *Länder* the person to be deported is left a pre-determined amount of money (retainer). According to the Ministry for Integration, Family Affairs, Children,

Youth and Women of Rhineland-Palatinate, the retainer amounts to EUR 134.98 in the case of people booked in on behalf of the Saarland Foreigners' Authority. In the case of those booked in at the instance of a Rhineland-Palatinate authority, according to the facility the retainer amounts to only EUR 5. The foreigners' authority checks on a case-by-case basis whether all or a part of the money is taken into safekeeping. However, it is not clear why amounts over and above EUR 5 are taken away, especially since the majority of the *Länder* permit detainees to keep a significantly larger amount of money. The detainees awaiting deportation in Ingelheim probably also find it difficult to understand such unequal treatment.

Response: According to section 7 (1), third sentence, of the Asylum Seekers Benefits Act, income and assets must be used in their full amount. According to determinations made by the Saarland, the retainer amounts to some EUR 134 in the case of people who are booked into the detention facility on behalf of the Saarland Foreigners' Authority. Since Rhineland-Palatinate also allows people booked into the facility pocket money (EUR 137) to cover the socio-cultural subsistence level (section 3 (1), fourth sentence, of the Asylum Seekers Benefits Act) and any pay for work done in the context of section 5 (around EUR 1 per hour), a comparable amount is available to persons to be deported on behalf of Rhineland-Palatinate.

The Prison Regulations applicable to Ingelheim Detention Centre for Persons Required to Leave the Country determine how detainees' correspondence is handled. It contains a list of facilities and persons whose correspondence with the detainees may not be monitored. Since correspondence with the National Agency may not be monitored, the National Agency should also be included in the list. This applies to incoming and outgoing correspondence.

Further, the house rules should also mention all those facilities and persons with whom detainees awaiting deportation may correspond in confidence.

Response: The Joint Commission will be added to the list in No. 6.5 ("Correspondence") of the Rules of Procedure concerning the process for implementing expulsion and detention pending deportation outside of prisons and Annex 5 ("Correspondence") to the Prison Regulations. Further, in future reference will be made during the initial meeting to the detainee's right to lodge an appeal, and the Joint Commission will also be mentioned in this context. A notice containing this information will also be displayed on notice boards.

1.2 – EISENHÜTTENSTADT PRE-DEPORTATION DETENTION FACILITY

The Joint Commission visited Eisenhüttenstadt Pre-Deportation Detention Facility on 18 March 2013.

Together with the deputy head of the facility the Joint Commission inspected the men's wings, the women's wing, the observation rooms, the visiting room, the sanitary facilities, the common rooms, the prison recreation yard and the kiosk. The Joint Commission spoke with several members of staff, including the shift supervisor, with the socio-educational instructor responsible for those in custody pending deportation, and the head of the advisory centre in the ministry of the interior. The Joint Commission also asked to meet with a prison chaplain or psychologist. However, the psychologist does not work set hours in the facility and an external church representative is responsible for chaplaincy duties, which was why neither was present at the time of the visit.

The Pre-Deportation Detention Facility can currently hold 108 detainees. It is divided into four wings, one of which is for women. At the time of the inspection visit the facility was holding 12 detainees awaiting deportation, including one woman.

1.2.1 – Positive findings

The Joint Commission welcomes the limited use made of the two observation rooms. These were used neither in 2012 nor in 2013. One of the rooms has a system of belts which can be used for *Fixierung*. However, it has not been used since 2009. Other precautionary measures, such as segregation, were applied neither in 2012 nor in 2013.

Unlocking times in the detention facility are generous, from 7 am to 9 pm.

1.2.2 – Recommendations of the Joint Commission and response of the Ministry of the Interior of Brandenburg

The Joint Commission found that staff in the facility comprise employees of a security firm. They have no penal service training. The shift supervisors are former staff of the foreigners' authority and therefore likewise have no penal service training. The Joint Commission recommends that in future when personnel decisions are taken attention is paid to ensuring that at least some of the staff have undergone general penal service training, thus also in dealing with people taken into custody. Regardless of that, training courses on dealing with people taken into custody should be organised for existing staff.

Response: The Joint Commission's suggestion that in future more staff should be employed who have undergone penal service training is welcomed in principle. Due to the age structure of the staff of the central foreigners' authority employed in the detention centre, it is assumed that new staff will have to be hired over the next few years and that job requirements could then be set accordingly. It will also be examined whether on account of the drop in the number of detainees in the penal system in Brandenburg it will be possible for prison staff trained there to be used. As regards existing staff members, the intention is to make more use in future of training courses offered by the prisons in Brandenburg. In addition, a training concept will be developed which involves staff of the private service provider.

The facility does not have sufficient specialists at its disposal. Neither socio-educational instructors nor psychologists are regularly available or have fixed office hours for detainees awaiting deportation. Further, no therapies are on offer. Only one educationalist who is also responsible for supervising the reception centre for asylum-seekers, does socio-educational work and is available on a daily basis to hear detainees' concerns.

The Joint Commission believes it is necessary for a psychologist to regularly be in attendance in the facility, not only upon the request of the detainees. Traumatized detainees awaiting deportation and those with suicidal tendencies will, for instance, not necessarily approach anyone in the facility of their own accord and ask to see a psychologist. The "Runder Tisch Ingelheim", a working group established on the initiative of the Ministry of Integration of Rhineland-Palatinate to improve the conditions of detention in Ingelheim Detention Centre for Persons Required to Leave the Country, holds the same opinion.

Only a psychologist specialising in this area who is regularly on hand and who is in contact with the detainees awaiting deportation will be able to diagnose suicidal tendencies, traumatisation or other mental illnesses. In addition, the hunger strike by detainees awaiting deportation which was ongoing at the time of the visit indicated that there is an urgent need for the provision of psychological care in the facility. Merely pointing out to detainees during their initial meeting that they can speak with a psychologist is, in the Joint Commission's opinion, not sufficient, especially since many detainees will probably not understand the reference on account of language barriers.²¹

At Eisenhüttenstadt Pre-Deportation Detention Facility the initial meeting is conducted by shift

supervisors, who have undergone no social-pedagogical or psychological training. Staff from the security firm have so far been given no training in this regard, for example in recognising traumatisation. The Joint Commission recommends that the initial meeting either be conducted by a member of staff with social-pedagogical training or to introduce another meeting with a psychologist in addition to the initial meeting.

Response: A graduate psychologist is currently employed for four hours per week on a freelance basis to provide psychological support to detainees awaiting deportation. In view of the low occupancy rates in the facility, this has proved sufficient so far, but her hours can be increased where the need arises. Given these occupancy rates, the creation of a part-time post – which would in principle be possible – will probably lead to the specialist's workload being quite low. We cannot see the advantages of fixed office hours, for instance once or twice a week, compared to her current on-call availability. The meeting with the psychologist in addition to the initial admission meeting suggested by the Joint Commission is already standard procedure. An additional full-time post for a psychologist who will primarily be responsible for looking after asylum-seekers in the reception centre has been requested within the context of the current supplementary budget. If this post is approved, it is envisaged that, in combination with what is currently available, all detainees will then be able to have an initial examination.

We do not see the need for staff in the facility to provide any more therapies over and above what is currently available, since Eisenhüttenstadt Hospital and its psychiatric wing cooperate closely with the facility. Immediate assistance and admission are available and possible in an emergency. Should occupancy rates rise on a permanent basis, the Joint Commission's suggestions will be re-assessed and, where necessary, the amount of psychological support provided will be increased.

1.2.3 – Further suggestions by the Joint Commission for improving the conditions of detention and response of the Ministry of the Interior of Brandenburg

The purposeful activities available in the Pre-Deportation Detention Facility are very limited. Currently, for instance, detainees awaiting deportation are allowed yard exercise for only one hour a day. They are not even granted longer yard exercise in the summer months. Especially in view of the low occupancy rate, the Joint Commission recommends introducing more flexible rules on yard exercise and to extend the amount of time detainees can spend outside.

The availability of different sports could also be improved by purchasing more sports equipment. Only

²¹ See also the Joint Commission's general stance, II.1.5

a table tennis table and a fitness bike are currently available. Further, especially where facilities hold detainees awaiting deportation with different cultural backgrounds and thus very different eating habits, detainees should be given the opportunity to prepare their own meals in a kitchen. The Joint Commission welcomes the fact that detainees awaiting deportation may use their own computers.

Response: Employment (cleaning work, work in the yard, painting and decorating etc.) is offered to detainees in accordance with section 5 of the Asylum Seekers Benefits Act. However, so far only few detainees awaiting deportation have availed themselves of this opportunity. Yard exercise time currently amounts to one hour per day in each of the four wings. The rule on yard exercise times is currently being revised. Recreation times will be increased to at least 1 1/2 hours per day from 1 November 2013. Detainees can now use the following sports equipment: a treadmill, a rowing machine, two ergo meters and a cross-stepper.

By contrast it is proving more difficult to implement the suggestion made regarding enabling detainees to prepare their own meals, since this would necessitate larger-scale building alterations and purchases being made. Brandenburg is already taking part in cross-Länder meetings to discuss alternatives to custody pending deportation and how the Länder could cooperate in this area. Before it can be guaranteed that the facility will continue to enforce custody pending deportation in the medium- to long-term, larger investments will only be justified if they can also be put to use afterwards – for example in asylum centres. This matter is being examined and will be taken into account in the context of further planning.

The double barbed wire fence surrounding the grounds and the barring of windows in particular give the facility a distinctive prison feel.

Since placement in custody pending deportation does not constitute a penalty but serves to enforce deportation, the facility should not feel like a prison. The necessary structural security measures should be unobtrusive and the facility should be as homely and open as possible. The CPT standards set out the following: “Further, care should be taken in the design and layout of the premises to avoid as far as possible any impression of a carceral environment.”²² The same applies to the recreation yard, which in the Eisenhüttenstadt Pre-Deportation Detention Facility comprises a narrow, bare patch of grass surrounded by barbed wire. This should urgently be remedied. Ingelheim Detention Centre for Persons Required to Leave the Country can again serve as an example here: Most of the visible security measures have been removed. There are also plans to remove the bars on

the windows of the detention rooms and to replace them with escape-proof glass.

The Joint Commission recommends examining whether the security measures can be removed.

Response: The Joint Commission criticised the carceral environment, i.e. the double barred wire fence. This was not originally installed in the facility, but as a consequence of a detainee escaping in 2000. Dismantling the fence without retaining the current level of security against detainees escaping can, therefore, not be considered, nor can the building of a wall to replace the wire fence. Besides, the facility does not meet the security standards of a prison by a long shot. Further, this would necessitate considerable investments about which no decision can currently be taken in view of the low occupancy rates, the fact that the number of detainees will likely drop even further, the discussion about cross-Länder cooperation in this area and the decision which Berlin is yet to take regarding short- or long-term detention of its detainees awaiting deportation in Brandenburg.

If the planned increased cooperation with other Länder in the field of custody pending deportation leads to capacities in the facility being put to better use, this will presumably necessitate the outdoor facilities being expanded. In that connection reorganising the outdoor area could then also be considered.

At the time of the visit only one woman was being held in the facility. This has often been the case on account of the low occupancy rates, and despite the cooperation with Schleswig-Holstein and Mecklenburg-Western Pomerania, who also place their female detainees awaiting deportation in Eisenhüttenstadt. The female detainee is, thus, inevitably on her own in the wing and has no contact with other detainees awaiting deportation. This is comparable to solitary confinement. The Joint Commission recommends reconsidering the conditions of detention for women in the facility. In view of the risk of isolation which is usually associated with the detention of women, this aspect should be given especial weight when taking the decision to detain anyone.

Response: The fact that female detainees are sometimes and of necessity held alone in a wing on account of the low occupancy rates is a problem which other Länder are also faced with. For that reason some Länder do not accommodate any female detainees at all, and these are taken to facilities enforcing custody pending deportation in other Länder in such isolated individual cases. For example, Eisenhüttenstadt Pre-Deportation Detention Facility takes in female detainees awaiting deportation from Schleswig-Holstein and Mecklenburg-Western Pomerania. Nevertheless, such “centralised” detention cannot rule out that, in individual cases, detention

²² CPT/Inf/E (2002) 1 – Rev. 2010, margin no. 29

resembles solitary confinement. The only possible alternative is to centralise the detention of female detainees awaiting deportation yet further and, as is already being planned, to reach an agreement with other Länder. The recommendation put forward by the Joint Commission, namely to take this aspect into account when taking the decision to detain a person is, however, no doubt not directed at the facility in Eisenhüttenstadt, since it merely serves to implement a judge's decision regarding detention.

The house rules pertaining to Eisenhüttenstadt Pre-Deportation Detention Facility are currently available in French, English, Russian and Vietnamese. This is not sufficient, especially in view of the fact that the facility holds detainees awaiting deportation. The Joint Commission therefore recommends making the house rules available in other languages as well.

Response: The recommendation has been taken up; the house rules will be translated into other languages after they have been revised, which was already planned anyway. It was deemed necessary to provide translations of the current version of the house rules in Georgian and Serbian, and these have already been commissioned.

1.3 – THE PRE-DEPORTATION DETENTION WING IN MANNHEIM PRISON

The Joint Commission visited the Pre-Deportation Detention Wing in Mannheim Prison on 10 April 2013. It was accompanied on its visit by a delegation of the UN Subcommittee on Prevention of Torture (SPT), which was looking into the work of the Joint Commission.

The Joint Commission spoke with the head of the institution as well as with staff in the Pre-Deportation Detention Wing. In addition, it spoke with a chaplain and a social worker in the facility. It also held meetings with three detainees in the Pre-Deportation Detention Wing and one detainee awaiting deportation who was in disciplinary detention, and it consulted their files.

The Pre-Deportation Detention Wing in Mannheim Prison is responsible for enforcing custody pending deportation in Baden-Württemberg. It has a roll of 65 and was holding 40 detainees at the time of the visit. One detainee awaiting deportation was in disciplinary detention. Mannheim Prison mainly holds male adult detainees awaiting deportation. Juvenile detainees require the consent of the Ministry of the Interior prior to detention. On average detainees stay for 30 days, although significantly longer stays of up to around seven months are also possible. The Pre-Deportation Detention Wing in Mannheim Prison is located in an entirely separate area of the prison, which is why prisoners do not come into contact with detainees awaiting deportation.

Only the security area and the disciplinary detention rooms in the main building are used.

The Joint Commission first inspected the specially secured room containing no dangerous objects (which is in the prison infirmary) where detainees awaiting deportation are also placed, as well as an observation room in the infirmary. It then inspected the Pre-Deportation Detention Wing in the separate area of the prison together with its detention rooms, sanitary facilities and common rooms. After it had learned that a detainee had been in disciplinary detention on the night preceding the visit, it inspected the disciplinary detention room in the main building.

1.3.1 – Positive findings

The Joint Commission welcomes the fact that Mannheim Prison does not use *Fixierung*.

It was further clear that staff of both the specialist services and the general prison service have been sensitised to the specific situation which detainees awaiting deportation are in. The Joint Commission welcomes the fact that staff of the general prison service are assigned to the Pre-Deportation Detention Wing on a fixed-term basis. In addition, it was pleased to note that the employees of the social service provide detainees with a telephone they can use to make calls outside of normal telephone times or if they have no money to do so. Another positive aspect is that detainees are asked each morning whether they wish to speak to one of the specialist services. If more detainees ask to speak to the specialist services than can be dealt with on one day, an unscheduled meeting is held the next day.

1.3.2 – Recommendations of the Joint Commission and response of the Ministry of Justice of Baden-Württemberg

No external interpreter is available in the Pre-Deportation Detention Wing. This often leads to communication difficulties between the detainees and the staff, which in turn often leads to heightened levels of aggression amongst detainees. Other detainees are often used as interpreters during consultation meetings with the special services, which is detrimental to the confidential nature of such meetings.

Response: Language barriers have recently given rise to conflicts with detainees from North Africa and Arab-speaking countries in particular. In consequence, a professional interpreter for Arabic will in future work in the facility three times a week to support the work of the specialist services and the general prison service.

All the staff with whom the Joint Commission spoke during its visits agreed that work in the Pre-

Deportation Detention Wing was particularly stressful. This was, firstly, due to communication difficulties, and, secondly, due to the fact that the detainees find themselves in an especially tense situation. So far the facility has held one training course on custody pending detention. The Joint Commission welcomes the fact that the head of the institution assured the Joint Commission in the final meeting that he would discuss the possibility of further training courses with the Ministry of Justice. The Joint Commission would like to be informed about the outcome of these discussions.

Response: Training courses specifically for staff employed in the Pre-Deportation Detention Wing have already been held; staff at Mannheim Prison and staff at Schwäbisch Gmünd Prison took part. Another one-day training course on "Intercultural Skills in Custody Pending Deportation" is planned for December 2013.

At the time of the visit, staff employed in the Pre-Deportation Detention Wing were not offered any supervision. However, both staff in the general prison service and those in the specialist services described the work in this unit as particularly stressful, as many detainees awaiting deportation did not understand why they had been taken into custody. The detainees' situation was very dispiriting and led to many all-too-human problems. This can be seen from the relatively large number of special incidents, such as 22 hunger strikes between 26 October 2012 and 10 April 2013, three instances in which a detainee was caught playing with fire and one case of arson in the same period. The prison chaplain reported that staff in the general prison service working in the Pre-Deportation Detention Wing often sought him out. The Joint Commission welcomes the fact that, according to the head of the institution, the issue of supervision was being discussed throughout Baden-Württemberg and that the situation in custody pending deportation in particular was being discussed in that context.

Response: There is definitely a need for supervision for staff working in custody pending deportation and over and above that too. However, given the current efforts at budget consolidation, it is rather unlikely that the required funding will be made available anytime soon.

Only one social worker on a 0.4 contract and a prison chaplain on a 0.3 contract are available to those in custody pending deportation. According to the head of the institution, an external social counselling service has been dropped. Both the social worker and the prison chaplain pointed out to the Joint Commission that there was a great need for counselling and support, in particular by a social worker.

Response: The competent social worker has increased her hours in the Pre-Deportation Detention Wing and is now

available to detainees awaiting deportation all day on Tuesdays and for half a day on Wednesdays, Thursdays and Fridays; this amounts to 50 per cent of her hours. It is not possible to further increase staffing levels by drawing on available prison staff.

Detainees awaiting deportation are given information by the foreigners' authority about the reasons for their custody prior to deportation, its duration and further information regarding the procedure. This information is available in German, Serbian, Russian, French, English, Arabic, Albanian and Turkish. The Pre-Deportation Detention Wing's house rules are, by contrast, only available in German, English, Arabic and French. Translations of the languages most commonly spoken by detainees should also be commissioned.

Response: There are plans to have the house rules translated into other commonly spoken languages where a real and sustainable need is established therefor.

There is no dimmable night light in the specially secured room containing no dangerous objects. Without a dimmable night light detainees only have a choice between bright lighting or total darkness. Whilst bright lighting prevents detainees from sleeping, darkness makes it impossible for them to find their way around the room, so that in an emergency they cannot quickly find the call button, and there is thus a risk of injury.

Response: The suggestions made by the National Agency have already been taken up and a dimmable night light fitted to the specially secured rooms. The remaining facilities in Baden-Württemberg will also follow the National Agency's suggestion.

The documents forwarded by Mannheim Prison indicate that in 2012 one detainee awaiting deportation was ordered to "participate in yard exercise with non-working sentenced prisoners". In order to be able to fulfil the principle that prisoners and detainees awaiting deportation be held separately (*Trennungsgebot*) no such instructions should be issued.

Response: Mannheim Prison pays very precise attention to ensuring that detainees awaiting deportation are kept separate from prisoners. However, especially in the more recent past detainees awaiting deportation have again and again behaved aggressively and posed a danger to others. The only option available to the prison in the extreme case is to order special precautionary measures. In such cases it is essential that the detainees affected can be placed in the segregation area in the main building as part of a precautionary measure, in which case the principle that prisoners and detainees awaiting deportation must be kept separate is also observed.

The Joint Commission would like to point out that it also in principle recommends the creation of separate detention facilities for the enforcement of

custody pending deportation, since this also stops the principle that detainees awaiting deportation be held separately from prisoners being softened.²³

According to staff at Mannheim Prison, the home affairs authorities do not always make it sufficiently clear to them when detainees awaiting deportation have been separated from their families. Separation from or a lack of information concerning the whereabouts of family members increases the psychological strain on detainees awaiting deportation. For example, the Joint Commission learned about one detainee awaiting deportation who was not told the whereabouts of his pregnant wife. Once it became clear that she was in the Central Reception Centre in Karlsruhe, the Reception Centre denied him telephone contact with her. It should be investigated how the flow of information between the authorities can be improved.

Response: The member of staff in the Regional Commissioner's Office who is responsible for custody pending deportation has had his hours increased by one day, which means he is now present in the facility three days a week. A sufficient flow of information between the prison and the foreigners' authority is thus guaranteed. The case referred to is likely an exception.

1.3.3 – Further suggestions by the Joint Commission for improving the conditions of detention and response of the Ministry of Justice of Baden-Württemberg

The advantage of placing detainees awaiting deportation in a prison is that they can make use of the prison infrastructure, in particular the specialist services, the infirmary and sports activities. However, the fact that the Pre-Deportation Detention Wing is attached to the prison also imposes restrictions on their daily routine. For instance, detainees awaiting deportation are not permitted to use mobile phones in the facility. Detainees can use the telephones installed in the facility between 8 am and 4 pm on weekdays and during their 1 1/2 hours of free time at weekends. These times are not conducive to maintaining contact, however, since they fall in normal working hours, which means that relatives who are working are not always able to maintain contact with detainees. In addition, problems can arise when detainees need to contact someone living in another time zone. Visiting hours are also restricted to one hour on weekdays (Mondays to Fridays between 8 am and 11 am). Likewise, it is only possible to use the recreation yard for 1 1/2 hours each day. On weekdays detention rooms are only unlocked between 2.30 pm and 5 pm. Association is possible between 9 am and 11 am.

²³ See II.1.3 above

Especially in regard to the free hour, lock-up times and the possibility of making telephone calls, the Joint Commission suggests examining whether it is possible to delimit the rules applicable to detainees awaiting deportation more significantly from those applicable to prisoners.

Response: In well-founded individual cases exceptions are made as regards using the telephone, so that detainees may phone their relatives up until 9.30 pm at the latest and outside of yard exercise times at the weekend. Visiting times have been relaxed completely. All visitors are admitted without time restrictions. Along with the 1 1/2 hours of daily yard exercise, detainees have recently been given the opportunity to do sports in the courtyard three times a week in the mornings (or in the sports hall or fitness room when the weather is bad). Unlocking times have also been extended, and detention rooms are now unlocked every day at 1 pm.

The Pre-Deportation Detention Wing is located in containers, which means it feels like a makeshift solution, and according to staff the containers are suited neither to summer nor winter temperatures. The Joint Commission suggests improving this situation.

1.4 – BERLIN-KÖPENICK PRE-DEPORTATION DETENTION FACILITY

The Joint Commission conducted a follow-up visit to Berlin-Köpenick Pre-Deportation Detention Facility on 26 June 2013. It had previously visited the facility on 8 April 2011 and drawn attention to several shortcomings. The main aim of the follow-up visit was to investigate whether these shortcomings had been remedied.

The Joint Commission found that some of the recommendations it made in 2011 have not yet been implemented.

The Joint Commission inspected those parts of the facility it had criticised during its initial visit, including the segregation area, the various landings used for male and female detainees awaiting deportation, the sanitary facilities, the visiting area and the admissions area. In addition, the Joint Commission spoke to several detainees awaiting deportation.

At the time of the visit the facility was holding 17 male detainees awaiting deportation. There were no female detainees awaiting deportation in the facility. The average time detainees spend in the facility was quoted as 17 days.

1.4.1 – Positive findings

Particular mention should be made of the noticeably good atmosphere which the Joint Commission

encountered in the facility. On account of the very good staffing levels, detainees can spend periods outdoors several times per day, in summer until 9 pm. Detainees may themselves decide how much time they wish to spend outside. Visiting hours are also very generous, and visits are not restricted (4 to 5 hours is sometimes possible). Visitors can be received between 7 am and 7 pm every day of the year.

Unlocking times in the detention facility are generous, and detention rooms are only locked during shift change-overs. Detainees awaiting deportation as well as the chaplains are free to move around their landings. Detainees can eat meals together in each of the landings. In view of the low occupancy rates, it is possible to have smoking and non-smoking landings, which is expressly welcomed in the interests of protecting non-smokers.

The Joint Commission would like to praise the accompanying use of pictogrammes when providing detainees with information. These were created on the initiative of the staff in the facility. The home-made pictogrammes are used to illustrate organisational procedures when detainees arrive in the facility, for example.

1.4.2 – Recommendations of the Joint Commission and response of the Berlin Senate Department for the Interior and Sports

The detention rooms are still inadequately and sparsely furnished and do not have a homely atmosphere. The beds still do not have a slatted frame but merely comprise a plank of wood and a mattress. Chairs were available neither in the common room used by the male nor in that used by the female detainees awaiting deportation. This fact had already been criticised in the report dated 17 June 2011.

Response: The shortcomings which currently exist in the facility and which result from the nature of the building will not be remedied until custody pending deportation as a whole has been reorganised. Possible alternatives are still being investigated.

The communal showers still do not have any partitions to protect detainees' privacy. The Joint Commission notes that no changes have been made, despite the recommendation expressed in the report dated 17 June 2011 and the criticism raised by the CPT in 1997. In a statement issued on 10 August 2011 the Senate Department for the Interior and Sports stated that it was not possible to separate off the individual showers because space in the shower room was very limited. The Joint Commission would like to point out that despite the structural conditions at least one shower per shower room could be partitioned off to give detainees privacy if they wish it.

Response: Despite the structural difficulties relating to the building, the Joint Commission's suggestion that at least one shower per shower room be fitted with a partition is being examined.

The Joint Commission was informed that there were still no concrete plans to relocate the facility to a more suitable property. It would like to point out once more that it regards the current property as little suited to enforcing custody pending deportation. This is, not least, due to the fact that, contrary to the recommendations of the CPT, the carceral environment due to the facility's previous use as a prison cannot be denied.

The Joint Commission noted that the facility still does not conduct a routine physical examination upon admission. The Joint Commission deems it necessary for each detainee to be subject to a medical examination after being admitted. The doctor should have specific training in diagnosing trauma and other mental illnesses. The investigation of possible trauma and/or other mental illnesses should always be part of this medical examination. This corresponds to the resolution adopted at the 114th German Medical Assembly.²⁴ Attention should also be paid to involving a professional interpreter when there are problems communicating with the doctor. For reasons of confidentiality, using other detainees as interpreters is not appropriate.

Response: As regards the medical examination, it was already noted in the last statement that in principle each detainee is presented to the detention facility's medical service upon admission or following a failed deportation in order to establish his or her state of health and to draw on the services of a doctor where the need arises. Further, the Senate Department is of the opinion that a routine medical and psychological examination upon admission cannot be conducted out of respect for the dignity of those concerned and on account of a lack of a legal basis therefor.

1.4.3 – Further suggestions by the Joint Commission for improving the conditions of detention and response of the Berlin Senate Department for the Interior and Sports

One-to-one meetings with the detainees revealed that they do not feel that they were given sufficient information regarding the different meals available (vegetarian, no pork, no beef). Especially in view of ethnic and religious diversity it is important to inform detainees in a manner they can understand. The Joint Commission recommends improving the level of communication in this regard.

²⁴ German Medical Association (2011), 114th German Medical Assembly, Resolution, p. 125

Response: Detainees in the facility are given sufficient information regarding the different types of meals available. Upon admission each detainee is given a copy of the house rules. Point 4 of the house rules (which are available in 10 different languages) describes in detail the different types of meals available. Further, reference is made to the choice of meals during the first meeting with the social service. In addition, the local staff on each landing address personal concerns. A system for providing information using pictogrammes is currently being prepared.

1.5 – THE PRE-DEPORTATION DETENTION WING IN BÜTZOW PRISON

The Joint Commission visited the Pre-Deportation Detention Wing in Bützow Prison on 8 August 2013. It inspected the wing together with the sanitary facilities, the specially secured room containing no dangerous objects, an observation room, the recreation yard and the visiting rooms.

During its visit the Joint Commission spoke with a psychologist, a social worker, the chaplain and other members of staff in the wing. Further, it held a confidential meeting with one detainee awaiting deportation. The head of the institution and other members of staff were on hand during the entire visit.

Bützow Prison has closed men's and women's wings and can hold a total of 533 prisoners. Its responsibility for male prisoners comprises enforcement of all terms of imprisonment of no more than five years and remand detention. It can hold a total of 498 men.

Bützow Prison is responsible for enforcing all terms of imprisonment against adult females in Mecklenburg-Western Pomerania and can hold a total of 35 women. The prison enforces custody pending deportation against adult male detainees awaiting deportation in Mecklenburg-Western Pomerania by way of providing administrative assistance to the Ministry of the Interior. The Pre-Deportation Detention Wing can hold 12 men and was fully occupied at the time of the visit.

1.5.1 – Recommendations of the Joint Commission and response of the Ministry of Justice of Mecklenburg-Western Pomerania

The Pre-Deportation Detention Wing in Bützow Prison is in a very bad state of repair. The detention rooms, sanitary facilities and the furnishings are worn out, some are broken. There are holes in the doors, windows and walls which have been filled with paper or towels in a makeshift manner. Some of the rooms and sanitary facilities are very dirty. According to one member of staff it is impossible to get them properly clean. The toilets in some of the cells are not partitioned off, in some detention rooms only by

means of a curtain. According to the head of the institution, only one detainee is ever placed in each of these detention rooms. Some of the detention rooms are very narrow, dark and not homely. The communal showers have no partitions to protect privacy.

The Ministry of Justice of Mecklenburg-Western Pomerania informed the Joint Commission that renovation work on Block B in which detainees awaiting deportation are housed is set to begin in 2016. Work has already begun on renovating Block A and on constructing a new building; according to current plans this work will be completed by June 2015 and December 2015, respectively. No decision has yet been taken on which building detainees awaiting deportation will be accommodated in.

On account of the structural design and the resulting consequences of the wing accommodating detainees awaiting deportation being affiliated to a prison, Bützow Prison is unsuited to enforcing custody pending deportation. Detainees awaiting deportation may only be subject to those restrictions which are absolutely essential to the enforcement of custody pending deportation. In the opinion of the Joint Commission, waiting for 1 1/2 years for the renovation work to be completed is not an option. In addition, short-term measures must urgently be taken to improve detainees' conditions of detention.

That is why the Joint Commission advocates creating a separate facility in which custody pending deportation is enforced, as is already the case in Brandenburg, Rhineland-Palatinate and Bavaria and as is provided for as the normal case by law. The CPT shares this opinion.²⁵

Response: First measures have been taken to improve the structural conditions in the Pre-Deportation Detention Wing by placing new furniture in the detention rooms. From January 2014 the detention rooms will be repainted, the structural defects which the Joint Commission criticised will be remedied and, where necessary, the sanitary facilities refurbished. Provision has also been made for the kitchen and the common room to be refurbished. Once this work is completed there are plans for these rooms to be given the necessary fittings and furnishings.

As mentioned in the above, pursuant to the EU Returns Directive custody pending detention should always be enforced in specialised detention facilities. Where such specialised detention facilities are not available in a Member State and detainees need to be accommodated in normal prisons, detained third-country nationals must be accommodated separately from normal prisoners (principle of separation). This is not possible in Bützow Prison.

²⁵ Cf. e.g. CPT/Inf/E (2002) 1 – Rev. 2013, margin no. 28 et seq. and CPT/Inf (2012) 6, margin no. 33

The Pre-Deportation Detention Wing is located on a landing on the second floor of that block in which remand detainees are held. The landing has been screened off from the wing accommodating those in remand detention by means of wooden boards. Remand prisoners are accommodated on the other half of the landing, and detainees awaiting deportation are kept separate from them only by means of a gate. On account of the lack of separation between the two groups of detainees, the detainees awaiting deportation are subject to the same security regulations and procedures as prisoners. They have only one hour of yard exercise per day and are only permitted to use the showers twice a week at specified times. The wooden boards mean that only little daylight gets into the landing, which is very dark. Although detention rooms in the Pre-Deportation Detention Wing are unlocked for 6 1/2 hours every day, detainees only have the dark corridor to stand around in during that time since there is no common room with seating or other opportunities to engage in any purposeful activities. According to the head of the institution, there is a kitchen on the landing. Detainees awaiting deportation have few opportunities to communicate or get information because they are not allowed to use their mobile phones and are only given limited opportunity to make telephone calls using the facility's own phone.

The Joint Commission recommends at least making a common room with chairs and rooms available to detainees awaiting deportation where they can engage in purposeful activities and that these be accessible to them all day long. In addition, they should be given access to the yard for several hours each day and better access to information and means of communication.

Response: *The Ministry is of the opinion that detainees awaiting deportation should, if possible, be held separately from prisoners in specialised detention facilities in order to avoid the impression of discrimination or criminalisation arising.*

Against this backdrop the current situation in the Pre-Deportation Detention Wing is not satisfactory, since the relaxed conditions which should actually be applied to this type of detention cannot be implemented for the detainees awaiting deportation on account of the cramped conditions in this wing in Bützow Prison.

For that reason the Ministry of the Interior and Sports of Mecklenburg-Western Pomerania is endeavouring to create other options for male detainees awaiting deportation as soon as possible and is evaluating various possibilities.

The possibilities for improving the situation in the prison are being fully exhausted during this transitional period in which Bützow Prison is still being used to enforce custody pending deportation.

As mentioned in the above, in Bützow Prison custody pending deportation is enforced in a separate area in one of the blocks and detainees are thus subject to restrictions.

The company responsible for construction and real property of Mecklenburg-Western Pomerania has been commissioned with examining the possibility of closing the top storey ceiling in order to make the entire, spacious landing available to detainees awaiting deportation when they are not in their rooms. This would mean they could use table tennis tables and engage in other recreational activities. The examination has not yet been completed. Seating is to be made available in the common room in the course of 2014.

Detainees awaiting deportation may use the showers during two fixed periods each week. However, they can shower more frequently, for instance after doing sports or before seeing a doctor, if they so wish.

It is currently not possible to extend daily yard exercise times to several hours since the prison has one recreation yard less at its disposal on account of refurbishment work. That is why detainees are currently only permitted one hour outside each day.

As well as general access to information via the radio and TV, detainees awaiting detention are also given two Turkish daily newspapers to read. Given the current situation it is difficult to make any changes to the available means of communication. Detainees awaiting deportation are permitted to make telephone calls with the outside world using the Telio telephone system. Calls generally have to be paid for, although in justified exceptional cases and taking account of the concrete circumstances of the individual case, free phone calls and calls abroad at the prison's expense are possible. Detainees are not permitted to use their own mobile phones as it is not generally permissible to use these on the prison grounds.

No recreational or other purposeful activities are available on the landing where detainees awaiting deportation are held. They can only engage in other sports (sports hall, volleyball, table tennis) for a few hours each week.

Response: *It is not possible to extend the range of recreational activities on offer to any satisfactory degree due to the wing being embedded within the prison. As already described in the above, neither yard exercise nor sports for two hours a day are sufficient to sensibly fill a day.*

To mitigate this situation Bützow Prison allows detainees awaiting deportation to receive visitors during general visiting hours without waiting or lead times and it has TVs and radios which detainees can borrow. Detainees are permitted to use the sports room in the upper storey for two hours every day, an improvement on the previous situation.

Advice and meetings, for example with non-governmental organisations are not available. A position for a social worker was cut. The prison chaplain, who also puts a great deal of time and effort

into looking after the detainees awaiting deportation, cannot compensate for the loss of this position. The other social worker is responsible for the entire prison. According to her, she only has a small amount of time she can allocate to detainees awaiting deportation. The social worker and the chaplain feel that detainees awaiting deportation urgently need regular advice and meetings in order to be able to deal with the specific problems encountered in custody pending deportation.

In the opinion of the detainees awaiting deportation, the conditions of detention in Bützow Prison mean that they cannot engage in any sensible activities apart from one hour of yard exercise per day and a little sports, and that they spend most of the day either sitting in their rooms or standing in the corridor doing nothing.

In view of this situation the Joint Committee recommends hiring an additional at least part-time social worker in the Pre-Deportation Detention Wing who is available to talk to detainees, who is aware of the specific problems associated with custody pending deportation and can provide assistance. Further, the range of recreational activities on offer should be extended.

Response: In order to improve the level of support available, Bützow Prison will be employing a social worker in the Pre-Deportation Detention Wing from February 2014. Her actual hours will be based on the needs of the detainees awaiting deportation.

The Pre-Deportation Detention Wing also has a room which is fitted with a CCTV camera. According to the head of the institution, it is used to accommodate those who are suicidal as well as for solitary confinement, which can sometimes be ordered for several months. The CCTV camera is always switched on when the room is occupied.

The fixtures and furnishings in the room fitted with a CCTV camera are not suitable for those who are at acute risk of committing suicide. The pipes above the sanitary facilities protrude from the wall and thus increase the risk of suicide significantly. The Joint Commission holds the opinion that those at acute risk of committing suicide should always be placed in a specially secured room containing no dangerous objects.

Further, it is not clear why those who have been placed in solitary confinement need to be constantly monitored by CCTV camera. Certain clearly defined conditions must be met before a detainee can be monitored by CCTV camera and this measure must be necessary in the individual case. The mere ordering of solitary confinement does not justify video surveillance of the detained person on a regular basis.

Further, the National Agency is of the opinion that measures must be taken to protect detainees' privacy. Human dignity demands that where video surveillance of a detention room, including the toilet, is conducted the detainee's genital area must be pixellated on the screen. Unrestricted monitoring of the detention room can at most be considered based on a carefully weighed up, well-founded and documented decision in an individual case where there is an acute risk of suicide or self-harm. Where such visual surveillance is conducted by CCTV or through a peephole, those concerned must be informed of that fact or it must be clear to them that such surveillance is being carried out.

Response: Persons who are at acute risk of committing suicide are not placed in a room fitted with a CCTV camera, but in a specially secured room containing no dangerous objects. The room on the top floor which is fitted with a CCTV camera is primarily used to accommodate detainees with mental health issues and violence issues or health issues and who were admitted to the facility at an inopportune moment. In accordance with the principle of proportionality, the facility only requires such placement to the extent and as far as necessary to serve its purpose. The supervisory authority agrees with the National Agency that the ordering of solitary confinement does not necessarily justify any monitoring by technical means and that it is only permissible where specific conditions are met. Bützow Prison will in future pay closer attention to this issue.

A sign (pictogramme) indicating the presence of video surveillance equipment will be affixed in front of or in this room to make it easier for detainees awaiting deportation to recognise that surveillance by visual means is being carried out. At the same time those placed in this area will be informed when video surveillance is in operation.

Detainees awaiting deportation should be able to have the lawfulness of the custody pending deportation order issued against them subject to legal review. To that end they first need to be given comprehensive information about available legal remedies, and that information must be provided in a language they can readily understand. Since those affected are usually not familiar with the German legal system and may have great difficulty, for example, making contact with non-governmental organisations or with lawyers while in the detention facility, they are especially reliant on help in asserting their rights. This support can, for instance, be provided by a social worker who has the necessary expertise in this area. Ingelheim Detention Centre for Persons Required to Leave the Country serves as a positive example; it has its own advice centre. The Joint Commission regards the legal counselling provided in the Pre-Deportation Detention Wing in Büren Prison in North Rhine-Westphalia and in Eisenhüttenstadt Pre-Deportation

Detention Facility in Brandenburg, which is funded by the respective *Land* and is free to the detainees awaiting deportation, as exemplary. In the deportation detention facility in Berlin-Köpenick the Republican Lawyers' Association provides free legal advice once a week.

Neither internal nor external services are available in Bützow Prison. There is a social worker who could provide support when legal questions arise and who could, for example, establish contact with a legal advisor. According to the head of the institution, it was not possible to find any external agencies to provide this service. As already explained, the Joint Commission urgently recommends hiring a social worker to support detainees awaiting deportation in asserting their rights.

Response: The social worker will offer regular advisory services and meetings to support detainees awaiting deportation when it comes to asserting their rights.

In order to make further improvements the prison is attempting to get a volunteer from an approved support and counselling organisation who is familiar with the problems associated with deportation to assist in finding legal advisors and external advisory services. The prison itself has so far been unable to provide detainees awaiting deportation with legal advice, although help is provided in dealing with matters involving the authorities.

According to the head of the institution, for cost reasons an interpreter can only be involved to aid communication with detainees awaiting deportation in urgent cases, for instance during medical examinations. Several members of staff confirmed in meetings with the Joint Commission that communication was often very difficult or only possible using sign language. The Joint Commission recommends involving a professional interpreter during the admission meeting and during initial medical examinations whenever language problems arise. This can also be done by telephone, where necessary, as is common practice in other *Länder*. Using another detainee to interpret is not a suitable solution as this is detrimental to the confidential nature of the meeting.

Response: In future, in order to maintain the confidentiality of these meetings, other detainees awaiting deportation will not be involved. Leaflets translated into various languages and translation aids available on the internet are used during the admission meeting.

Where it is not possible to communicate with a particular detainee, a professional interpreter will in future be involved during the admission meeting and on other important occasions (e.g. medical examinations). As recommended by the Joint Commission, this will also be done by telephone where necessary.

1.6 – THE PRE-DEPORTATION DETENTION WING IN BÜREN PRISON

The Joint Commission visited the Pre-Deportation Detention Wing in Büren Prison on 18 September 2013.

It visited various parts of the facility, including the specially secured room, the enhanced supervision room, the various wings accommodating male and female detainees awaiting deportation together with their tea kitchens and common rooms, the family room, the sanitary facilities, the visiting and admission area, the medical section, the outdoor sports facilities, as well as the sports and recreational section. In addition, the Joint Commission spoke to several detainees awaiting deportation, the prison doctor, the Catholic priest, a representative of the staff council and a member of staff of European Homecare.

The prison can hold a total of 513 people, including 151 sentenced prisoners. Along with detainees awaiting deportation the prison holds sentenced prisoners serving prison sentences of no more than three months and substitute penal sentences.

The Pre-Deportation Detention Wing can accommodate 320 male and 42 female detainees awaiting deportation. At the time of the visit the unit had 72 male and seven female detainees awaiting deportation plus 168 sentenced prisoners. The male detainees awaiting deportation (Block 2) are kept separate from the prisoners (Block 1).

Block 2, which accommodates the male detainees awaiting deportation, is divided into three wings, one admissions wing (closed wing) and two open wings. The admission wing carries out a "suitability check" to establish whether there is an increased risk of flight and to what extent the detainee awaiting deportation is socially competent. Detainees generally spend three to four days in this wing.

Block 3 is used to accommodate female detainees awaiting deportation separately from the male detainees.

At the time the Annual Report went to press, the Ministry of Justice of North Rhine-Westphalia had not yet submitted its statement. This will be included in the Annual Report 2014.

1.6.1 – Positive findings

During its visit the Joint Commission noted the positive atmosphere in the facility. This impression was confirmed by the staff and detainees awaiting deportation. Those interviewed spoke positively about the facility, people's dealings with each other and the atmosphere. Cooperation with staff of the private security firm Kötter had also proved successful, they said.

Emphasis should be given to the broad range of activities which the Pre-Deportation Detention Wing in Büren Prison offers. It includes, a landing with sports and recreational facilities, for example sports and fitness machines, table tennis, billiards, table football, as well as a library containing foreign-language books. In addition cookery and video groups are organised in the recreation room. Detainees can play football, volleyball, badminton and basketball outside. The detainees awaiting deportation are offered the opportunity to, for instance, do maintenance and cleaning work, work in the depository and cleaning the yard. They can work with wood, making nesting boxes for birds and other items in workshops. In Works Hall 1 they can do simple packaging and assembly work.

The Joint Commission was able to see for itself that many of the detainees take up the recreational, sports and employment opportunities available. Staff stressed how important the possibility of doing sports was for detainees awaiting deportation, since it gave them the chance to relieve their dissatisfaction at their situation, as well as the accompanying frustration and aggression. In this context staff also mentioned that they were in favour of a sports hall being built for the detainees so that they can continue doing sports in winter.

Five employees of the company European Homecare (EHC) are responsible for providing social assistance to the detainees awaiting deportation. Four members of staff are responsible for the social service and one is responsible for organising workshops. They are generally available on weekdays, as well as at weekends where necessary. According to many members of staff in the facility, they make a key contribution to the good atmosphere. The fact that these staff members also have different cultural and national backgrounds is a not insignificant factor for success. It also means the EHC employees speak a wide spectrum of languages, which is why they are often involved in the admission meeting and medical examination. The EHC employees support the detainees in, amongst other things, filling in asylum applications, contacting and communicating with the authorities or organising relatives' visits. According to various members of staff, the Catholic priest and the doctor, the EHC employees showed great personal commitment and have gained the trust of the detainees awaiting deportation. During its visit the Joint Commission witnessed the trusted manner in which an EHC employee treated the detainees.

The Joint Commission would like to emphasise that the facility gives the impression of being in a very good condition, that is the detention rooms, the common rooms and the outdoor area. For example, there was

hardly any graffiti on the walls, although it is more than two years since the building was renovated.

Detainees awaiting deportation are also offered sufficiently long visiting times. However, the Joint Commission feels that Büren Prison's location is not unproblematic. The facility is approx. 6 km outside of the town of Büren in a forest and cannot be reached by public transport. A taxi ride from Büren costs approx. EUR 25. Nevertheless, the Joint Commission learned that this problem is also being solved successfully and very practically through the commitment of the staff in the facility, the EHC employees, cooperation with the private welfare organisation and the *Evangelisches Werk* (the social services of the Protestant Church in Germany). Visitors who do not have the required financial means are helped either by being refunded the costs of the trip or by being given a lift in one of the staff's private cars. According to the staff, the previous month 195 visiting groups (comprising a maximum of three adults and one child each) were registered. These high visiting figures are an indication that, despite the facility's unfortunate location, visits are being made possible by the personal commitment of the staff and welfare organisations.

1.6.2 – Recommendations of the Joint Commission

The enhanced supervision room in the infirmary is equipped with "riot-proof" furniture. This is regarded as a less severe measure than detention in the specially secured room and is in particular used where there is a risk of suicide. The toilet in the enhanced supervision room is visible through a window in the door.

The Joint Commission would like to emphasise the following: It follows from Article 1 of the Basic Law that each person has the right to the protection of privacy when performing their bodily needs. The CPT has repeatedly stressed that privacy must be protected when a person is using the toilet or washing. Sanitary facilities (in the detention rooms) must at least be partially partitioned off.²⁶ According to the CPT, this also applies to high security cells, which are comparable to an enhanced supervision room.²⁷ The Joint Commission is of the opinion that measures must also be taken in the enhanced supervision room to protect detainees' privacy.

Further, the fittings and furnishings in the specially secured room give occasion to draw attention to the need to protect detainees' privacy. The specially secured room in the facility is a very large room which has a toilet set into the floor. This toilet is also visible

²⁶ Cf. CPT/Inf (2009) 5, margin no. 109

²⁷ Cf. e.g. CPT/Inf (2010) 16, margin no. 17

via a CCTV camera installed in the room. Human dignity demands that where video surveillance of a detention cell, including the toilet, is carried out, the detainee's genital area must be obscured on the screen. Unrestricted monitoring of the detention cell can at most be considered on the basis of a carefully weighed up, well-founded and documented decision in an individual case where there is an acute risk of suicide or self-harm.

However, mention should also be made in this context of the possibility of pixellation, which helps protect privacy and at the same time shows the person concerned's actions in outline. The Joint Commission witnessed this in Frankfurt I Prison, for instance. Reference must also be made to the fact that Lower Saxony has already introduced pixellation of CCTV monitoring as standard procedure, including in specially secured rooms.

The head of the institution reported that detainees awaiting deportation are not returned to Büren Prison after a failed deportation procedure. By order of the Ministry of Justice of North Rhine-Westphalia of 12 November 2012, after a failed deportation procedure the persons concerned must be taken to another prison in North Rhine-Westphalia.²⁸ The order contains a breakdown for the entire year, according to which a different prison is obliged to take in detainees awaiting deportation every six weeks. Apart from Büren Prison, no other prisons in North Rhine-Westphalia are equipped to accommodate detainees awaiting deportation. Holding detainees awaiting deportation separately from prisoners would, nevertheless, also have to be guaranteed in the other prisons. If the principle of the separation of prisoners and detainees awaiting deportation cannot be observed, the Joint Commission recommends rethinking this method of procedure.

1.7 – CUSTODY PENDING DEPORTATION IN HANOVER PRISON, LANGENHAGEN UNIT

The Joint Commission inspected custody pending detention being enforced in Hanover Prison, Langenhagen Unit on 19 September 2013.

It inspected the wings housing male and female detainees awaiting deportation, the sanitary facilities, as well as two specially secured rooms. The Joint Commission also spoke with several detainees awaiting deportation and with the doctor who works there on a freelance basis.

According to Lower Saxony's enforcement plan, Hanover Prison, Langenhagen Unit is the central

facility responsible for enforcing custody pending deportation against all men and women. Custody pending deportation is enforced by way of administrative assistance for the Ministry of the Interior. The Langenhagen Unit is also responsible for enforcing short terms of imprisonment and substitute prison sentences. The facility can hold a total of 22 male detainees and six female detainees awaiting deportation. At the time of the visit the facility had only seven male detainees in custody pending deportation.

1.7.1 – Recommendations of the Joint Commission

During its visit the delegation met most of the detainees awaiting deportation in their detention rooms. The majority of the detainees gave the impression of being quite apathetic. Staff confirmed that they often neither used their free hour nor engaged in any sports or recreational activities. There are also no employment opportunities, a fact the detainees criticised when talking to the Joint Commission.

The Joint Commission regrets that the detainees make limited use of the opportunities on offer. One possible reason could be the fact that due to the low occupancy rates the detainees hardly communicate with each other. Average occupancy rates have dropped from 27.48 in 2010 to 8.6 so far in 2013. Communication with other detainees and staff is difficult due to language barriers.

In specialised facilities with higher occupancy rates the detainees awaiting deportation could be offered more purposeful activities. In addition, it would be easier for detainees to get into contact with other detainees and to share their experiences and engage in recreational activities together. In the long term, the Ministry of Justice of Lower Saxony should, therefore, possibly together with other *Länder*, sound out how the conditions of detention could be made more suitable.

The National Agency suggests improving the detainees' situation in custody pending deportation by taking suitable measures, for example bringing in a social worker or stepping up cooperation with volunteers or associations.

Female detainees are kept in a separate wing in the prison. According to the head of the institution, sometimes only one woman is held there. At the time of the visit there were no women in custody pending deportation. The documents shown to the Joint Commission indicate that the number of women being detained in custody pending deportation has steadily dropped. So far in 2013 only four women have been in custody pending deportation. This can prove

²⁸ File no. 4431-IV.28

problematic. The detention of individual females who do not have the opportunity to talk to other women is tantamount to solitary confinement. The Joint Commission therefore recommends not keeping women alone in custody pending deportation, for example by cooperating with other *Länder*.

In the Joint Commission's view language barriers could also be contributing to the detainees' situation. This became especially clear during the one-to-one meetings which members of the Joint Commission held with detainees. The detainees have different linguistic and cultural backgrounds and that may be why they cannot find any common ground. This is especially true given the steady drop in occupancy rates. Staff are also unable to alleviate the situation, since they themselves do not have the necessary language skills. In addition, communication problems easily arise in dealings between the detainees awaiting deportation and members of staff.

The CPT standards also emphasise that staff have a key role to play in dealings with detainees awaiting deportation.²⁹ According to the CPT, staff must be carefully selected and given appropriate training in order to be able to handle interpersonal and intercultural problems. Further, relevant language skills are necessary.

A professional interpreter is involved where necessary in the admission meetings as well as medical examinations. However, in other cases, other options are used, for example bringing in other detainees to interpret. This can be detrimental to the confidential nature of these meetings, especially when personal details are being revealed. Professional interpreters should therefore always be brought in where required, both in the admission meeting and the initial medical examination. Other detainees should at any rate not be used in this capacity when confidential or personal information is being shared.

The Joint Commission moreover recommends increasingly allocating people with relevant language skills to work in the unit. Staff with different linguistic, cultural or ethnic backgrounds could have a positive influence especially when it comes to communicating with detainees awaiting deportation. Büren Prison serves as an example of this. Firstly, Büren Prison allocates prison staff with various linguistic skills. Secondly, European Homecare provides various services, and the company employs people with different backgrounds. The Joint Commission gained the impression that this linguistic and cultural diversity has a positive impact on the atmosphere in the facility.

²⁹ CPT/Inf/E (2002) 1 - Rev. 2010, p. 63

The Joint Commission had the impression that the range of training courses available to staff working in custody pending deportation could be improved. For example, there is no training course which deals with intercultural skills or recognising traumatisation. However, staff have a key role to play in recognising problems, since it is they who experience detainees in everyday situations. Staff should also be in a position to recognise the signs of trauma and to get psychiatric or psychological help.

Langenhagen Unit has two specially secured rooms which are each camera-monitored. The rooms each have a toilet set into the floor. The Joint Commission welcomes the fact that the toilet area is only visible on the screen in pixellated form. However, the toilets are in full view through a peephole. This seems inconsistent.

Legal advice is provided neither by internal nor external legal experts in the Langenhagen Unit. Once a week the church-run organisation "*Rafaelswerk*" offers detainees awaiting deportation advice on forced returns. However, this primarily serves to assist returnees in reintegrating into their home country.

Detainees awaiting deportation must be able to draw on legal advice. They should receive support when it comes to contacting lawyers, for example, or non-governmental organisations.

The Joint Commission regards the free legal advice which North Rhine-Westphalia offers to detainees awaiting deportation at Büren Prison as exemplary. It is organised by the local lawyers' associations and is funded by the *Land*.

The toilets are not located in the detention rooms, but on the corridors. After 8 pm detainees have to first ring a bell so that their door can be unlocked and they can then be taken to the toilet. The Joint Commission believes this is not ideal. However, according to staff, depending on the level of occupancy and an assessment of the security situation, doors are not always locked at night.

According to the European Prison Rules, each prisoner must have access at all times to sanitary facilities which are hygienic and protect their privacy.³⁰

The communal showers do not have partitions to protect detainees' privacy. Although, in view of the low occupancy rates, this does not currently pose a problem, a practical solution has been found in that detainees shower individually and at different times of the day. Nevertheless, the lack of partitions could become a problem when occupancy rates rise, which is why the Joint Commission deems it necessary that partitions be installed.

³⁰ Council of Europe, Recommendation CM/Rec(2006)2, No. 19.3

So far, the facility's house rules are only available in German. The visiting delegation was informed that an English translation was being done. This is expressly welcomed. However, translations into other languages, namely those most commonly spoken by detainees awaiting deportation, should also be provided, as is already the case in regard to individual leaflets.

1.7.2 – Preliminary result

The Ministry of Justice of Lower Saxony has in the meantime informed the Joint Commission in writing that Langenhagen Unit is to return to its original operations and that it will in future only be admitting detainees awaiting deportation. According to the Ministry, the Lower Saxony Enforcement and Admissions Plan has been amended. Since 1 January 2014 only detainees awaiting deportation may be booked into the Langenhagen Unit. The male sentenced prisoners who had latterly also been held there have now been moved to the main facility, Hanover Prison. Following the necessary structural measures (which will presumably be completed in late March 2014), female transit detainees, who had sometimes also been detained in Langenhagen, will in future be moved to Vechta Prison, Hildesheim Unit (which is responsible for female detainees). A working group comprising staff from Hanover Prison, led by the head of the institution, is currently working on a recommendation for reorganising the enforcement of custody pending deportation at Langenhagen Unit. The draft will likely be available in early March 2014. After the draft version has been examined by the Ministry of Justice of Lower Saxony and possibly again coordinated with the working group, it will be discussed with external people and groups in the context of a round table and the concept developed further.

1.8 – THE PRE-DEPORTATION DETENTION WING IN NUREMBERG PRISON

The Joint Commission visited Nuremberg Prison on 19/20 November 2013. As well as the penal and remand wings, it inspected the wings holding male and female detainees awaiting deportation.

The findings and recommendations of the Joint Commission regarding the other prison wings are set out under 3.4 below. Since the visit took place late in 2013, the Bavarian State Ministry of Justice had not yet submitted its statement at the time the Annual Report went to press. It will be included in the Annual Report 2014.

At the time of the visit Nuremberg Prison was holding 11 male and five female detainees awaiting deportation.

1.8.1 – Positive findings

Talking to staff and detainees awaiting deportation revealed that the fact that a social worker has been assigned to the Pre-Deportation Detention Wing is leading to an improvement in the detainees' situation. Studying the detainees' files also confirmed that this was the case, since they indicated that the social worker had in many cases mediated between the detainees and the management. The detainees awaiting deportation and the social worker herself also mentioned the great commitment shown by one member of the refugee assistance, who has been looking after the concerns of detainees awaiting deportation for many years.

1.8.2 – Recommendations of the Joint Commission

On the day prior to the Joint Commission's visit, the Bavarian State Ministry of Justice announced that as from 25 November 2013 Mühldorf am Inn Prison would become the central facility responsible for enforcing custody pending deportation. The Joint Commission welcomes this development, since when detainees awaiting deportation are accommodated together with sentenced prisoners and remand prisoners, even if the principle of the separation of these two groups is fulfilled, detainees have to put up with stricter restrictions than would be the case in a separate facility enforcing custody pending deportation.

Even though Nuremberg Prison will in future be responsible for enforcing custody pending deportation only when Mühldorf am Inn Prison is overcrowded, the Joint Commission feels it must still make those recommendations regarding the placement of detainees awaiting deportation based on its visit to Nuremberg Prison. These recommendations can in particular be taken into account when organising custody pending deportation at Mühldorf am Inn Prison.

Unlocking times for male detainees awaiting deportation are from 8.30 am to 12 noon on Mondays to Fridays and between 10.30 am and 3.45 pm at the weekend. From 4.15 pm onwards detainees awaiting deportation are locked into their rooms. Female detainees awaiting detention are allowed out of their detention rooms between 8 am and 12.30 pm on Mondays to Fridays and from 3 pm to 4 pm at the weekend. At the weekend they are allowed out of their rooms for 1 hour in the morning and 1 1/2 to 2

hours in the afternoon. Both the men and women are given access to the yard during these times. These hours should be extended. Since detainees awaiting deportation are not prisoners, they should only be subject to those restrictions which are absolutely necessary in regard to the enforcement of the deprivation of liberty. That is why the detention rooms should be unlocked for as long as possible and detainees should be given access to the courtyard and the shower rooms when they are allowed out of their rooms. An exemplary rule is applied in Berlin-Köpenick Pre-Deportation Detention Facility, where detention rooms are only locked during shift changeovers and access is provided to the recreation yard several times each day. In Ingelheim Detention Centre for Persons Required to Leave the Country unlocking times are between 7 am and 10 pm every day, and detainees have access to the recreation yard and the showers during those times.

According to the prison management, the social service lets detainees awaiting deportation make telephone calls every other week. Other calls may be authorised in urgent cases. However, it is often difficult for detainees to make calls to their home countries on account of the connection failing. The Joint Commission is aware that for security reasons on account of the facility also being used to enforce other types of detention, detainees may not use mobile phones. However, it would like to point out that the use of mobile phones is variously permitted in separate facilities enforcing custody pending deportation. At any rate, detainees awaiting deportation should be permitted regular access to a telephone which they can also use to phone abroad. The visiting times granted to detainees awaiting deportation (30 minutes per week) are comparatively short. Considerably longer visiting times should be granted, as is the case in the facilities in Ingelheim, Berlin and Büren.

Prison staff reported that no professional interpreter is brought in during the admission meeting and the initial medical examination of detainees awaiting deportation. Where communication problems arise, other detainees are, where possible, used to interpret, including prisoners. Sometimes communication is only possible using sign language, they said. Sometimes even day-to-day life in the unit was only possible by communicating by indirect means. This was also the conclusion the Joint Commission drew after it inspected the files of detainees awaiting deportation, since applications were often written by other people. Detainees awaiting deportation are often at particular risk on account of their background (flight, experiencing violence). Because they often suffer from mental

illnesses, custody awaiting deportation is a particularly stressful situation for those affected. The following is taken from the resolution adopted in 2011 at the 114th German Medical Assembly:

“It is a well-known fact that the health of detainees awaiting deportation deteriorates whilst they are in custody. Detrimental conditions include a lack of information about the reason for and duration of their detention, being accommodated together with prisoners, isolation, not being able to communicate due to language barriers, retraumatisation following trauma experienced during earlier arrests and periods in detention, and the lack of psychological and medical care.”³¹

Against this backdrop it is especially important that staff are able to get as broad a picture of a detainee's mental and physical state as possible. Firstly, drawing in other detainees to interpret does not guarantee that what those affected say is rendered fully and correctly in German. Secondly, it also does not ensure a confidential atmosphere during the meeting. It should be ensured that interpreters, where necessary external interpreters, are called in to take part in admission meetings and especially medical examinations. It must also be possible for staff and detainees awaiting deportation to communicate on a day-to-day basis in the wing. During its inspection of the pre-deportation detention wing in the women's prison the Joint Commission found that in some cases staff were not able to communicate with the detainees. When Mühldorf am Inn Prison becomes the central facility responsible for enforcing custody pending deportation, attention should be paid to the targeted selection of personnel to work in this area. Staff should have various cultural backgrounds and cover as large a spectrum of languages as possible.

The civil servants employed in the Pre-Deportation Detention Wing are not given any specific training in dealing with detainees awaiting deportation. However, this group of people find themselves in a very specific situation on account of their facing deportation. At Mannheim Prison, for instance, staff in the Pre-Deportation Detention Wing are given special training. The National Agency suggests organising similar courses for staff in the new unit to be set up at Mühldorf am Inn Prison.

The women's prison has a shower room which is used by all the prisoners and female detainees awaiting deportation. The latter are permitted to use the showers on weekdays during unlocking times. When enforcing custody pending deportation in a specialised facility, unrestricted access should in

³¹ German Medical Council (2011), 114th German Medical Assembly, Resolution, p. 125

future be provided to the shower rooms during unlocking times.

According to the house rules, prisoners are allowed to wear their own clothes. According to staff, detainees awaiting deportation must wear prison clothing. In order to approximate their situation as closely as possible to life outside the facility, it should be ensured that detainees awaiting deportation can wear their own clothes. Likewise, opportunities should be created for detainees awaiting deportation to wash their clothes.

1.9 – THE PRE-DEPORTATION DETENTION WING IN FRANKFURT I PRISON

The Joint Commission visited the Pre-Deportation Detention Wing in Frankfurt I Prison on 5 December 2013.

It inspected various parts of the facility, including the specially secured room, the pre-deportation detention wings and a recreation room, the sanitary facilities, the medical section and the sports hall. In addition, the Joint Commission spoke with one detainee awaiting deportation, a prison doctor and a prison chaplain. The Joint Commission was also given access to the files.

Frankfurt I Prison is responsible for enforcing remand detention against male juveniles and adults, as well as for enforcing custody pending deportation against male adults.

Detainees awaiting deportation are held separately from remand prisoners within the prison in a separate wing in Block C.

The wing for detainees awaiting deportation can hold a total of 42 detainees (38 in single cells plus four in a multi-occupancy cell). At the time of the visit the wing had 32 male detainees awaiting deportation in single cells.

The Joint Commission is of the opinion that detainees awaiting deportation must be held in separate facilities enforcing custody pending deportation and not in prisons. In separate facilities the custody pending deportation can be organised in such a manner that appropriate attention is paid to fulfilling the specific needs of detainees awaiting deportation.³²

Response: Reference was first made to the fact that one key change has been made since the Joint Commission's visit: Whilst 30 detainees awaiting deportation were still being accommodated in Frankfurt I Prison in early December 2013, that figure has dropped considerably since January 2014. Since then less than 10 detainees awaiting deportation

were held in the facility on average. This is linked to court decisions following the Federal Court of Justice's decision of 11 July 2013 to refer the matter to the European Court of Justice.³³ The prison thus needs to await a final ruling. Until then at any rate the detainees awaiting deportation are being placed in very good conditions in Frankfurt I Prison.

1.9.1 – Positive findings

During its visit the Joint Commission noted the good atmosphere in the facility. The head of the institution appears to put a lot of effort into granting detainees awaiting deportation as many freedoms as possible within the prison. This impression was also confirmed in the meetings the Joint Commission had with a Protestant pastor, for instance.

Frankfurt I Prison is a new building which was taken into operation in 2011. Block C III in which detainees awaiting deportation are accommodated thus also has new and modern fittings and furnishings. Each detention room has its own separate wet cell (with a wash basin and toilet), the necessary furnishings, plus a fridge, a TV, a radio and a kettle. The Block has a homely atmosphere on account of the painted walls and the plants. Detainees awaiting deportation are allowed out of their rooms all day and may also use the common room and the kitchen at any time during the day. The shower room is also accessible all day and has one shower with partitions to protect detainees' privacy.

Detainees awaiting deportation are offered a varied range of purposeful activities. As well as sports in the recreation yard, which has a small basketball pitch and table tennis tables, detainees can use the fitness and the cardio room between 9.30 am and 11.30 am on Mondays. On Fridays between 10 am and 11.30 am they can also do sports in the sports hall. The limited amount of time available for making use of the wide-ranging sports activities indicates that there are organisational issues which are linked to detainees awaiting deportation being held in a prison. As well as providing a range of sports activities, efforts are made to offer detainees awaiting deportation the opportunity to do simple jobs.

Since October 2013 members of Amnesty International have been providing legal advice in the facility.

The Joint Commission would like to emphasise the solution which Frankfurt I Prison has found in regard to monitoring of its specially secured rooms: The rooms are fitted with CCTV cameras, but the images in the toilet area are pixellated. Pixellation means detainees' privacy is protected, at the same time those

³² Cf. II.1.3 above

³³ Federal Court of Justice, NVwZ 2014, 166

concerned are visible in outline. Staff can recognise and prevent suicidal acts.

1.9.2 – Recommendations of the Joint Commission and response of the Ministry of Justice of Hesse

It turned out during the meeting with the doctor working in the medical section that communication problems have in the past often arisen with detainees awaiting deportation during the initial medical examination. Where necessary, another detainee was brought in to act as interpreter or in rare cases a professional interpreter was called in. In some cases no communication whatsoever had been possible with the person concerned. In the Joint Commission's opinion this is unsatisfactory. Involving another detainee during the medical examination breaks the relationship of trust between the doctor and patient. The other detainee is not bound to medical secrecy. Personal or even intimate discussions about physical problems or mental issues cannot thus take place.

Further, being able to communicate with the detainee awaiting deportation appears indispensable when it comes to diagnosing mental illnesses such as traumatisation. The Joint Commission recommends bringing in a professional interpreter during the initial medical examination whenever communication problems arise.

Response: Detainees awaiting deportation must be given a medical examination as soon as possible, i.e. generally one or two days after admission. Carrying out this examination as quickly as possible is especially important given the possible health consequences associated with its delay (e.g. unknown predispositions, illnesses, risk of infection for other detainees or staff, risk of self-harm). Practical experience shows that on account of the diversity of languages and dialects which the detainees awaiting deportation speak, finding a suitable professional interpreter is sometimes very difficult and time-consuming. In order to avoid delaying the medical examination, detainees are asked whether they will agree to another detainee being brought in to interpret or whether they wish a professional interpreter to be brought in. This method of procedure is also accepted and welcomed by detainees; no complaints have yet been raised against this procedure.

Since the detainees awaiting deportation are instructed about the fact that it is possible to bring in a professional interpreter at any time, it is left up to each detainee to decide of their own accord whether they wish to use another detainee to interpret for them.

As well as being responsible for detainees awaiting deportation, the doctors in the facility also look after the prisoners. According to the facility, so far only one of the doctors at Frankfurt I Prison has undergone any training in regard to traumatisation. The Joint

Commission got the impression that it would be important for all the staff in the medical section who come into contact with detainees awaiting deportation to do this training so that they are sensitised to the specific problems arising in this area.

The social worker who generally holds the initial meeting also felt it would make sense for him to take a training course on traumatisation.

Response: The service centre of the Hesse prison system, H.B. Wagnitz-Seminar, will enquire whether there is any need to run a training course in regard to traumatisation. If staff express an interest in the topic, the course will be offered and a suitable speaker found.

1.9.3 – Further suggestions by the Joint Commission for improving the conditions of detention and response of the Ministry of Justice of Hesse

So far the prison house rules have also applied accordingly to those in custody pending deportation. The facility informed the Joint Commission that house rules were being drawn up specifically for those in custody pending deportation. These should be translated into those languages most commonly spoken by detainees awaiting deportation.

Response: According to the director of Frankfurt I Prison, after the house rules for those in custody pending deportation have been drawn up they will be translated into the languages most commonly spoken by detainees awaiting deportation.

1.10 – HESSE RECEPTION CENTRE FOR REFUGEES IN GIESSEN – FRANKFURT AIRPORT BRANCH

The Joint Commission visited the Frankfurt Airport Branch of the Hesse Reception Centre for Refugees in Gießen together with the Federal Agency on 5 December 2013. The Airport Branch is responsible for accommodating refugees who, in accordance with section 18a of the Asylum Procedure Act, are held in the airport transit area whilst their asylum application is being processed. It is also used to accommodate those who have been denied entry up until such time as they are returned home. The facility can accommodate 100 people in 25 rooms. At the time of the inspection visit it was accommodating 38 people (27 men and 11 women). The facility did not notify the Joint Commission of how many minors were present, although it noted at least one child who was being accommodated there together with its family. The average duration of stay over the past three years was nine days.

The Federal Agency and the Joint Commission first inspected the detention rooms at Frankfurt am Main

Airport V Federal Police District Office in Building 177, where asylum applicants are also fingerprinted and photographed. The delegation then accompanied Federal Police officers to Building 587a, where another section of Federal Police District Office V and the Hesse Reception Centre for Refugees, Frankfurt Airport Branch is located. After speaking with officers of the Federal Police there, the Joint Commission introduced itself to the head of the facility and was shown around the building by him. It inspected several common rooms, the courtyard, a cinema room, Christian and Muslim prayer rooms, the library, a sports room, the landing for men travelling alone, and the landing for women travelling alone, families and minors who are regarded as capable of acting in the asylum procedure (*„asylmündig Minderjährige“*). They also spoke to a member of the church refugee support group of the *Caritasverband Frankfurt e.V.* (the Frankfurt branch of the welfare association of the Catholic Church in Germany) and a member of the *Diakonisches Werk Frankfurt* (the Frankfurt branch of the social welfare organisation of the Protestant Church in Germany), as well as to a vicar.

As the visit took place in late 2013 the Ministry of Social Affairs and Integration of Hesse had not yet submitted its statement at the time this Annual Report went to press. It will be included in the Annual Report 2014.

1.10.1 – Positive findings

The Reception Centre is clean, light and has modern furnishings. Detainees can use two common rooms with a TV which receives numerous foreign TV stations. In addition, there are two telephones which can be used for both incoming and outgoing calls. Further, there is a modern courtyard with a play area and a tartan field with a football pitch, as well as seating and green spaces. Detainees are free to move around the facility all day and night and can use the courtyard at any time. The Joint Commission welcomes the fact that women and men are accommodated in separate rooms but not in separate areas.

Detainees can contact the church social service between 7 am and 9 pm every day. An on-call service is available at night. In addition, a doctor holds surgery twice a week in the facility.

1.10.2 – Recommendations of the Joint Commission

Neither minors travelling alone who are regarded as capable of acting in the asylum procedure (i.e. they are over the age of 16) nor minors travelling with their

families are kept separate from the other adults. According to the social worker, in one case this led to an under-age refugee witnessing an adult attempting suicide. The Ministry for Social Affairs and Integration of Hesse admitted after the visit that the case most likely involved an underage female who was to be separated from her adult husband, as she had to be taken into care by the Youth Welfare Office. The husband thereupon attempted to hang himself using bed sheets. The incident was still being investigated.

As well as this individual case, the Joint Commission has fundamental concerns about whether accommodating minors travelling alone and families with underage children together with adults is in the children's best interests. Due to the especially stressful situation which those accommodated in the Reception Centre are generally under, it seems reasonable to assume that there is an increased risk of self-harm or suicide. This can lead to trauma or can exacerbate existing traumatisations, especially when minors experience such incidents or resistance against the enforcement of forced returns.

The Joint Commission welcomes the fact that each time a person is booked in they are examined by a doctor as soon as possible. However, special attention should be paid during these examinations to diagnosing traumatisations and suicidal tendencies. The examining doctor should have been specially trained in diagnosing trauma and other mental illnesses, or he or she should bring in a specially trained psychologist. It must be ensured that traumatisations are accurately diagnosed.

Detainees are informed of the house rules by means of notices hung in the common room in Arabic, English, French and Tamil. The rules also contain information about rights. An excerpt of this information is handed to new admissions in the form of a leaflet with pictogrammes. The house rules regulate the community life of those accommodated in the facility and can help to prevent conflicts arising. As is the case in facilities enforcing custody pending deportation, these house rules should therefore be available in various languages based on the detainees' most common countries of origin.

1.10.3 – Further suggestions for improving the conditions of detention

Women and juveniles can lock the doors to their rooms. It is not apparent why this opportunity is denied the men.

The staff of the church social service reported about cases in which the medical and psychological examination identified problems but these were not passed on the Federal Police, who nevertheless began the procedure for returning the persons in question. It

PRE-DEPORTATION DETENTION FACILITIES

should be examined whether communication between the *Land* and the federal authorities can be improved.

As described in the above, the Reception Centre is well-equipped. However, the head of the facility reported during the visit and the meeting with staff of the church-run social service also revealed that the facility cannot offer those accommodated there any supervised recreational activities. The documents sent to the Joint Commission after the visit likewise do not indicate that there are any courses or sports activities on offer. Especially when people with different cultural backgrounds are placed together it appears important, however, to actively encourage them to break up their daily routine. The facility should offer more courses at fixed times during the week, as otherwise there is a risk that those placed there will not use the opportunities which are theoretically available and will lapse into mere “safe-keeping”.

1.II – RENDSBURG PRE-DEPORTATION DETENTION FACILITY

The Joint Commission visited Rendsburg Pre-Deportation Detention Facility on 13 January 2014.³⁴ Custody pending deportation is enforced by way of administrative assistance for the Ministry of the Interior of Schleswig-Holstein and the Federal Ministry of the Interior. Rendsburg Pre-Deportation Detention Facility is a branch of Kiel Prison. It is located in a property which was built around 1900 and which was initially used as a youth detention facility. Since 2003 it has been used to accommodate male adult detainees awaiting deportation, since 2008 also male juveniles over the age of 16. The facility has a separate area in which minors are accommodated.³⁵ Detainees are held in a total of 40 detention rooms, four of which are double-occupancy rooms. According to the head of the institution, only one person is ever placed in each of the rooms. At the time of the visit the facility was holding 17 male detainees awaiting deportation. The average duration of stay over the past year was around 25 days.

Based on an administrative agreement, female detainees awaiting deportation are held in Eisenhüttenstadt Pre-Deportation Detention Facility. Rendsburg Pre-Deportation Detention Facility is also responsible for enforcing remand detention and detention prior to being brought before officials in an embassy or consulate. However, in 2012 and 2013 no-one was placed in such detention.

³⁴ Although the visit was made in January 2014, it is presented in connection with the special topic “custody pending deportation” chosen for the Annual Report 2013.

³⁵ A total of five juveniles were placed in the deportation detention facility in 2013 (seven in 2012).

As well as staff of the general prison service, employees of the *Kieler Wach- und Sicherheitsgesellschaft*, a private security firm, are employed in the facility. The latter staff, who are chosen in a targeted manner for employment in the Pre-Deportation Detention Facility, are dedicated staff who take training courses in preparation for their work.

The members of the Joint Commission held an initial meeting to discuss the planned visit and were given information about the facility. The director of Kiel Prison, the director of Rendsburg Pre-Deportation Detention Facility, the prison doctor at Kiel Prison, the prison vicar at Kiel Prison, and the head of the provincial advisory council responsible for the enforcement of custody pending deportation also took part in the meeting.

The delegation inspected the areas in which detainees awaiting deportation are detained, the sanitary facilities, several observation rooms and the specially secured room. In addition, the Joint Commission spoke with several detainees awaiting deportation, including detainees from Afghanistan, Syria and Morocco.

1.II.1 – Positive findings

The Joint Commission would like to expressly commend the efforts being made to significantly improve the conditions of detention. For instance, detainees are no longer locked in their rooms for a period of quiet after lunch, and they may wear their own clothing and wash that clothing in a washing machine which was bought specifically for that purpose. Likewise, the extension of shower times is to be welcomed. In addition, detainees can now use mobile phones. They may use their own phones so far as these have no camera. If that is not the case, the facility has a telephone which can be operated using pre-paid cards. Detainees also have access to the internet.

The Joint Commission also takes a positive view of the intercultural skills training course which is being planned for 2014 and plans to organise supervision for staff and the private security service.

1.II.2 – Recommendations of the Joint Commission and response of the Ministry of Justice, Europe and Culture of Schleswig-Holstein

The property very much resembles a prison. Although it was renovated in 2002 before being taken into operation as a facility enforcing custody pending deportation, there is no denying the influence its historic panoptical construction has on the building.

This is little suited to accommodating detainees awaiting deportation. The accommodation is spread across three floors which are linked by means of staircases. The detention rooms themselves are bare and at most functionally furnished. Sanitary facilities are integrated into each detention room, but have no separate ventilation and are separated off only by means of a moveable partition.

The floor area of a room measured during the visit was 7.67 m². However, documents indicate that considerably smaller rooms with a floor area measuring only 5.96 m² are also used. Deducting the sanitary area from the usable space, detainees have hardly any room to move around in. According to the head of the institution, most of the double-occupancy rooms are only used to accommodate one person. The deficits in terms of the size of the detention rooms is not compensated by the fact that the facility grants detainees relatively long unlocking times, namely between 7.30 am and 8.30 pm (rooms are only locked for a short time when meals are distributed at lunch-time and in the evenings). The facility has only a few other rooms which detainees can use (e.g. common rooms). During the visit the detainees also spent most of the time standing in the corridors or on the stairs. This leads to levels of noise which are stressful both for detainees and staff. The head of the institution is also aware of the problem and has already arranged for sound-protection measures to be taken.

The Joint Commission regards the conditions as little suited to enforcing custody pending deportation. Thus, when allocating detainees to the detention rooms, attention should be paid to allocating them to those rooms which have the largest floor space.

Response: First, the detention rooms are allocated according to how people of different nationalities but the same cultural and religious background can be grouped together in the wing. Account is also taken of the size of the detention room and detainees' wishes.

Rendsburg Pre-Deportation Detention Facility has several so-called observation rooms as well as a specially secured room. One of the observation rooms and the specially secured room, including the toilet area, are visible through a peephole.

According to Article 16 of the UN Convention against Torture, States Party must prevent acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in Article 1. Not observing the privacy of persons detained in custody can constitute inhuman or degrading treatment. It can also be derived from Article 1 para. 1 of the Basic Law that the privacy of a person performing bodily needs must be guaranteed.

On the occasion of its visits the CPT has repeatedly emphasised that privacy must be guaranteed when a

person is using the toilet or washing themselves. This also applies to so-called high-security cells, which are comparable to observation rooms or specially secured rooms, for instance.³⁶ Sanitary facilities must at least be partially screened off.³⁷ The National Agency shares this view. A decision on whether deviations are possible where there is a great risk of self-harm or suicide can only be taken after carefully examining each individual case. Such decisions must be documented.

The grounds for the placement must be documented on the form (Annex 9) used to order special security measures. A distinction is also drawn between the different types of detention rooms. Happily, according to the submitted documents, the facility only very rarely places detainees in the specially secured room or in one of the observation rooms. Placement in the specially secured room was only ordered twice in 2013 following special incidents. Placement in observation rooms (both with screened-off and not screened-off sanitary facilities) was ordered on 11 occasions in 2013.

Response: Three out of the four available observation rooms are fitted with the sanitary facilities which are customary in a facility enforcing custody pending deportation, including a screened-off sanitary area. In contrast to general standards, the other observation room has a solidly built bed with a mattress and a sanitary area with a toilet and stainless steel washing stand which are not screened off. This room is used to accommodate those who have already harmed themselves or have announced that they intend to harm themselves. These orders are documented on a special form, citing grounds.

The detainees have limited opportunities for engaging in activities outside of their detention rooms. They can use a recently installed prayer room, a sports room, a table tennis table and a table football. They are not offered any means of employment. They cannot prepare their own meals.

The facility has a sports yard on which various sports are also offered under instruction. However, the provincial advisory council's annual report 2012 shows that these courses are often cancelled due to a shortage of staff. Courses offered by volunteers who regularly visit the facility, as well as a conversation and a painting class which are offered once a week break up the daily routine.

Nevertheless, the range of recreational and purposeful activities should be extended, particularly in view of the inadequate size of the detention rooms. Creating the means for detainees to take meals together in a common room might help to improve

³⁶ Cf. e.g. CPT/Inf (2010) 16, margin no. 17

³⁷ Cf. CPT/Inf (2009) 5, margin no. 109

the overall situation. Several detainees criticised the food.

Response: The possibility of providing cooking facilities is being examined.

In the opinion of the Joint Commission, detainees awaiting deportation may not suffer any detriment to their health on account of their detention. Those who are traumatised generally find their health deteriorating under the conditions of detention. For that reason, traumatising must be accurately diagnosed when detainees are admitted. Where language barriers exist, a professional interpreter should be brought in. Staff should also be able to recognise trauma so they can call in psychiatric and psychological help.

The Joint Commission recommends examining the need for training courses and initiating the corresponding measures.

Response: The prison doctor (a general practitioner) at Kiel Prison is responsible for the provision of health care to detainees awaiting deportation. He also investigates possible traumatisation when detainees are admitted to the facility. In addition, it is being examined whether the cooperation between Kiel Prison and the Centre for Integrative Psychology (ZIP) at Kiel University can be expanded and whether the ZIP could also work a certain number of hours on a consultative basis in the facility.

Detainees awaiting deportation are taken to Kiel Prison for treatment when they are ill, since it is only there that general health care provision can be guaranteed. After placement in the specially secured room and following other special incidents detainees were transferred to Kiel Prison, sometimes for several days. The Joint Commission was given a list of special incidents in 2013. The list contains one case of a mentally ill detainee awaiting deportation who was transferred to Kiel Prison on 12 December 2013 and who remained there until he was deported on 10 January 2014. The Joint Commission requests further details regarding this specific case from the Ministry of Justice, Culture and Europe.

Transferring detainees awaiting deportation to Kiel Prison may violate the principle of the separation of prisoners and detainees awaiting deportation if detainees are then accommodated together with sentenced prisoners and remand prisoners.

Response: In the past detainees awaiting deportation have been transferred to Kiel Prison in only a few exceptional cases. The grounds therefor were, for example, substitution therapy or the need for more intensive medical care provision. Another reason was the behaviour of one detainee and the need to place him in a specially secured room to calm him down. Detainees are immediately returned to the Pre-Deportation Detention Facility as soon as their health has stabilised.

The detainee referred to was arrested on 2 December 2013 by Flensburg Federal Police. The judge issued an order on 3 December 2013. The detainee had talked about suicide, shown evidence of self-harm and threatened to kill himself and others or to take hostages. He was examined in a clinic on 12 December 2013 after fainting and was then taken to Kiel Prison on account of the behaviour he evidenced there. As his behaviour was regarded as unpredictable and latently threatening, he was kept there until he was deported to Denmark on 10 January 2014.

2 – POLICE STATIONS

Recommendations were made concerning	Singen Police Station	Konstanz Police Station	Friedrichshafen Police Station	Reutershagen Police Station
Fire alarms			x	x
Natural light	x	x		
Mattresses	x	x		
Information about rights	x	x	x	x
Frequency of checks	x		x	
Privacy				x

In 2013 the Joint Commission visited four police stations in Baden-Württemberg and Mecklenburg-Western Pomerania. Statements submitted by the Ministry of the Interior of Baden-Württemberg and the Berlin Senate Department for the Interior and Sports following visits in 2012 are also included below.

2.1 – VISITS TO MANNHEIM EAST, MANNHEIM CITY CENTRE, HEIDELBERG CITY CENTRE AND HEIDELBERG SOUTH POLICE STATIONS IN 2012

The Joint Commission visited Mannheim East and Mannheim City Centre police stations on the night of 2 November 2012. Mannheim East Police Station can hold nine people in seven cells, Mannheim City Centre two in single cells. No-one was being held in custody in either of the police stations at the time of the visit.

The Joint Commission was given access to two investigation files of the Mannheim Public Prosecution Office containing reports made against police officers regarding offences committed in the custody suites. They gave no occasion for further comment.

The Joint Commission visited Heidelberg City Centre and Heidelberg South police stations on 3 November 2012. Heidelberg City Centre Police Station has a total of 10 single-occupancy detention rooms. Some of the detention rooms can be monitored by CCTV camera. Heidelberg South Police Station has four single-occupancy detention

rooms, some of which can be monitored by CCTV camera. No-one was being held in custody at the time of the visit.

2.1.1 – Recommendations of the Joint Commission and response of the Ministry of the Interior of Baden-Württemberg

None of the detention rooms in any of the police stations had either a fire alarm or dimmable lighting. In addition, none of the detention rooms in Mannheim City Centre Police Station or in either of the police stations in Heidelberg had any daylight, which is why they are not suitable for detaining people for any length of time. New buildings should be constructed so that direct, natural light is guaranteed, even during short periods of custody.

Response: The Ministry is seeking to fit the detention rooms with fire alarms and night lights as soon as possible in consultation with the building authorities. The recommendation that when planning new buildings provision should be made for direct natural light has been passed on to the competent Office for Assets and Construction Management.

Some of the detention rooms in the police stations had the option of conducting CCTV surveillance. However, it was not clear in the detention rooms themselves whether the cameras were on or not. Also, contrary to the Police Act and the Police Custody Regulations, detainees were not always informed that they may possibly be monitored by CCTV camera. At Heidelberg City Centre Police Station it was clear

that the screen linked to those detention rooms fitted with CCTV cameras is located between other surveillance screens at the central communications table. The Joint Commission fears that officers will not always be aware of situations playing out on the screen. It was even reported at Heidelberg South Police Station that when few staff are on duty and because the custody suite is in the basement, instead of being checked in person the detention rooms are sometimes monitored using the CCTV cameras and intercoms. The Joint Commission pointed out that video surveillance can on no account be a substitute for regular, direct checks, and that it could at most be used as an additional measure.³⁸

Response: The officers will once more be instructed that they must inform detainees when CCTV surveillance is in operation. In addition, pictogrammes will be procured and those signs that have already been acquired affixed to the doors to the detention rooms.

The detention rooms in both Heidelberg City Centre and Heidelberg South police stations are in the basement and need to be accessed through a number of doors. Those in police custody can only draw attention to themselves via an intercom or when checks are carried out. In view of this, the Joint Commission would like to point out that the intercom system must be checked at regular intervals to ensure that it is still functioning properly and that these checks should be recorded.

The CPT had already recommended on the occasion of its visit to Heidelberg City Centre Police Station in 2005 that custody suites should be equipped with mattresses.³⁹ Nevertheless, none of the facilities visited had in the meantime acquired flame-resistant, washable mattresses.

Response: The Ministry of the Interior has recommended that the police stations acquire suitable mattresses for detention rooms as their respective budgets permit.

There is no standard practice when it comes to informing detainees about their rights. The officers at Mannheim East Police Station said that in the case of custody enforced under the Police Act they generally only informed detainees orally and that an interpreter was not always called in. The fact that information about rights has been given is only recorded in writing in the case of major incidents by the service which is then established. Mannheim City Centre Police Station, by contrast, reported that officers regularly use a form to give information about rights in writing. Information was also given by the arresting officers and an entry made in the files. Where the person

concerned was handed over to a detention facility, the facility was not informed whether the person had actually been given information about rights or not, since officers could not access the entry. That is why rules on the provision of information about rights should be standardised and legal instructions handed out as soon as possible and always in writing. Information regarding the right to notify relatives, to legal advice and to see a doctor should be included. Corresponding forms should be available in the same languages as the forms required under the Code of Criminal Procedure. All those officers dealing with persons taken into custody should be able to understand the information about legal rights given to those in custody.

Despite the detailed rules set out in No. 1.4 of the Police Custody Regulations, no standardised procedure was adopted regarding the custody record books kept in the police stations. At Heidelberg South Police Station the checks were not always recorded in the custody record book. In some cases entries were not made for several hours or it could only be deduced from other entries that a doctor had in the meantime visited the person in question. Further, the Joint Commission noted at both police stations in Heidelberg that doctors' examinations were sometimes recorded in the custody record books, sometimes in the case files. In addition, there was disagreement regarding whether the fact that information about rights had been given was to be recorded on paper or electronically. In none of the police stations did the officers sign that they had carried out the checks. It should, therefore, be examined whether these shortcomings should, for example, be remedied by having supervising officers regularly check the custody record books and indicate when errors have been made.

Response: The police stations' attention will be drawn to the fact that they must uniformly apply the provisions under section 28 (2) of the Police Act and in the Police Custody Regulations, including detailed regulations regarding information about rights and custody record books. Custody records are regularly checked during shift change-overs by the supervising police office taking over.

2.1.2 – Other suggestions by the Joint Commission for improving the conditions of detention and response of the Ministry of the Interior of Baden-Württemberg

Mannheim East Police Station was in a bad state of repair, i.e. both the custody suite and those areas available to the officers. In some cases these did not even meet the standards which the Joint Commission applies to detention facilities. The Joint Commission got the impression that the officers do not feel that

³⁸ Cf. No. 4.3 of the Baden-Württemberg Police Custody Regulations

³⁹ CPT/Inf(2007) 18, margin no. 39

their working conditions reflect any appreciation of the work they put in. It is obvious that this also has an impact on the working atmosphere and, ultimately, on how those taken into custody are treated. The sanitary facilities in Mannheim East Police Station in particular should therefore be repaired as soon as possible.

Response: The competent Office for Assets and Construction Management in Mannheim has been notified of the structural defects in Mannheim East Police Station. The measures necessary will be carried out as the building authorities' budget permits.

Some of the detention rooms in Mannheim East Police Station do not have integrated sanitation. Detainees can communicate with the duty officer via an intercom and ask to be taken to a toilet. However, given the strong smell of urine in one of these detention rooms, some detainees must be relieving themselves on the floor. Toilets should be installed in all the detention rooms.

Response: The toilets in the custody suite will be repaired. Priority is being attached to installing toilets in the detention rooms. Those which are soiled will be cleaned to professional standards and disinfected.

The detention rooms in both facilities, but especially in Mannheim City Centre Police Station, where detention rooms have no direct fresh air, were also noticeably stuffy. Rooms should be aired sufficiently frequently.

Response: The ventilation problems are difficult to remedy. Due to where the buildings are located and the fact that some of them are quite old, the air in the detention rooms' anterooms can sometimes get stuffy. However, most of the detention rooms have ventilation systems. As an alternative, rooms are regularly ventilated by tilting the windows.

Depending on the state detainees are in, they should be given the opportunity to wear clean clothing whilst they are in custody, especially during review hearings etc., however. To that end the facilities should keep clothes ready, for example hand-me-down jogging suits. In addition, it should be examined whether it is possible to give detainees sufficient clean clothing when they are released, for example disposable garments.

Response: In future overalls will be made available which can be handed out to the detainee and billed later on. Alternatively, other spare clothes could be kept at the police stations which could also be worn after release.

In the computer program "ComVor" which is used to process all custody procedures the forms must each be selected and filled out individually. When a particular procedure is completed no check is carried out to see whether all the required forms have been processed, especially those regarding the provision of

information about rights. A custody procedure can, therefore, also be completed without any information about rights being given. The information forms on custody in accordance with section 28 of the Police Act are only available in the program in German. In addition, they do not contain all the necessary points which need to be addressed.

Response: The "ComVor" computer program does contain all those templates and forms relating to the measure. Documents need to be selected individually since they are not all required in each individual case. A review of the recommendations regarding plausibility, having forms available in other languages and updating these forms has been commissioned.

Wearing name or number badges increases transparency in dealings between officers and detainees. The Joint Commission therefore suggests once more examining whether such badges could be introduced.

Response: All police officers have been given a name badge. They wear them on a voluntary basis. The relevant regulations oblige officers to identify themselves by showing their ID when requested to do so by persons affected by measures and to state their name and police station or to present a business card. Officers can also be identified by means of standard incident reports and custody records.

The Joint Commission asked for a statement regarding the extent to which officers are trained in situations typically arising in police custody.

Response: The police training curricula cover "Custody", "Minimum Intervention", "Proportionality" and "Basic Rights". In addition, there is a separate module on "Custody" as part of "Fighting Crime". In that module legal conditions, as well as practical aspects of custody and the specific features of helpless, sick, mentally disturbed individuals and drug addicts are addressed. Officers are also given situation training so that they can put into practice what they have learned in theory. The topic "Custody" is regularly included in deployment training conducted by local police stations and is also addressed when appropriate.

2.2 – VISIT TO BERLIN CITY POLICE CUSTODY IN 2012

On 14 December 2012 the Joint Commission visited Berlin City Police Custody. The facility can hold 25 people – in 10 single cells, two cells for five people, one for three and one for two people. The facility is responsible for custody generally lasting up to 12 hours. Those who need to be kept in custody for longer are transferred to the Tempelhofer Damm Central Custody Facility.

The Joint Commission inspected two detention rooms, the sanitary area, the treatment room and the watch room. It talked to the supervising police officer

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and other staff. It was not able to talk to the only person in custody at the time of the visit on account of the state this person was in. Afterwards the Joint Commission asked for additional information to be passed on regarding three incidents which occurred in custody, though it found no reason to make any recommendations.

2.2.1 – Positive findings

Berlin City Police Custody gave the impression of being clean and well organised overall. For example, officers have set up a board in the watch room on which they enter the names of those people being detained in the cells and indicate any peculiar conduct using magnets, for example risk of suicide, alcoholic state. This is an example of a simple and affordable measure which enables detainees at risk who require special attention to be identified during shift changes, for instance.

The information forms for detainees detained in custody under police law are very detailed and easy to understand. Particular mention should be made of the information sheet given to juveniles, which is exemplary.

Other positive aspects are the permanent presence of a doctor at night and the fact that *Fixierung* (physical restraint) is not used.

Staff working in the custody suite take part in a one-week training course every two years. The course also addresses issues specific to police custody, such as learning and consolidating intercultural skills.

2.2.2 – Recommendations of the Joint Commission and response of the Berlin Senate Department for the Interior and Sports

None of the detention rooms was fitted with a fire alarm. In the event of fire, detainees have to shout out to get officers' attention. According to officers, the detention rooms are checked every 15 minutes. Further, the detention rooms did not have a night light. Without dimmable light detainees only have a choice between bright light or total darkness once the outer door is locked. Whilst bright lights stop them sleeping, they cannot find their way around easily in the dark, which is why they cannot locate the intercom quickly in the event of an emergency, leading to a risk of injury.

Response: Fire alarms are currently being fitted in Berlin South-West Police Custody. There are plans to fit such fire alarms in other custody facilities in Berlin. The recommendation regarding night lights is being examined and will be successively implemented.

The custody suite only has one mattress for use in all of the detention rooms. It is recommended that a

large number of washable, flame-resistant mattresses be acquired and made available to detainees, in particular those taken into custody at night.

Response: Detainees who remain in police custody in Berlin for more than four hours are transferred to Tempelhof, where sufficient mattresses and bedding are available. Only those who are detained on account of excessive consumption of narcotics remain in Berlin City Police Custody for any length of time in individual cases. Taking this into account, the facilities available in Berlin City Police Custody are deemed to be adequate. In addition, where necessary additional equipment can be transferred at short notice.

The exemplary information sheet for detainees is available in English, Turkish, Arabic, Polish and Russian. The Joint Commission would welcome the information being made available in other languages as well, ideally in the same ones in which information under the Code of Criminal Procedure is available.

Response: The number of languages is regarded as adequate. Should another language be required in an individual case, professional interpreters can be called in at any time. Nevertheless, the police in Berlin will look at the first six months of 2013 and will provide additional translations if these are required. It is not regarded as expedient to have forms available as a precautionary measure if they are not in fact needed. The same procedure will be applied to the information sheet handed to juveniles.

2.3 – KONSTANZ, SINGEN AND FRIEDRICHSHAFEN POLICE STATIONS

The Joint Commission visited Konstanz and Singen police stations on the night of 31 May 2013. It paid a second visit to Konstanz Police Station on the night of 1 June 2013 and visited Friedrichshafen Police Station on 2 June 2013.

The Joint Commission spoke to officers in all the facilities it visited, it inspected the custody suites and was given access to the custody record books. There was no-one being held in custody at the time of its visits.

Singen Police Station has seven, Konstanz Police Station 10 and Friedrichshafen Police Station five single-occupancy detention rooms.

The Joint Commission visited Konstanz Police Station twice, as on its first visit it was only given access to the station around one hour after arriving there. The Joint Commission therefore broke off the visit, since it could no longer be classed as being unannounced. The next day, by contrast, it was granted access to the custody suite without further ado.

2.3.1 – Positive findings

Checks are noted in the custody record books in all the police stations along with the name of the officer doing the round. All those officers the Joint Commission met during its visits make every effort to be of as much help to detainees as possible. Where possible, they accompany them outside so that they can smoke, for example. In addition, all the facilities can provide those who have no money with food which is delivered either from local prisons or, in the case of Friedrichshafen Police Station, from an old people's home which is nearby. The Joint Commission welcomes the fact that all the detention rooms are fitted with dimmable night lighting and that Friedrichshafen Police Station even has a light which permits those in custody to sleep as well as read.

2.3.2 – Recommendations of the Joint Commission and response of the Ministry of Justice of Baden-Württemberg

Friedrichshafen Police Station does not have fire alarms fitted in its detention rooms. These should be retrofitted. The Joint Commission would like to point out that detention rooms like the ones in Konstanz and Singen do not have natural light and are therefore not suitable for longer periods of detention.

Mattresses are available in all the detention rooms in Friedrichshafen Police Station. In Konstanz and Singen, by contrast, no mattresses were available. The Joint Commission recommends acquiring washable, flame-resistant mattresses for these police stations too.

Response: *Based on the recommendations made following the visits to the police stations in Mannheim and Heidelberg, police stations across Baden-Württemberg have been directed to immediately procure and provide mattresses, blankets and spare clothing. As regards the usability and functioning of intercoms, toilets, fire alarms and night lights, the police stations have been requested to check their detention rooms and – where this is not yet the case – to ensure the required standards are met at short notice. Since the police stations visited only accommodate people for a short period, there is not felt to be any acute need to take any action regarding daylight.*

All the detention rooms in the police stations in Singen and Konstanz are fitted with CCTV cameras which can be used for surveillance purposes but not recording.⁴⁰

Different practices are applied in the individual police stations as regards informing detainees about their rights. Those taken into custody are informed about their rights orally in all the police stations

visited. They are also handed these legal instructions in writing. According to police officers, those who are under the influence of alcohol or drugs and who are not responsive are not informed about their rights or if this is not possible due to language difficulties. In the latter case, attempts are made to call in a professional interpreter, but this is not always possible, particularly at night. As a result, these people are not informed about their rights. In Konstanz the Joint Commission was also informed that detainees were never subsequently informed about their rights, whilst police officers in Singen and Friedrichshafen stated that they also give information, where necessary, when a person is released.

The manner in which the fact that someone has been informed about their rights is recorded in the custody record books does not appear adequate in Konstanz and Singen. For example, it is only possible to tick a box to indicate whether someone has been informed about their rights or not. If the “no” box is ticked, it is not possible to indicate why that information was not given. Also, no provision is made for noting that information was subsequently given, for example upon that person's release. The custody records at Friedrichshafen Police Station, by contrast, contain a field “Information about the right to notify given” and “Information on legal rights subsequently given”. Nevertheless, it is not possible to indicate why, in an individual case, it was not possible to give this information. Further, in several cases in all the police stations visited neither “yes” nor “no” had been ticked. Information about legal rights should be handed to the person concerned as soon as possible and always in writing. Information about the right to notify relatives and a legal advisor and to be examined by a doctor should also be included. Relevant documents should be available in the same languages as the forms required in accordance with the Code of Criminal Procedure. It would be useful if it were not possible to complete a custody procedure in “ComVor” unless the forms regarding the provision of information about legal rights have been processed.

Response: *In accordance with the Police Custody Regulations, detainees must be immediately informed of the reason for their being taken into custody and permissible appeals in a generally comprehensible form and, if necessary, the obligation regarding the provision of information and information about legal rights and notification must be observed. The relevant templates and forms currently available in “ComVor” are easy to find and user-friendly. When the system was introduced it was decided that the forms regarding information about legal rights were to be made available via the intranet in all commonly spoken languages. Where necessary, an interpreter must be called in to assist in informing the person concerned about their legal*

⁴⁰ See II.2 above

rights. According to the Police Custody Regulations, the times of the checks on detainees must be recorded. There are plans to revise the Police Custody Regulations this year. The suggestions made by the Joint Commission, in particular as regards standardising and examining the available information about legal rights across Baden-Württemberg, will be addressed.

The Joint Commission welcomes the fact that detention rooms are inspected every one to two hours at Konstanz Police Station when they are occupied. At Singen and Friedrichshafen police stations checks are carried out at considerably longer and irregular intervals. For example, in one case in Singen the following was noted in the custody record book: Booked in at 8.40 pm, first recorded check at 4.05 am. This not only represents a risk for the detainee, but also exposes police officers to unnecessary liability. In line with No. 4.3 of the Baden-Württemberg Police Custody Regulations, fixed times for checks should also be introduced in Friedrichshafen and Singen, and these should be recorded in the custody record book. Regular checks of the custody record books should include checking whether these times are being observed and the records are being properly kept.

The Joint Commission feels that it is problematic that all the police stations at times only have one police officer on duty. When checking detainees or in the event of an emergency, a patrol has to be called in so that two officers are on hand to enter the detention room. In an emergency the ensuing delay can put detainees in considerable danger.

Response: The frequency and times of the checks are based on the circumstances of each individual case. The intervals should be no longer than two hours and should be guaranteed by allocating the officers on duty accordingly. In exceptional cases in which a delay, for example by having to call in a patrol car, would lead to the person in custody being at concrete risk, the police officers on duty must immediately initiate the necessary measures. The police stations will again be notified that they must observe the relevant guidelines.

2.4 – REUTERSHAGEN POLICE STATION

The Joint Commission visited Reutershagen Police Station in Rostock on 8 August 2013. It has 10 single cells and a new central holding place, which will be taken into operation in 2015. A total of 892 people were taken into custody in 2012. No-one was being held in custody at the time of the visit.

The Joint Commission inspected the custody suite in the police station, together with the doctor's examination room and the sanitary facilities, and it was given access to the custody record book. It talked

to the supervising police officer and to two police officers on duty.

2.4.1 – Positive observations

The custody suite at Reutershagen Police Station was very clean and in perfect condition.

According to the deputy supervising officer, the police station disburses the costs arising when the doctor examines detainees in advance, which ensures that health care provision is guaranteed at all times.

In addition, the Joint Commission is pleased to note that Reutershagen Police Station does not use *Fixierung*.

2.4.2 – Recommendations of the Joint Commission and response of the Ministry of the Interior and Sports of Mecklenburg-Western Pomerania

The Joint Commission would like to point out the need to immediately inform detainees about their legal rights when they are taken into custody under police law. The right to notify relatives and to consult a doctor or legal counsel is of particular importance in this context. The CPT is of the same opinion.⁴¹

The Joint Commission was informed that those taken into custody under police law are only informed about their rights orally by the police officer booking them in. There is no written information sheet and the fact that information is given orally is not recorded. It is therefore not possible to check whether a person has in fact been informed about their rights or not. It would be worth considering laying down the obligation to inform detainees of their rights and the written documentation thereof in the relevant statutory provisions.

The Joint Commission also recommends using information sheets to inform detainees about their rights in brief, summary form, as is standard practice in other *Länder*. These forms should be available in all commonly spoken languages, in the same way as forms required in accordance with the Code of Criminal Procedure. Where the state a person is in precludes their being informed about their rights at the start of their period in custody, this could possibly be done at a later point in time. This fact should also be recorded in the custody record book.

Response: Pursuant to section 56 (1) of the Act on Public Safety and Order of Mecklenburg-Western Pomerania, a detainee (in custody, compulsory detention or in prison) must be informed of the reason for the measure and admissible legal remedies. In Mecklenburg-Western Pomerania, detainees are informed of their rights orally.

⁴¹ Cf. CPT/Inf/E (2002) 1 - Rev. 2013, p. 10

The police informs those who do not speak or understand German about their rights through a professional interpreter. The method applied in Mecklenburg-Western Pomerania goes far beyond the required minimum, namely providing information on a sheet.

There are no indications of any problems or complaints in connection with this modus operandi.

The detention rooms in Reutershagen Police Station are not fitted with fire alarms. The Joint Commission recommends checking all the police stations in Mecklenburg-Western Pomerania to see whether they have fire alarms in their detention rooms and to retrofit them in order to guarantee the safety of detainees in the event of fire.

Response: All the custody facilities run by the Land police have been instructed to fit fire alarms wherever these are not yet available.

2.4.3 – Further suggestions by the Joint Commission for improving the conditions of detention

Four out of the 10 detention rooms have a toilet which is in full view through a peephole. These rooms do not guarantee detainees' privacy. However, the custody suite has a separate washroom where there is a toilet which is not visible and which detainees may ask to use. The Joint Commission feels this is a practicable solution as long as people are made aware that a toilet is available which is not in full view from the outside.

The police officers working in the custody suite were not wearing name or number badges. The Joint Commission suggests examining whether such identification could be introduced.

3 – PRISONS

The Joint Commission visited two prisons in the period under review. The statements submitted by the Ministry of Justice of Thuringia following two visits in 2012 are also included below.

3.1 – VISIT TO TONNA PRISON IN 2012

The Joint Commission visited Tonna Prison on 7 November 2012. Tonna Prison is responsible for adult male offenders serving their first sentence of more than five years and those serving regular sentences of more than two years and six months up to life imprisonment, as well as for male remand detainees over the age of 21. It also has an open wing.

The Joint Commission inspected a penal detention wing, including sanitary facilities, the admissions area, the visiting area, the yard, the depository, specially secured rooms containing no dangerous objects, “plain detention cells” (*Schlichthafräume*) and residential groups. It held meetings with the head of the institution, with staff in various wings, staff council representatives, representatives of the prisoner council and two prisoners.

The prison has a roll of 589. On the day of the visit it had an occupancy of 522 prisoners. The closed wing is spread across six blocks which can each hold a maximum of 90 prisoners, split into residential groups comprising 17 prisoners each. Each residential group has a large common room with a kitchen and television.

3.1.1 – Positive findings

The residential groups have dedicated employees. This promotes a good atmosphere between prisoners and prison staff, which prisoners and representatives of the prisoner council confirmed in their meetings with the Joint Commission; both stressed the good atmosphere.

The long unlocking times are also noteworthy (e.g., on weekdays for non-workers: 6.30–6.50 am, 11.45 am–12.30 pm and 4–9 pm). This enables prisoners to choose themselves when they wish to take a shower. The showers in the prison are fitted with a lockable cubicle, allowing prisoners to shower in private if they wish to do so for religious or personal reasons.

One project which was in its test phase during the visit to Tonna Prison is also worthy of note. The project is called “multio”, and is a communication system for prisoners which combines 50 TV stations,

a telephone and internet access. Prisoners are offered this package at EUR 14.95 a month. They can use the system to make telephone calls from their cell to previously checked and enabled numbers. They can also send emails, after they have been checked for content, to enabled addresses. The project gives prisoners access to enabled websites, for example that of the Federal Employment Agency, and gives them the opportunity to familiarise themselves with the internet.

Finally, the Joint Commission took positive note of the cleanliness of the entire prison.

3.1.2 – Recommendations of the Joint Commission and response of the Ministry of Justice of Thuringia

The prison has so-called “plain detention cells”, in which the furniture is secured to the floor and the sanitary facilities are made of stainless steel. The plain detention cells the Joint Commission inspected on the ground floor of the housing blocks had windows fitted with frosted glass. This not only stops people looking in, it also stops natural daylight getting in. According to the head of the institution, these windows had been fitted because a path runs past the rooms on the ground floor. The aim was to prevent prisoners inside contacting others outside.

The Joint Commission is of the opinion that a prisoner must be able to see out the window. It recommends removing the frosted glass. The head of the institution plans to replace the windows with one-way glass.

Response: The frosted glass windows have been replaced by plexiglass which allows those inside to see out the windows. The suggestion that a window film be fitted to prevent anyone looking into the cell has also been taken up.

As regards the use of the plain detention cells, the head of the institution stated that they were used to enforce both special precautionary measures pursuant to sections 88 (2), nos 1 and 3 and measures pursuant to section 17 (3) of the Prison Act. In contrast to disciplinary detention cells (*Arresträume*), the law does not contain any regulations on the use of these plain detention cells. The Joint Commission is therefore of the opinion that placement in such plain detention cells must be very carefully considered. Particularly in view of the lack of definition by law and the various measures which are enforced in these plain detention cells, the conditions for their use must be clearly determined. In order to prevent legal uncertainty

amongst both prisoners and staff, it must be clear which measure is being enforced so that, if necessary, the legal basis for the measure is obvious. Further, the use of these cells must be carefully documented since different conditions apply and therefore different grounds arise therefor.

Response: The head of the institution has directed that occupancy of the plain detention cells be documented fully and in detail according to the ground for the placement, for instance in occupancy record books. In addition, the central IT office serving prisons in Thuringia has been asked to update existing EDP programs so that it is possible to trace back the occupancy history.

When inspecting the files the Joint Commission found that the forms used to order precautionary measures do not draw a distinction between segregation pursuant to section 88 (2), no. 3 of the Prison Act and solitary confinement in accordance with section 89 (1) of the Prison Act.

Response: The suggestion that separate forms be used for cases under section 88 (2) no. 3 and those under section 89 (1) of the Prison Act has been examined. However, there is not felt to be any need to introduce separate forms, since solitary confinement is merely a special form of segregation. The forms also provide that the ordering of the measure and its termination be precisely documented so that time-limits are observed.

The house rules applicable to the various groups of prisoners are only available in German. They should be made available in those languages most commonly spoken by prisoners.

Response: The house rules will be revised upon the entry into force of the Thuringia Prison Act and then translated into the languages most commonly spoken by prisoners.

3.2 – VISIT TO GOLDLAUTER PRISON IN 2012

The Joint Commission visited Goldlauter Prison on 8 November 2012. Goldlauter Prison is responsible for the execution of terms of imprisonment of no more than one year and six months, remand detention imposed against adults, juveniles and youths, and custody pending deportation. The closed wing has a roll of 298, divided into 150 single and 148 multi-occupancy cells. An additional 22 prisoners can be accommodated in the open wing.

At the time of the inspection visit the facility had an occupancy of 296 prisoners, 16 of whom were in the block for day release prisoners and 24 in the semi-open block. Three people were in custody pending deportation, 120 in remand detention. The Joint Commission in particular inspected the wings for sentenced prisoners, for remand prisoners, for detainees awaiting deportation, the open wing and the

semi-open wing, the admissions area, the “riot-proof cells” with CCTV cameras, the specially secured room containing no dangerous objects and the options for enforcing *Fixierung*.

The Joint Commission talked to the head of the institution, as well as to staff in the general prison service and the specialist services. In addition, it talked to three prisoners who were being detained in the plain detention cells at the time of the visit, including one detainee awaiting deportation, and six other remand prisoners and sentenced prisoners, some of whom were being held in multi-occupancy cells.

3.2.1 – Positive findings

Detaining different groups of prisoners requires a high degree of organisational differentiation. In the Joint Commission’s view the prison has successfully implemented different conditions of detention based on security aspects. It welcomes the fact that a prison treatment plan is drawn up for each prisoner after 90 days. In this context the Joint Commission would like to mention the informative meeting it had with the specialist services. It would like to highlight the fact that during the meeting a strategy was developed for creating a prisoner council taking account of the special circumstances of the prison which executes relatively short terms of imprisonment. The Joint Commission also welcomes the fact that staff are assigned to different areas on a permanent basis, which is conducive to developing a relaxed atmosphere between prisoners and prison staff.

3.2.2 – Recommendations of the Joint Commission and response of the Ministry of Justice of Thuringia

In the multi-occupancy cells which the Joint Commission inspected the toilet area is not structurally separate from the living area, but is only separated off by means of a shower curtain. This protects neither against noise nor odour. In addition, the multi-occupancy cells have a floor area of just under 10.77 m².

Response: The cells referred to are all in Block 1 (an old building). The number of multi-occupancy cells has been significantly reduced since 2008. Nevertheless, at the time of writing Block 1 still had 31 double-occupancy cells with no separate toilet. Enclosing the toilets would involve alterations on a larger scale having to be made; these have already been applied for but not yet authorised. In a first step the double-occupancy cells will be turned into single-occupancy cells. However, this cannot be done until the Youth Detention Facility in Arnstadt opens. As an interim solution the head of the institution is endeavouring to ensure

that each cell is only occupied by one prisoner, but that is also dependent on prison occupancy rates in Thuringia as a whole.

The ordering of special precautionary measures is documented separately, but the documents do not indicate when these measures were enforced in the “riot-proof cells”. Only general remarks such as “segregation” or “CCTV monitoring” are entered in the files. In order to be able to better check the use of the specially secured room, its occupancy and the ground therefor should be recorded separately.

Response: The Joint Commission is referring to the plain detention cells. The prison has five detention cells which are furnished only with a bed, a chair and a table and in which CCTV monitoring is possible. The prison also has two normally furnished cells which also have CCTV cameras. These cells allow an effective, staged system to be applied, and staff can respond more effectively to each individual prisoner's conduct than was possible in the past. Further, this reduces the number of prisoners having to be placed in specially secured rooms containing no dangerous objects. Placement in a plain detention cell is not a special precautionary measure and is therefore not listed in the relevant register. Occupancy of these rooms will be documented separately in future. Further, special precautionary measures will be recorded in the prisoner's file and continually updated.

According to the head of the institution, on account of a lack of interest on the part of prisoners it has so far not been possible to establish a **prisoner council**. However, as an organ of collective co-responsibility in the law enforcement process, it represents an important element in the prison management system when it comes to achieving the objective of treatment and observing the principle of approximating life in prison to general living conditions (*Angleichungsgrundsatz*).

Response: The prison is still making efforts to get a prisoner council elected. However, prisoners have shown little interest, which is, ultimately, probably due to the clientele, which comprises those in remand detention and prisoners serving short prison sentences.

A good atmosphere between prison staff and prisoners is promoted, amongst other things, by prisoners being able to talk to the head of the institution. The preconditions are favourable in a small to medium-sized prison such as Goldlauter. In accordance with section 108 (1), second sentence, of the Prison Act, the head of the institution must hold regular office hours.

Response: Immediately following the visit the Ministry of Justice informed the Joint Commission that it had asked the head of the institution to establish regular office hours at short notice.

The communal showers do not have partitions. It would be desirable for partitions to be fitted between the showers in order to give prisoners some privacy. Partitions between the showers which do not reach right down to the floor do not necessarily make it more difficult to monitor the showers.

Response: Partitions with curtains will be fitted in the shower rooms.

A comparatively small number of prisoners are engaged in employment in Goldlauter Prison. According to the head of the institution, this is primarily due to the lack of businesses in the structurally weak region. Non-working prisoners are locked into their cells apart from unlocking times and during their free hour. Further, they lack both the daily structure which work gives them and the resulting social rehabilitation. It would be desirable to increase the number of jobs available.

Response: Given the limited amount of space in the prison, it is not possible to increase the number of jobs available. That is why the construction of a workshop is being considered as part of the prison's long-term building concept.

The house rules are only available in German. They should be available in those languages which most of the prisoners understand.

Response: The house rules will be revised following the entry into force of the Thuringia Prison Act and then translated into the languages most commonly spoken by prisoners.

Whether detainees awaiting deportation should be placed in prisons is a debatable matter. The Joint Commission tends to the opinion that separate facilities should be available to accommodate detainees awaiting deportation. The situation is particularly problematic in Goldlauter Prison (it being the only facility providing custody pending deportation in Thuringia), given the small number of detainees awaiting deportation and the need to observe the principle of separation between prisoners and detainees awaiting deportation. The Federal Government's response to a Major Interpellation in the German Bundestag regarding the situation in facilities in Germany enforcing custody pending deportation shows that in 2010 there were 38 detainees awaiting detention in Thuringia; in 2009 there were only 36.⁴² This means that often only a few detainees awaiting deportation are held in the prison. This increases the risk that, as described in the above, unstable detainees have to be placed under individual observation because they cannot be placed together with other, mentally stable detainees. In times in which only one detainee awaiting deportation is

⁴² Bundestag Printed Paper 17/10596, p. 12

accommodated in the prison, the principle of separation of prisoners and detainees awaiting deportation inevitably and unintentionally leads to the detainee's isolation.

Response: In view of the small number of detainees awaiting deportation, it is unlikely that it will be possible to place them in a separate facility. The desired positive effects will likely not arise.

3.3 – KONSTANZ PRISON

The Joint Commission visited Konstanz Prison on 1 June 2013, which was a Sunday. It inspected the specially secured room containing no dangerous objects, the remand detention and penal detention wings, and other areas in the prison. In addition, the Joint Commission spoke to prison staff, including a staff representative, and five prisoners.

Konstanz Prison is responsible for the execution of prison sentences of no more than 15 months and of remand detention. It has a roll of 72; it was holding 105 inmates at the time of the visit.

3.3.1 – Positive findings

During its tour of the prison the Joint Commission noted the positive and relaxed atmosphere between prisoners and prison staff. Prison staff are extremely committed to their work, even beyond their normal duties, and offer sports courses, for example.

The Joint Commission welcomes the fact that the prison does not carry out *Fixierung*.

3.3.2 – Recommendations of the Joint Commission and response of the Ministry of Justice of Baden-Württemberg

Konstanz Prison has some cells with no separate toilet which are occupied by two prisoners. The floor area in double-occupancy cells, including sanitary area, is between 8.64 and 9.05 m². These cells therefore do not meet the requirement set down in section 7 (2) of the Penal Code Book I that each prisoner must have 4.5 m² space, including sanitary area.⁴³ Further, detention in these cells violates human dignity. With regard to multi-occupancy cells Frankfurt Higher Regional Court set the standard that each prisoner should have floor area of at least 6 to 7 m², whereby the toilet must be separate and have separate ventilation in multi-occupancy cells.⁴⁴ Karlsruhe Higher Regional Court regards placing two

prisoners in one cell with a floor space of 9.13 m² as still meeting human rights standards only if the toilet is separated off.⁴⁵ The Federal Constitutional Court has also classified the detention of prisoners as violating human dignity if the minimum floor area is not observed and there is no separate toilet in the cell.⁴⁶ Accordingly, prisoners cannot consent to being placed in such multi-occupancy cells.⁴⁷

Even the cells occupied by three or four prisoners only have a floor area totalling 17.53 m², including sanitary area, and thus do not meet the statutory requirements. Section 7 (2) of the Penal Code Book I requires a floor area of at least 6 m² per prisoner, excluding the sanitary area, if a cell is occupied by three or more prisoners. In addition, the question must be raised whether, in view of the other conditions of detention, one can still speak of decent detention. This depends on the concrete circumstances.⁴⁸ Particular attention should here be given to the fact that the prisoners face the additional burden that they cannot look out of the cell, which gives them an additional sense of confinement. That is why it is also doubtful whether the prisoners concerned can effectively consent to being placed in multi-occupancy cells. In addition, some prisoners told the Joint Commission that they had not been asked for their consent to being placed in a multi-occupancy cell.

The Joint Commission believes this violates human dignity. Cells without a separate toilet may only be occupied by one prisoner. It recommends that the conditions of detention be improved in those cells occupied by two or more prisoners.

Response: Prison occupancy on the day of the visit was the highest it had been for many years. Average occupancy in the prison had stood at 94 prisoners over the previous 12 months. The reason for this state of affairs was that there is a lack of prison accommodation close to home in the South Württemberg/South Baden area and the new prison which had been planned for a long time in that region had not yet been built. The burden on Konstanz Prison had been relieved on only few occasions after prisoners were transferred elsewhere, because prisoners generally preferred the confined space in the prison to serving their sentence in prisons further away from home, which made it more difficult for relatives to visit them. Regardless of this fact and immediately after the Joint Commission's visit, 15 prisoners were, at their own request, moved to other prisons.

⁴³ See also Baden-Württemberg Printed Paper 14/5012, p. 172

⁴⁴ Frankfurt Higher Regional Court, decision of 18 July 2003, file no. 3 Ws 578/03 (StVollz), JURIS, margin no. 23. Cf. also National Agency, Annual Report 2010/2011, p. 19 et seq., available in German and English at: www.nationale-stelle.de

⁴⁵ Karlsruhe Higher Regional Court, decision of 31 January 2005, file no. 1 Ws 279/04, JURIS, margin no. 18

⁴⁶ Federal Constitutional Court, file no. 1 BvR 409/09, order of 22 February 2011, JURIS, margin no. 31

⁴⁷ See Arloth, StVollzG, 3rd ed., section 18, margin no. 2

⁴⁸ Cf. Federal Court of Justice, judgment of 11 March 2010, file no. III ZR 124/09, JURIS, margin no. 7

Over the following weeks prison occupancy dropped further. In August 2013 there were 70 prisoners in the prison on average. There are plans to establish an additional wing with 16 cells. Further, there are plans to build a new prison in the region.

The windows in all the cells in Konstanz Prison are fitted with opaque plexiglass. Although this glass lets in the light, it does not allow prisoners to see out through the window. In their meetings with the Joint Commission prisoners themselves described this as particularly stressful and they addressed the issue at the meeting of the prisoner council on 20 February 2012.

Prisoners should have access to natural, unfiltered light in their cell.⁴⁹ Even if the situation in Konstanz Prison, given its location in the middle of a residential area, necessitates measures being taken to restrict contact with the outside world and people in neighbouring houses looking into the cells, attempts should nevertheless be made to enable prisoners to see out of their windows.

Response: There is no denying that the opaque glass is very stressful for prisoners. Because the prison is situated in the middle of the city very close to the neighbouring public areas and adjacent premises, sight guards are nevertheless necessary to prevent neighbours suffering noise pollution, prisoners communicating with the outside world, which compromises the procedure, and in particular dangerous objects such as weapons and drugs being smuggled into the prison. However, these sight guards will not be necessary in the 16 new cells which are being created.

The Joint Commission recommends examining how at least one shower per unit can be separated off in a manner so that prisoners' genital area is obscured when they are showering. There do not appear to be any security reasons which speak against this, since this measure has already been implemented in other prisons.

Response: Shower rooms are the most difficult rooms in which to prevent violence amongst prisoners. That is why it is not expedient to fix partitions which reduce visibility in the shower room. Those very few prisoners who feel a sense of shame when they have to shower in communal showers can reasonably be expected to wear swimming trunks. In particularly well-founded exceptional cases individual prisoners are allowed to shower on their own.

The specially secured room has two doors which are each fitted with peepholes. The toilet in the detention room is in full view through the peephole in the door on the right-hand side. In order to ensure prisoners' privacy, the Joint Commission recommends that the genital area should not be visible through the peephole.

Response: The main purpose of the specially secured room is to prevent those prisoners who are at extreme risk of suicide from harming themselves. For that reason the toilet area must also be fully visible through the peephole.

The house rules applicable to the various groups of prisoners are only available in German. They should be translated into those languages most commonly spoken by prisoners in order to ensure that the rules are understood as far as possible. This issue was also addressed by prisoners through the prisoner council. The list of institutions with whom prisoners may communicate without their correspondence being monitored (No. 6 of the house rules), should be written in line with section 17 (3) of the Penal Code Book II.

Response: After establishing the five books of the Baden-Württemberg Penal Code with the relevant administrative provisions, the standardised information brochure for prisoners now needs to be incorporated. There are plans to have this translated into those languages spoken most commonly by prisoners in the course of that work.

3.3.3 – Further suggestions by the Joint Commission for improving the conditions of detention and response of the Ministry of Justice of Baden-Württemberg

On the day of the visit, Konstanz Prison, which has a roll of 72, was holding 105 prisoners. This massive overcrowding leads to cramped conditions of detention, for example with cells being occupied by three or four people. Overcrowding can become a problem because common rooms, employment opportunities and staffing levels are also not designed to cope with the actual number of prisoners being held.⁵⁰ This structural overcrowding should therefore be remedied as soon as possible.

Response: See response to the above recommendations.

At the time of the Joint Commission's visit there was no **prisoner council in the facility**, as the elections had been unsuccessful. The Joint Commission is aware of the difficulties in electing a prisoner council in a prison enforcing short prison sentences with a high throughput of prisoners. It therefore welcomes the fact that the head of the institution has informed the Joint Commission that new elections are currently being organised and it encourages the prison to continue regularly promoting the formation of this body.

Response: It is often not possible to establish a prisoner council. This is due exclusively to the lack of interest on the part of prisoners serving short sentences, who are generally not prepared to stand for election.

⁴⁹ Cf. CPT/Inf/E (2002) 1 – Rev. 2010, p. 26 et seq.

⁵⁰ Cf. also CPT/Inf/E (2002) 1 – Rev. 2010, p. 17, 22, 25

The documents forwarded by the prison and meetings with prisoners show that no imam visits the prison. It was pointed out during the meeting with prison staff that an imam should visit the prison at least on major Muslim holy days. It should be examined whether there is any need to increase the level of Muslim pastoral care.

Response: The prison has a positive attitude towards stepping up the level of Muslim pastoral care provided. However, so far this has failed on account of various external factors on which the prison has no influence.

3.4 – NUREMBERG PRISON

The Joint Commission visited Nuremberg Prison on 19/20 November 2013. After an initial meeting with the deputy head of the institution and various members of staff, the Joint Commission inspected the wing for male detainees awaiting deportation, the wing for male sentenced prisoners, the wing for female detainees awaiting deportation and the respective security areas. The Joint Commission spoke with general prison service staff, the socio-educational instructor responsible for male detainees awaiting deportation, with two male and three female detainees awaiting deportation, two female remand prisoners, and a representative of the prisoner council. In addition, it held a meeting with the chair of the staff council. The Joint Commission was given access to the files relating to detainees awaiting deportation and relating to the last prisoners against whom solitary confinement or disciplinary detention had been ordered. Further, it inspected the remand detention wing and spoke to the prison chaplains, a doctor and a remand prisoner against whom a court had ordered solitary confinement.

At the time of the Joint Commission's visit to the prison it was responsible for male prisoners serving their first and those serving regular sentences of no more than two years, for female prisoners serving their first and those serving regular sentences of no more than three months, for male and female detainees awaiting deportation, remand detainees and those in juvenile detention (who were not visited). As the enforcement of all forms of detention across Bavaria has been reorganised, custody pending deportation is being enforced in Mühldorf am Inn Prison since 25 November 2013, when it became the central facility for those awaiting deportation. Since then Nuremberg Prison has only taken in male detainees awaiting deportation when Mühldorf am Inn Prison is overcrowded.

Nuremberg Prison has a roll of 1,039 – 554 male sentenced prisoners, 417 in remand detention, and 68 female sentenced prisoners. At the time of the visit it

had an occupancy of 874 prisoners, of whom 486 (including 11 detainees awaiting deportation) were in the male wing, 45 (including five detainees awaiting deportation) were in the female wing and 343 were in remand detention. One remand prisoner was in solitary confinement under judicial order.

For the sake of thematic consistency, the results of the visit pertaining to custody pending deportation are detailed under point 1.8 above. Since the visit did not take place until late in 2013, at the time the Annual Report went to press the Bavarian State Ministry of Justice had not yet submitted its comments. These will be included in the Annual Report 2014.

3.4.1 – Positive findings

The atmosphere in Nuremberg Prison was good. Prisoners in particular referred to the relationship with general prison service staff.

3.4.2 – Recommendations of the Joint Commission

Prisoners in the male wing are given paper underpants to wear when they are placed in the detention room containing no dangerous objects. In the female wing prisoners are also given a shirt specifically designed by the prison for this purpose. These shirts should also be given to the men when they are placed in detention rooms containing no dangerous objects.

The disciplinary detention rooms inspected by the Joint Commission were clean and appropriately furnished. However, the SS symbol and a swastika had been drawn on the table in one of the rooms. When prisoners are placed in their detention rooms particular attention should be paid to ensuring that comments or drawings of an unconstitutional nature which may insult or provoke specific groups of prisoners are removed.

The shower rooms in the male wing which the Joint Commission inspected have six showers which are not separated by partitions. Even during the comparatively long unlocking times this means that some prisoners shower in their underpants out of a sense of shame or for religious reasons. The Joint Commission therefore recommends separating off at least one shower so that at least the genital area is shielded while showering. Corresponding measures in other prisons have not led to an increase in attacks on account of it being harder to monitor the shower room.

PRISONS

3.4.3 – Further suggestions by the Joint Commission for improving the conditions of detention

Prisoners who are placed in the transport unit generally arrive in the transport bus at around 6 pm. They are given an evening meal and are then locked in. Only those prisoners who are not immediately transported away again the next day are able to shower. According to prison staff, on the evening of their arrival prisoners are not able to shower because this is time-consuming and a number of staff need to be present. Some prisoners were therefore unable to shower for four to five consecutive days. The Joint Commission recommends giving those prisoners arriving in the transport unit the opportunity to take a shower.

4 – COURT HOLDING CELLS

4.1 – VISIT TO THE COURT HOLDING CELLS AT BERLIN-TIERGARTEN LOCAL COURT IN 2012

On 14 December 2012 the Joint Commission visited the court holding cells at Berlin-Tiergarten Local Court, which are in the same building as Berlin-Moabit Criminal Court.

The Joint Commission spoke with the Vice-President of the Local Court, the supervising judge and with staff in the Central Security Service. It then inspected the court holding cells and spoke with three detainees.

Berlin-Tiergarten Local Court is responsible for delivering prisoners to all the authorities in the Berlin-Moabit Criminal Court building. These include the Local Court, Berlin Regional Court, Berlin Public Prosecution Office, the Berlin District Attorney and the panels of the Berlin Court of Appeal sitting in the Criminal Court as a court of first instance. Around 70 people can be accommodated in the court holding cells. Some 11,000 detainees are held there over the course of a year.

The court holding cells serve as a “way station” for prisoners who are either waiting for their hearing on that same day or who need to be transported back to a facility after their hearing is interrupted or ends. The majority of prisoners are brought from the adjacent Moabit Prison, sometimes they are also brought from other prisons or by the police.

The Central Security Service was established at the President of the Local Court in 2008 and is responsible for security throughout the whole of Berlin-Moabit Prison. Nearly 240 police constables work in the security area of the Local Court, between eight and ten of whom are assigned to the court holdings cells on a permanent basis. The training programme which all the police constables in judicial service regularly take part in is regarded as exemplary. The programme covers custody-specific issues, such as de-escalation training, dealing with aggression, stress management, intercultural skills, oral communication skills and escorting prisoners.

The court holding cell section is to be completely restructured. A separate office is to be created for members of staff and appropriate accommodation is to be created for prisoners. In particular, the meals counter is to be brought in line with hygiene standards.

4.1.1 – Recommendations of the Joint Commission and response of the Berlin Senate Department for Justice

The single holding cells have a floor area of 2.3 m². Their windows are covered with frosted glass films. Prisoners who are brought from Moabit Prison can be led directly via an underground tunnel into the court holding cell section. They are generally detained for significantly less than an hour. Prisoners from other prisons, by contrast, have to spend longer in the holding cells (up to around four hours), depending on the availability of transportation. Detention rooms in prisons are generally required to have a minimum floor area of 6 to 7 m² per person. Lower Saxony regards a minimum area of 3.5 m² per person to still be appropriate for police holding cells used only for a few hours.⁵¹ Even if they are only detained for a short time, prisoners should at least be able to stand up and move around in the cell. This is not possible in a cell measuring 2.3 m² which also has a built-in bench. That is why the Joint Commission welcomes the fact that the floor area of the holding cells is to be doubled in the course of refurbishment by merging two cells in each case. However, care should be taken to ensure that prisoners can also see out through a window. Therefore, alternatives to the opaque frosted glass film should be considered.

Response: Single holding cells will be merged in the course of refurbishment and the new cells will then have a floor area of at least 4.6 m². The frosted glass film which was only used in the holding area for women will be removed, as women are now placed in another area which is not visible from the outside. In addition, the President of the Local Court has announced that all the windows in the court holding section will be refurbished as their current mode of construction means they cannot be cleaned.

The multi-occupancy cells for men do not have a toilet. Prisoners are taken to a separate toilet at their request. The multi-occupancy cells for women, by contrast, have an open toilet. The Local Court has a partition wall which is around hip-high for use in these cells. This does not permit the toilet to be used in a manner which meets any standards of decency, however, firstly on account of the ensuing noise and odour and, secondly, because the low partition wall does not sufficiently protect the person using the toilet from being watched by the other detainees. A separate toilet therefore also needs to be installed for women to use.

⁵¹ No. 17.2 of the Lower Saxony Police Custody Regulations (2008)

COURT HOLDING CELLS

Response: Immediately after the Joint Commission's visit the Senate Administration announced that it would be getting rid of the open toilets. Female prisoners will be taken to separate toilets at their request.

There are no fire alarms either in any of the corridors in the court holding section or in the cells. The President of the Local Court stated that this was due to the prisoners currently being free to smoke in the cells. He said that a general smoking ban appears problematic as far as procedural law is concerned with a view to prisoners' ability to stand trial; given the low risk of fire in the holding cells there was no need to install smoke detectors, he said. Nevertheless, no final decision has yet been taken on the matter. In the view of the Joint Commission consideration should be given to the fact that it is not only the furnishings in a cell that represent a fire hazard but also prisoners' clothing. For that reason it recommends installing fire protection systems as a matter of principle in those facilities which accommodate potentially excitable individuals for even just a short period of time. It should be examined to what extent account can be taken of factors influencing a person's ability to stand trial by means of other suitable measures, for instance a smokers' cell which is in full view from the judicial police constables' office.

Response: The recommendation has been passed on to the engineering firm commissioned with drawing up the fire protection concept. The competent security engineer has stated that installing fire alarms in the cells is not provided for under construction law and that this goes well beyond the required fire protection measures, since there are no fire loads to speak of. Since the concept for the new court holding section already includes a cell for prisoners with mental health issues and before prisoners can be placed in this cell they are subjected to a thorough search, all dangerous objects will be removed from their person and so additional measures are not necessary. The smokers' cells will be located in a central area which police constables will in future be able to keep under particular observation at irregular intervals.

The Joint Commission informed the Senate Administration that it nevertheless still had concerns. Fire protection provisions and the review of fire loads are not always based on the assumption that persons who are in a locked room cause a fire intentionally. This not only applies to those whose mental health issues are the reason for their being placed in a special detention room. Incidents linked to fires in detention rooms which have occurred in recent years show that the potential risk needs to be especially carefully examined.

Even when prisoners are carefully monitored they can still smuggle lighters or matches, for instance, into the cell even if they are non-smokers. A special cell for

prisoners with mental health issues can indeed help to reduce the risk of self-harm. Nevertheless, the Joint Commission assumes that it is not only those who already have obvious mental health issues who may act unpredictably, particularly in the especially stressful situation prior to court proceedings or after they learn the outcome of the proceedings, which they may possibly regard as unjust. Even prisoners whose conduct has so far been normal may also be at risk of causing a fire.

Name and number badges increase transparency in dealings between staff and prisoners. The Joint Commission therefore welcomes the fact that the judicial authorities plan to issue judicial police officers with number badges.

Response: Berlin-Tiergarten Local Court is currently drawing up corresponding regulations and is examining the technical preconditions.

5 – YOUTH DETENTION FACILITIES

5.1 – KÖNIGS WUSTERHAUSEN YOUTH DETENTION FACILITY

The Joint Commission visited Königs Wusterhausen Youth Detention Facility on 27 June 2013.

Königs Wusterhausen Youth Detention Facility is responsible for the enforcement of youth detention for the whole of Brandenburg. Since mid-December 2011 it has been housed in containers formerly used by the police in the immediate vicinity of Königs Wusterhausen Police Station. The containers were formerly used for enforcing police custody.

The Youth Detention Facility can accommodate four female and 13 male detainees. At the time of the visit the facility had an occupancy of six male youths who were serving full-period detention. Those in youth detention spent an average of 10 days in detention in 2012.

The Government of Brandenburg plans to have a new youth detention facility built in 2014; according to current plans it will be able to accommodate 25 youths. In addition, discussions are being held about placing those in youth detention in Berlin and Brandenburg in a joint facility.

5.1.1 – Positive findings

Special emphasis should be given to the diverse range of support and courses available to youth detainees. The young people the delegation spoke to also felt that the majority of the offers available were positive and useful, especially the social training course run by Hönow Youth Workshop.

The Joint Commission would also like to highlight the fact that the facility is relatively generous as regards unlocking times and the amount of time detainees can spend outside each day. This is evident from the daily schedules forwarded to the Secretariat. According to these schedules, (category II and above) detainees are permitted to spend one hour outside twice each morning and once or twice each afternoon. At weekends they are permitted to go outside at least once in the morning and once in the afternoon. According to No. 7 of the In-house Rules, (category I) detainees can use all their free periods. The young men and women may use the street football field and an outdoor chessboard in the yard. At the time of the visit a shelter was also being built to provide protection against bad weather.

5.1.2 – Recommendations of the Joint Commission and response of the Ministry of Justice of Brandenburg

It is obvious from the furnishings and layout of the rooms that the facility was previously used to enforce police custody. The detention rooms have an oppressive feel to them on account of the dark colour of the walls. The rooms all have air conditioning, but at least in the section accommodating the male youths the windows cannot be opened. The Joint Commission would like to note that a sufficient supply of fresh air must be guaranteed in all those rooms in which people are detained for a longer period of time. This requirement is set out in the UN's standard minimum rules for the treatment of prisoners.⁵² According to principle no. 11, "[i]n all places where prisoners are required to live or work, (...) the windows (...) shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation."

The windows do not have blinds or any other protection against the sun. The juveniles hang additional sheets supplied to them over the windows, which the Joint Commission can at best only regard as a compromise solution.

According to the head of the facility, there are no other possibilities for making the detention or common rooms look more attractive (e.g. by hanging up pictures), which the Joint Commission regrets. To make matters worse, no other alterations whatsoever can be made. For example, it is neither possible to change the colour of the walls in the detention rooms, nor can the young people personalise their rooms in any way. The rooms therefore have a very sparse and dreary appearance.

Both the prison manager and the prison service manager endeavour to make the best use of the limited space available to them. Nevertheless, the Joint Commission feels that the structural situation in the facility makes it unsuitable for the enforcement of youth detention. It therefore recommends quickly constructing the new building as planned, and it would like to know what stage of planning it is at.

Response: *As the conditions of detention in the youth detention facility have deteriorated so drastically over the*

⁵² ECOSOC Resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977; available at: https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf (last retrieved on 28 October 2014)

past few years, renovation work is being considered and relocation has also become an unavoidable option. The facility which the Joint Commission inspected thus only represents a temporary solution. Since the containers are being leased, it is not possible to make any structural changes, such as fitting window blinds. The air conditioning in the male youth detainees' cells has now been switched to a mode in which fresh air is drawn in at short, regular intervals. In addition, the male detainees are allowed to spend more time outside.

There are plans to build a new youth detention facility in Königs Wusterhausen. Discussions are also ongoing about holding detainees from Berlin and Brandenburg together in one facility.

During the initial meeting the head of the institution already addressed the issue of the repeated complaints raised about the size of the meal portions. The ministry has already been informed about this. Detainees addressed the issue of insufficient meal portions during their one-to-one meetings with the visiting delegation. According to the head of the institution, the service provider also supplies homes for the elderly and kindergartens. The facility is currently remedying the situation by giving some detainees an additional half portion on doctor's orders.

Those in youth detention should be provided with nutritious and sufficient quantities of food, taking account of their age, health, religion and the activities they engage in. The same requirements are made under the European Rules for juvenile offenders subject to sanctions or measures.⁵³ The Joint Commission recommends adapting requirements accordingly and increasing the size of the meal portions if necessary. It also suggests examining the nutritional composition of the meals.

Response: The youth detention facility is supplied by a local caterer. The contract concluded with this caterer includes the Catering Regulations for Prisons in Brandenburg, which take account of the requirements of a healthy diet and in particular the recommendations of the German Society of Nutrition. They also include stipulations concerning adequate portion sizes. After consulting the doctor, the head of the youth detention facility can also grant additional portions in individual cases if this is necessary to maintain health, for instance. An average of 2,500 kcal per day is currently provided for. The possibility was recently introduced of ordering additional portions, meaning that an average of 2,780 kcal can then be provided.

According to the head of the institution, a doctor visits the detention facility once a week to examine detainees after arrival. Depending on when they are admitted, this can mean the examination is not

carried out straight away. If, for example, a youth detainee is booked in mid-week, it may take five to six days before he or she is examined by the doctor.

The medical examination primarily serves to ensure the detainee stays in good health during the enforcement of detention and to establish whether any treatment is necessary. It is therefore key that this examination is carried out as soon as possible after detainees are admitted, even if the period of youth detention is relatively short. A solution to this problem must be found in order to guarantee that the medical examination is carried out as soon as possible after detainees are admitted, as required under section 17 (1) of the Enforcement of Youth Detention Code. A delay of several days is not acceptable, especially in view of the short duration of youth detention compared to general prison sentences.

Response: Detainees should be examined by a doctor as soon as possible after they begin their period in detention. This has been regulated in the current draft of an act on the enforcement of youth detention in Brandenburg. Exceptions are only provided for those in leisure-hour and short-term detention. The head of the youth detention facility wishes to ensure that these examinations can be carried out by a doctor when detainees are admitted, and plans to sign a corresponding contract with local doctors to that end. However, on account of the small number of detainees and the lack of doctors across the Land, negotiations are proving difficult. Involving prison doctors is not an option due to their heavy workload. Detainees are guaranteed health care provision at all times through the public health insurance's emergency service and the emergency services, although these cannot be drawn on to conduct the initial medical examination.

According to the head of the institution, contact with the outside world is heavily restricted. Detainees are allowed to stay in touch with their relatives by letter. However, they are permitted to use the telephone only in special cases (e.g. a death in the family) or after filing an application stating grounds. In the view of the Joint Commission, detainees must at least be guaranteed regular contact with their closest family members, for example parents, spouses and children.

The CPT also emphasised this aspect when setting its standards. Accordingly, the CPT has established that: "The guiding principle should be to promote contact with the outside world; (...) The active promotion of such contacts can be especially beneficial for juveniles deprived of their liberty, many of whom may have behaviour problems related to emotional deprivation or a lack of social skills. The CPT also wishes to stress that a juvenile's contact with the outside world should never be restricted or denied

⁵³ Council of Europe, Recommendation CM/Rec(2008)11, No. 68

as a disciplinary measure.”⁵⁴ During its visit to Berlin Youth Detention Facility in 2010 the CPT also emphasised that those in youth detention should be permitted more frequent contact with the outside world (especially with close family members).⁵⁵ The CPT made explicit reference to the restrictive practices in other youth detention facilities in Germany.

The European Rules for juvenile offenders subject to sanctions or measures assume that “[a]rrangements for visits shall be such as to allow juveniles to maintain and develop family relationships in as normal a manner as possible and have opportunities for social reintegration.”⁵⁶

The Joint Commission therefore recommends reconsidering current practice as regards contact with the outside world in light of the above.

Response: Restrictions have so far been imposed on juvenile detainees’ contact with the outside world in line with the requirements of the Enforcement of Youth Detention Code. However, it will be examined to what extent these contacts with the outside world can be extended.

The forthcoming Brandenburg Act on the Enforcement of Youth Detention provides for more generous contacts with the outside world. For example, detainees may receive visitors and use the telephone if this does not prove an obstacle to the objective of the detention and the security and order of the facility is not jeopardised thereby. Detainees will have the right to send and receive letters. Visits and telephone calls with primary carers are permitted. Visits, telephone calls and correspondence will, in addition, not be monitored.

5.1.3 – Further recommendations of the Joint Commission for improving the conditions of detention and response of the Ministry of Justice of Brandenburg

According to the head of the institution, a meeting is held with detainees prior to their being discharged only if they are discharged early; otherwise, prison staff tend to carry out these meetings more in passing. The head of the institution forwarded several discharge reports to the Joint Commission by way of example. The facility does not offer all juveniles an official meeting upon their discharge. However, the Joint Commission feels that such a meeting would be useful for all juveniles. It can also serve to indicate what outpatient support is available for the period after discharge and to give juveniles the necessary help in that regard. In general, the Joint Commission suggests that when restructuring the enforcement of

youth detention in Brandenburg attention should be paid to laying down binding requirements as regards the provision of support after discharge and institutional links to youth detention.

Response: The applicable Enforcement of Youth Detention Code provides for the detainees having a meeting with the prison manager. The head of the youth detention facility and the educational instructor emphasised the fact that they hold repeated meetings throughout the enforcement of youth detention to establish whether there is any need for support during detention or after discharge.

The draft of the act on the enforcement of youth detention provides that the head of the facility must explain the content of the final report to the detainee in a meeting prior to his or her discharge. This meeting is important, as it serves to indicate to detainees exactly where they stand, and it then becomes clear to them whether and to what extent they have achieved the objective of their detention and what further support they require. This meeting is thus equal to a separate educational measure.

In addition, emphasis is placed on establishing contact with those who can offer further assistance. The facility must ensure that this help follows on seamlessly after detainees are discharged. The draft legislation therefore also provides for the possibility of initiating aftercare measures and for staff to be involved in providing support after discharge. Youth detention, being a short-term educational measure, is embedded within the support systems available in Brandenburg, including the youth welfare services, schools, vocational training facilities, the judicial social services and independent youth welfare service providers. The youth detention facility works especially closely with the Youth Welfare Office, the Judicial Social Services, the Employment Agency and primary carers.

The binding requirements which the Joint Commission called for and the institutional networking between these agencies and the youth detention facilities have, thus, been incorporated into the draft legislation. The youth detention facility has been endeavouring for some time now to establish networks with the aforementioned agencies and facilities.

Regular consultations with a psychologist or external contractual partners have so far not been available. The Joint Commission feels it would be useful to establish cooperation with local youth psychologists and youth psychiatrists. That would mean that mental disorders which are already in evidence during youth detention could be diagnosed more easily and treated as soon as possible after discharge from youth detention. This is also considered desirable according to the Ministry of

⁵⁴ CPT/Inf/E (2002) 1 - Rev. 2010, margin no. 34

⁵⁵ CPT/Inf (2012) 6, margin nos 122–124

⁵⁶ Council of Europe, Recommendation CM/Rec(2008)11, No. 84

YOUTH DETENTION FACILITIES

Justice's "Principles of Educational Work in the Youth Detention Facility in Königs Wusterhausen".⁵⁷

Response: It must be conceded that so far no regular consultations with a psychologist or an external contractual partner have been available; rather, such support is only occasioned as and when the need arises. The youth detention facility is currently negotiating a contract with a local psychotherapist who has an additional qualification as a child and youth therapist. There are plans to have this expert provide psychological support and, where necessary, to assess detainees' need for therapy and initial psychotherapy sessions on the basis of a regular, fixed number of monthly hours.

The draft Brandenburg Act on the Enforcement of Youth Detention provides that external experts (psychiatrists, psychologists) can be called in with the consent of the detainee or their primary carer.

⁵⁷ In: Brandenburg Land Parliament Documents, P-RA 5/28, Annex 1

6 – CHILD AND YOUTH WELFARE FACILITIES

6.1 – VISIT TO GAUTING HOME FOR GIRLS IN 2012

The Joint Commission visited Gauting Home for Girls on 28 November 2012. The facility accommodates girls between the age of 12 and 17 who have refused or evaded all previous educational or therapeutic measures. The home can accommodate 42 girls in its closed wing, which was under full occupancy at the time of the inspection visit.

The Joint Commission inspected the closed wing, including rooms, group rooms and the kitchen, the “time-out room”, the therapy room and the courtyard. It talked to the head of the facility, plus two heads of department. In addition, it talked to members of the girls’ council. The head of the facility and the head of the trauma group were on hand during the Joint Commission’s entire visit.

6.1.1 – Positive findings

The Joint Commission is pleased to note that the relationship between the girls accommodated in the facility and the staff appears to be very good.

The residential groups in Gauting Home for Girls are furnished in a very homely and friendly manner and they contribute to the very good atmosphere in the facility. All the common rooms which the Joint Commission saw were in perfect condition and very clean. The girls’ rooms are large enough and appropriately furnished, and girls are allowed to personalise their rooms.

The Joint Commission regards as especially positive the fact that the group rules, house rules and a separate information booklet provide the girls with information about their rights in an age-appropriate manner, and that the language used is friendly, polite and clear. This is evidence of the respectful tone used towards the girls. In addition, all the information regarding rights and duties is accessible to the girls at any time. The Joint Commission in particular regards the list of rights as exemplary.

Further, the Joint Commission would also like to mention the very successful and highly differentiated therapy and treatment concept applied in the facility, which the psychologist elucidated. According to the head of the facility, cooperation with the psychiatric clinic works well.

6.1.2 – Recommendations of the Joint Commission and response of the Bavarian

Ministry of Labour and Social Affairs, Families and Women

Gauting Home for Girls has two so-called “time-out rooms”. It is only in exceptional cases that both rooms are used simultaneously, which is why only one of them is always kept ready for immediate use. It has a mattress with a fitted sheet and a blanket. The ceiling light is dimmable and there is a large window which lets in natural light. The room has no call system; however, a member of staff must always be present in the adjacent duty room whilst a girl is in the time-out room – if need be even overnight. Nevertheless, it is not possible to see into the time-out room from the duty room. It should also be noted that the window in the time-out room does not fit seamlessly into the wall. These two observations give rise to doubts as to whether it can be ruled out at all times that a girl placed in the room will not attempt suicide. The Joint Commission recommends monitoring the girls placed in this room for a time-out period by means of continuous, direct personal supervision by a member of staff (a measure known as “*Sitzwache*”). The presence of a member of staff in an adjacent room, who may possibly be resting on the couch in that room, is not sufficient.

Response: A technical call system is not necessary because there is an opening in the wall between the time-out room and the duty room measuring approx. 40 x 40 cm. This means communication is possible at all times without the need for any technical measures.

However, the facility will remove the doorknobs on the inside of the door as quickly as possible so as to eliminate the risk of injury. The member of staff on call in the duty room must keep any girl placed in the time-out room under constant observation. The expert must regularly fill in monitoring sheets, even at night. Requiring continuous, direct personal supervision of the time-out room by a member of staff is regarded as sensible where there is the risk of self-harm, and this will be implemented accordingly in future. Other more suitable forms of observation must be used where there is the danger of a girl harming others.

Since the person monitoring the time-out room can only see into the room when standing up – because of the position of the glass in the door to the room – the facility is examining whether and to what extent a CCTV camera system can be installed. The supervisory authority will raise this issue again during the next inspection visit.

Some of the therapists in Gauting Home for Girls also have the authority to act as heads of department.

This imposes a heavy burden on them, especially in view of the dual role they take on, which can be problematical from a therapeutic perspective. Only two special groups can work with an additional therapist. In the other groups one-to-one sessions can only be offered at longer intervals on account of the therapists' limited capacities. One therapist, for instance, told the Joint Commission that she could only offer one-to-one sessions for between 15 mins and a maximum of 45 mins every two weeks. The Joint Commission recommends hiring additional therapists in order to keep the role of head of department and therapist separate and to be able to offer more one-to-one sessions. Each girl should be offered at least one hour of one-to-one therapy a week.

Response: The supervisory authority's operating licence provides for 3 1/4 hours of therapeutic support and promotion per week per girl in the Borderline Group and the Trauma Therapy Group, which are to be provided by graduate psychologists. The girls in the other groups are each given 2 1/3 hours per week. The specialist services thus provide considerably more hours of support than is recommended by the Joint Commission (at least one hour of one-to-one therapy per girl and week). The issue of the exact distribution of management functions and specialist tasks is being discussed intensively in further meetings between the supervisory authority and the operator of Gaunting Home for Girls in order to avoid the confusion caused by overlapping tasks and to guarantee that the therapeutic offers provided for in the operating licence can be delivered.

The girls accommodated in Gaunting Home for Girls can approach the head of the facility or members of staff in the facility with any grievances they have, but there is no external means of lodging complaints. The Joint Commission recommends setting up an external complaints system, for example in the form of an ombudsperson. The Joint Commission was pleased to learn from the head of the facility that this is already being discussed.

Response: The operator of the girls' home is currently clarifying whether the former deputy head will take over the role of external complaints manager. In addition, a notice will be hung on the notice boards in all the groups listing the name, address and telephone number of the competent member of the supervisory authority.

6.2 – VISIT TO WÜRZBURG CLEARING HOUSE IN 2012

The Joint Commission visited Würzburg Clearing House on 29 November 2012. The Clearing House is responsible for children and juveniles aged between 10 to 15 years against whom a court order has been issued pursuant to section 1631b of the German Civil Code. In addition, children and juveniles can be admitted to

the closed group as a temporary measure pursuant to sections 42 and 43 of the Eighth Book of the Social Code. The Clearing House can accommodate a total of six in the closed wing and was under full occupancy at the time of the inspection visit.

The Joint Commission inspected the closed wing, including the rooms, sanitary facilities, group rooms and kitchen, plus the time-out room. It held meetings with the head of the facility, with a psychological psychotherapist and a teacher. In addition, it spoke with three children and juveniles in the facility.

6.2.1 – Positive findings

The facility makes a very good overall impression. The residential groups were furnished in a very homely and friendly manner; the rooms were large enough, light and appropriately furnished.

The Joint Commission would like to make special mention of the highly structured, clear pedagogical/therapeutic concept the facility applies, which it was impressed with. The Clearing House also has sufficient staff. This means that treatment can be tailored to specific disorders. The relatively short period of time the children and juveniles spend in the facility (six to eight months) is obviously used well. Cooperation with the psychiatric out-patient clinic and the psychiatric hospital works very well according to the convincing description of the head of the facility.

The Joint Commission regards as particularly positive the fact that the time-out room is only used for very short periods of time (a few minutes) and the children and juveniles placed in the room are kept under constant observation. The size of the room alone does not permit it to be used for longer periods or even overnight. It is not possible to lie down in the room.

6.2.2 – Recommendations of the Joint Commission and response of the Bavarian Ministry of Labour, Social Affairs, Families and Women

Information regarding applicable rules (house rules, group rules, sanctions) and the rights and duties of the children and juveniles accommodated in the facility should be available in writing and they should be readily accessible. In addition, the information should be written in clear, friendly and polite language which is age-appropriate. The children and juveniles accommodated in Würzburg Clearing House were aware of the house rules and possible sanctions, but they did not have access to them in written form. The Joint Commission would like to point out the positive example of the list of rights available in Gaunting

Home for Girls, which is exemplary on account of its being written in age-appropriate as well as friendly and respectful language.

Response: As the Joint Commission established, all the children in the Clearing House are aware of the group rules and possible sanctions. The Joint Commission's recommendation that the group rules should also be made available to the children in writing will be implemented immediately. All the rules regarding how everyday life and life in the group is structured have now been collected and put on laminated sheets in a file, which is freely accessible to children in the Clearing House in the group area. In the course of 2013 the Clearing House will also be taking up the suggestion of drawing up a list of children's rights written in age-appropriate language. The list of children's rights will be compiled and written down on the basis of the UN Convention on the Rights of the Child with the active involvement of the children and teachers.

Würzburg Clearing House has an internal complaints procedure; however, there is no external complaints procedure, for example an ombudsperson. The Joint Commission recommends establishing such an office which the children and juveniles detained in the facility can turn to at any time.

Response: The Clearing House has so far not regarded an external complaints procedure to be necessary, since all the children in the Clearing House already have an external guardian ad litem who is known to them and whom they are generally also familiar with. The children have the right to and are able to contact him at any time. In the context of further developing the existing good internal complaints procedure and options available in the facility, the facility is nevertheless currently considering looking for a suitable external person for the entire home for children and young people, including the Clearing House, who, after the relevant preparations, would then be able to act as an additional complaints body or ombudsperson to deal with the children's and juveniles' concerns.

V
ANNEX

I – CHRONOLOGICAL LIST OF VISITS

Date	Facility/measure
7 January 2013	Löberfeld Barracks, Erfurt
7 January 2013	Erfurt Federal Police District Office
8 January 2013	Henne Barracks, Gotha
8 January 2013	Friedenstein Barracks, Erfurt
25 February 2013	Ingelheim Detention Centre for Persons Required to Leave the Country
5 March 2013	Forced return by air conducted by Düsseldorf Federal Police District Office
18 March 2013	Eisenhüttenstadt Pre-Deportation Detention Facility
9 April 2013	Mainz Federal Police Station
10 April 2013	Pre-Deportation Detention Wing in Mannheim Prison
10 April 2013	Mannheim Federal Police Station
10 April 2013	Karlsruhe Federal Police District Office
23 May 2013	Munich Customs Investigation Office, Nuremberg Office
23 May 2013	Nuremberg Federal Police District Office
24 May 2013	Waidhaus Federal Police District Office
24 May 2013	Weiden Federal Police Station
31 May 2013	Konstanz Police Station
31 May 2013	Singen Police Station
1 June 2013	Konstanz Police Station
1 June 2013	Konstanz Prison
2 June 2013	Friedrichshafen Police Station
26 June 2013	Berlin-Köpenick Pre-Deportation Detention Facility
27 June 2013	Königs Wusterhausen Youth Detention Facility
12 August 2013	Ludwigsdorf Federal Police District Office
12 August 2013	Görlitz Federal Police Station
13 August 2013	Forced return by air conducted by Dresden Airport Federal Police Station
13 November 2013	Goldene Bremm Federal Police Station, Saarbrücken, Neunkirchen Duty Room
14 November 2013	Graf Werder Barracks, Saarlouis; Graf Haeseler Barracks, Lebach
19/20 November 2013	Nuremberg Prison
5 December 2013	Frankfurt am Main Airport V Federal Police District Office
5 December 2013	Hesse Reception Centre for Refugees in Gießen, Frankfurt Airport Branch; Pre-Deportation Detention Wing in Frankfurt I Prison
13 January 2014	Rendsburg Pre-Deportation Detention Facility

2 – HISTORY AND LEGAL BASES

10 December 1948	UN General Assembly Resolution (adopting the General Declaration of Human Rights), including the prohibition of torture and other cruel, inhuman or degrading treatment or punishment
10 December 1984	Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UN Convention against Torture)
26 November 1987	European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
18 December 2002	Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 (OP-CAT)
20 September 2006	Germany signs the Optional Protocol
26 August 2008	The Optional Protocol is implemented in German law by means of an act of assent of the German Bundestag
20 November 2008	The Federal Agency is created by organisational decree of the Federal Ministry of Justice
4 December 2008	Germany ratifies the Optional Protocol; nomination of an honorary Director to the Federal Agency
1 May 2009	The Federal Agency takes up its work, based in the headquarters of the Centre for Criminology in Wiesbaden
25 June 2009	Signing of the State Treaty on the Establishment of the Joint Commission on the Prevention of Torture by means of a State Treaty between all the <i>Länder</i>
23/24 June 2010	The members of the Joint Commission are nominated at the 81st Conference of the Ministers of Justice of the <i>Länder</i>
1 September 2010	Entry into force of the State Treaty on the Establishment of the Joint Commission and the Administrative Agreement between the Federal Government and the <i>Länder</i> on the National Agency for the Prevention of Torture
24 September 2010	Official inauguration of the Joint Commission by the Ministry of Justice of Hesse in Wiesbaden

3 – MEMBERS OF THE FEDERAL AGENCY

Name	Title	Since	Function
Klaus Lange-Lehngut	<i>Ltd. Regierungsdirektor (retd)</i>	Dec. 2008	Director
Ralph-Günther Adam	<i>Ltd. Sozialdirektor (retd)</i>	June 2013	Deputy Director

4 – MEMBERS OF THE JOINT COMMISSION

Name	Title/job title	Since	Function
Rainer Dopp	<i>State Secretary (retd)</i>	Sept. 2012	Chair
Petra Heß	Commissioner for Foreign Affairs of the Free State of Thuringia	Sept. 2012	Member
Dr Helmut Roos	<i>Ministerialdirigent (retd)</i>	July 2013	Member
Michael Thewalt	<i>Ltd. Regierungsdirektor (retd)</i>	July 2013	Member

5 – NATIONAL AND INTERNATIONAL ACTIVITIES OF THE NATIONAL AGENCY IN THE PERIOD UNDER REVIEW

Date	Place	Participant	Activity
28/29 Jan. 2013	Wiesbaden	Joint Commission	Meeting of the Joint Commission, meeting with the State Secretary for Justice and Integration in the Ministry of Justice, for Integration and Europe of Hesse, Dr Kriszeleit
9–11 Apr. 2013	Wiesbaden	National Agency	Visits by the UN Subcommittee on Prevention of Torture
3 May 2013	Berlin	National Agency	Annual Report delivered to the Minister-President of Thuringia, Christine Lieberknecht, Chair of the Conference of Minister-Presidents
3 May 2013	Berlin	Joint Commission	Meeting at the German Institute for Human Rights
6 May 2013	Erfurt	Joint Commission	Meeting with Der Paritätische Wohlfahrtsverband of Thuringia and the Ministry of Social Affairs and the Ministry of Justice of Thuringia on the Joint Commission's competence in regard to homes for the elderly and care homes
15 May 2013	Berlin	National Agency	Annual Report delivered to the Federal Ministry of Justice
17 May 2013	Wiesbaden	Joint Commission	Meeting of the Criminal Justice Committee of the <i>Länder</i>
23 May 2013	Frankfurt	Secretariat	Conference on “The Psyche in Distress – Coercion and Violence, Power and Powerlessness in Psychiatry”
3 June 2013	Berlin	Federal Agency	Panel discussion organised by Amnesty International: “How serious is Germany about preventing torture?”
24 June 2013	Berlin	Federal Agency	Meeting with a delegation from Uzbekistan as part of a project run by the Gesellschaft für Internationale Zusammenarbeit (GIZ)
13 June 2013	Wiesbaden	Secretariat	Meeting with the Presidium of the National Commission for the Prevention of Torture of Switzerland
9 July 2013	Berlin	National Agency	Meeting with Amnesty International
27 Aug. 2013	Berlin	Federal Agency	Protestant Church in Germany, Berlin – participation in a meeting on deportation monitoring
10 Sept. 2013	Berlin	Joint Commission	Meeting with the head of the Human Rights Directorate in the Australian Ministry of Justice
13/14 Nov. 2013	Bremen	Secretariat	Suicide Prevention Working Group
21/22 Nov. 2013	Strasburg	Joint Commission	Immigration Detention Conference
21 Nov. 2013	Strasburg	Joint Commission	Meeting with the CPT
23 Nov. 2013	Gießen	Secretariat	Conference on “Torture – An Extreme Form of Interpersonal Violence”
30 Nov. 2013	Berlin	Federal Agency	Meeting with the Federal Ministry of Justice
6 Dec. 2013	Berlin	Federal Agency	Event in the Office of the Federal President on Human Rights Day

6 – GENERAL ASSEMBLY RESOLUTION 57/199 ON THE OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT OF 18 DECEMBER 2002

The General Assembly

Recalling article 5 of the Universal Declaration of Human Rights,⁵⁸ article 7 of the International Covenant on Civil and Political Rights,⁵⁹ the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁶⁰ and its resolution 39/46 of 10 December 1984, by which it adopted and opened for signature, ratification and accession the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and all its subsequent relevant resolutions,

Reaffirming that freedom from torture is a right that must be protected under all circumstances,

Considering that the World Conference on Human Rights, held at Vienna from 14 to 25 June 1993, firmly declared that efforts to eradicate torture should first and foremost be concentrated on prevention and called for the early adoption of an optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, intended to establish a preventive system of regular visits,

Welcoming the adoption of the draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by the Commission on Human Rights in its resolution 2002/33 of 22 April 2002⁶¹ and by the Economic and Social Council in its resolution 2002/27 of 24 July 2002, in which the Council recommended to the General Assembly the adoption of the draft optional protocol,

⁵⁸ Resolution 217 A (III)

⁵⁹ Cf. Resolution 2200 A (XXI), Annex

⁶⁰ Resolution 3452 (XXX), Annex

⁶¹ Cf. Official Records of the Economic and Social Council, 2002, Supplement No. 3 (E/2002/23), Ch. II, Part A

1. *Adopts* the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment contained in the annex to the present resolution, and requests the Secretary-General to open it for signature, ratification and accession at United Nations Headquarters in New York from 1 January 2003;

2. *Calls upon* all States that have signed, ratified or acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to sign and ratify or accede to the Optional Protocol.

*77th plenary meeting
18 December 2002*

Annex

Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

Preamble

The States Parties to the present Protocol,

Reaffirming that torture and other cruel, inhuman or degrading treatment or punishment are prohibited and constitute serious violations of human rights,

Convinced that further measures are necessary to achieve the purposes of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Convention) and to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment,

Recalling that articles 2 and 16 of the Convention oblige each State Part to take effective measures to prevent acts of torture and other cruel, inhuman or

degrading treatment or punishment in any territory under its jurisdiction,

Recognising that States have the primary responsibility for implementing those articles, that strengthening the protection of people deprived of their liberty and the full respect for their human rights is a common responsibility shared by all and that international implementing bodies complement and strengthen national measures,

Recalling that the effective prevention of torture and other cruel, inhuman or degrading treatment or punishment requires education and a combination of various legislative, administrative, judicial and other measures,

Recalling also that the World Conference on Human Rights firmly declared that efforts to eradicate torture should first and foremost be concentrated on prevention and called for the adoption of an optional protocol to the Convention, intended to establish a preventive system of regular visits to places of detention,

Convinced that the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment can be strengthened by non-judicial means of a preventive nature, based on regular visits to places of detention,

Have agreed as follows:

Part I General Principles

Article 1

The objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

Article 2

(1) A Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (hereinafter referred to as the Subcommittee on Prevention) shall be established and shall carry out the functions laid down in the present Protocol.

(2) The Subcommittee on Prevention shall carry out its work within the framework of the Charter of the United Nations and shall be guided by the purposes and principles thereof, as well as the norms of the United Nations concerning the treatment of people deprived of their liberty.

(3) Equally, the Subcommittee on Prevention shall be guided by the principles of confidentiality,

impartiality, non-selectivity, universality and objectivity.

(4) The Subcommittee on Prevention and the States Parties shall cooperate in the implementation of the present Protocol.

Article 3

Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism).

Article 4

(1) Each State Party shall allow visits, in accordance with the present Protocol, by the mechanisms referred to in articles 2 and 3 to any place under its 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 (hereinafter referred to as places of detention). These visits shall be undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment.

(2) For the purposes of the present Protocol, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.

Part II The Subcommittee on Prevention

Article 5

(1) The Subcommittee on Prevention shall consist of ten members. After the fiftieth ratification of or accession to the present Protocol, the number of the members of the Subcommittee on Prevention shall increase to twenty-five.

(2) The members of the Subcommittee on Prevention shall be chosen from among persons of high moral character, having proven professional experience in the field of the administration of justice, in particular criminal law, prison or police administration, or in the various fields relevant to the treatment of persons deprived of their liberty.

(3) In the composition of the Subcommittee on Prevention due consideration shall be given to equitable geographic distribution and to the representation of different forms of civilisation and legal systems of the States Parties.

(4) In this composition consideration shall also be given to balanced gender representation on the basis of the principles of equality and non-discrimination.

(5) No two members of the Subcommittee on Prevention may be nationals of the same State.

(6) The members of the Subcommittee on Prevention shall serve in their individual capacity, shall be independent and impartial and shall be available to serve the Subcommittee on Prevention efficiently.

Article 6

(1) Each State Party may nominate, in accordance with paragraph 2 of the present article, up to two candidates possessing the qualifications and meeting the requirements set out in article 5, and in doing so shall provide detailed information on the qualifications of the nominees.

- (2) a) The nominees shall have the nationality of a State Party to the present Protocol;
b) At least one of the two candidates shall have the nationality of the nominating State Party;
c) No more than two nationals of a State Party shall be nominated;
d) Before a State Party nominates a national of another State Party, it shall seek and obtain the consent of that State Party.

(3) At least five months before the date of the meeting of the States Parties during which the elections will be held, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall submit a list, in alphabetical order, of all persons thus nominated, indicating the States Parties that have nominated them.

Article 7

(1) The members of the Subcommittee on Prevention shall be elected in the following manner:

- a) Primary consideration shall be given to the fulfilment of the requirements and criteria of article 5 of the present Protocol.
b) The initial election shall be held no later than six months after the entry into force of the present Protocol.
c) The States Parties shall elect the members of the Subcommittee on Prevention by secret ballot.
d) Elections of the members of the Subcommittee on Prevention shall be held at biennial meetings of the States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Subcommittee on Prevention shall

be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States Parties present and voting.

(2) If during the election process two nationals of a State Party have become eligible to serve as members of the Subcommittee on Prevention, the candidate receiving the higher number of votes shall serve as the member of the Subcommittee on Prevention. Where nationals have received the same number of votes, the following procedure applies:

- a) Where only one has been nominated by the State Party of which he or she is a national, that national shall serve as the member of the Subcommittee on Prevention.
b) Where both candidates have been nominated by the State Party of which they are nationals, a separate vote by secret ballot shall be held to determine which national shall become the member.
c) Where neither candidate has been nominated by the State Party of which he or she is a national, a separate vote by secret ballot shall be held to determine which candidate shall be the member.

Article 8

If a member of the Subcommittee on Prevention dies or resigns, or for any cause can no longer perform his or her duties, the State Party that nominated the member shall nominate another eligible person possessing the qualifications and meeting the requirements set out in article 5, taking into account the need for a proper balance among the various fields of competence, to serve until the next meeting of the States Parties, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

Article 9

The members of the Subcommittee on Prevention shall be elected for a term of four years. They shall be eligible for re-election once if renominated. The term of half the members elected at the first election shall expire at the end of two years; immediately after the first election the names of those members shall be chosen by lot by the Chairman of the meeting referred to in article 7, paragraph 1 (d). 95.

Article 10

(1) The Subcommittee on Prevention shall elect its officers for a term of two years. They may be re-elected.

(2) The Subcommittee on Prevention shall establish its own rules of procedure. These rules shall provide, inter alia, that:

- a) Half the members plus one shall constitute a quorum.
- b) Decisions of the Subcommittee on Prevention shall be made by a majority vote of the members present.
- c) The Subcommittee on Prevention shall meet in camera.

(3) The Secretary-General of the United Nations shall convene the initial meeting of the Subcommittee on Prevention. After its initial meeting, the Subcommittee on Prevention shall meet at such times as shall be provided by its rules of procedure. The Subcommittee on Prevention and the Committee against Torture shall hold their sessions simultaneously at least once a year.

Part III Mandate of the Subcommittee on Prevention

Article 11

The Subcommittee on Prevention shall

- a) Visit the places referred to in article 4 and make recommendations to States Parties concerning the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;
- b) In regard to the national preventive mechanisms
 - i) Advise and assist States Parties, when necessary, in their establishment;
 - (ii) Maintain direct, and if necessary confidential, contact with the national preventive mechanisms and offer them training and technical assistance with a view to strengthening their capacities;
 - (iii) Advise and assist them in the evaluation of the needs and the means necessary to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;
 - iv) Make recommendations and observations to the States Parties with a view to strengthening the capacity and the mandate of the national preventive mechanisms for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;
- c) Cooperate, for the prevention of torture in general, with the relevant United Nations organs and mechanisms as well as with the international, regional and national institutions or organisations

working towards the strengthening of the protection of all persons against torture and other cruel, inhuman or degrading treatment or punishment.

Article 12

In order to enable the Subcommittee on Prevention to comply with its mandate as laid down in article 11, the States Parties undertake,

- a) To receive the Subcommittee on Prevention in their territory and grant it access to the places of detention as defined in article 4 of the present Protocol;
- b) To provide all relevant information the Subcommittee on Prevention may request to evaluate the needs and measures that should be adopted to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;
- c) To encourage and facilitate contacts between the Subcommittee on Prevention and the national preventive mechanisms;
- d) To examine the recommendations of the Subcommittee on Prevention and enter into dialogue with it on possible implementation measures.

Article 13

- (1) The Subcommittee on Prevention shall establish, at first by lot, a programme of regular visits to the States Parties in order to fulfil its mandate as established in article 11.
- (2) After consultations, the Subcommittee on Prevention shall notify the States Parties of its programme in order that they may, without delay, make the necessary practical arrangements for the visits to be conducted.
- (3) The visits shall be conducted by at least two members of the Subcommittee on Prevention. These members may be accompanied, if needed, by experts of demonstrated professional experience and knowledge in the fields covered by the present Protocol who shall be selected from a roster of experts prepared on the basis of proposals made by the States Parties, the Office of the United Nations High Commissioner for Human Rights and the United Nations Centre for International Crime Prevention. In preparing the roster, the States Parties concerned shall propose no more than five national experts. The State Party concerned may oppose the inclusion of a specific expert in the visit, whereupon the Subcommittee on Prevention shall propose another expert.

(4) If the Subcommittee on Prevention considers it appropriate, it may propose a short follow-up visit after a regular visit.

Article 14

(1) In order to enable the Subcommittee on Prevention to fulfil its mandate, the States Parties to the present Protocol undertake to grant it:

- a) Unrestricted access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;
- b) Unrestricted access to all information referring to the treatment of those persons as well as their conditions of detention;
- c) Subject to paragraph 2 below, unrestricted access to all places of detention and their installations and facilities;
- d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the Subcommittee on Prevention believes may supply relevant information;
- e) The liberty to choose the places it wants to visit and the persons it wants to interview.

(2) Objection to a visit to a particular place of detention may be made only on urgent and compelling grounds of national defence, public safety, natural disaster or serious disorder in the place to be visited that temporarily prevent the carrying out of such a visit. The existence of a declared state of emergency as such shall not be invoked by a State Party as a reason to object to a visit.

Article 15

No authority or official shall order, apply, permit or tolerate any sanction against any person or organisation for having communicated to the Subcommittee on Prevention or to its delegates any information, whether true or false, and no such person or organisation shall be otherwise prejudiced in any way.

Article 16

(1) The Subcommittee on Prevention shall communicate its recommendations and observations confidentially to the State Party and, if relevant, to the national preventive mechanism.

(2) The Subcommittee on Prevention shall publish its report, together with any comments of the State Party concerned, whenever requested to do so by that State Party. If the State Party makes part of the report public, the Subcommittee on Prevention may publish the report in whole or in part. However, no personal

data shall be published without the express consent of the person concerned.

(3) The Subcommittee on Prevention shall present a public annual report on its activities to the Committee against Torture.

(4) If the State Party refuses to cooperate with the Subcommittee on Prevention according to articles 12 and 14, or to take steps to improve the situation in the light of the recommendations of the Subcommittee on Prevention, the Committee against Torture may, at the request of the Subcommittee on Prevention, decide, by a majority of its members, after the State Party has had an opportunity to make its views known, to make a public statement on the matter or to publish the report of the Subcommittee on Prevention.

Part IV National preventive mechanisms

Article 17

Each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level. Mechanisms established by decentralised units may be designated as national preventive mechanisms for the purposes of the present Protocol if they are in conformity with its provisions.

Article 18

(1) The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.

(2) The States Parties shall take the necessary measures to ensure that the experts of the national preventive mechanism have the required capabilities and professional knowledge. They shall strive for a gender balance and the adequate representation of ethnic and minority groups in the country.

(3) The States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms.

(4) When establishing national preventive mechanisms, States Parties shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights.

Article 19

The national preventive mechanisms shall be granted at a minimum the power,

- a) To regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection

against torture and other cruel, inhuman or degrading treatment or punishment;

- b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;
- c) To submit proposals and observations concerning existing or draft legislation.

Article 20

In order to enable the national preventive mechanisms to fulfil their mandate, the States Parties to the present Protocol undertake to grant them,

- a) Access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;
- b) Access to all information referring to the treatment of those persons as well as their conditions of detention;
- c) Access to all places of detention and their installations and facilities;
- d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information;
- e) The liberty to choose the places they want to visit and the persons they want to interview;
- f) The right to have contacts with the Subcommittee on Prevention, to send it information and to meet with it.

Article 21

- (1) No authority or official shall order, apply, permit or tolerate any sanction against any person or organisation for having communicated to the national preventive mechanism any information, whether true or false, and no such person or organisation shall be otherwise prejudiced in any way.
- (2) Confidential information collected by the national preventive mechanism shall be privileged. No personal data shall be published without the express consent of the person concerned.

Article 22

The competent authorities of the State Party concerned shall examine the recommendations of the national preventive mechanism and enter into a dialogue with it on possible implementation measures.

Article 23

The States Parties to the present Protocol undertake to publish and disseminate the annual reports of the national preventive mechanisms.

Part V Declaration

Article 24

- (1) Upon ratification, States Parties may make a declaration postponing the implementation of their obligations under either part III or part IV of the present Protocol.
- (2) This postponement shall be valid for a maximum of three years. After due representations made by the State Party and after consultation with the Subcommittee on Prevention, the Committee against Torture may extend that period for an additional two years.

Part VI Financial provisions

Article 25

- (1) The expenditure incurred by the Subcommittee on Prevention in the implementation of the present Protocol shall be borne by the United Nations.
- (2) The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Subcommittee on Prevention under the present Protocol.

Article 26

- (1) A Special Fund shall be set up in accordance with the relevant procedures of the General Assembly, to be administered in accordance with the financial regulations and rules of the United Nations, to help finance the implementation of the recommendations made by the Subcommittee on Prevention after a visit to a State Party, as well as education programmes of the national preventive mechanisms.
- (2) The Special Fund may be financed through voluntary contributions made by Governments, intergovernmental and non-governmental organisations and other private or public entities.

Part VII Final provisions

Article 27

- (1) The present Protocol is open for signature by any State that has signed the Convention.
- (2) The present Protocol is subject to ratification by any State that has ratified or acceded to the Convention. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
- (3) The present Protocol shall be open to accession by any State that has ratified or acceded to the Convention.

(4) Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

(5) The Secretary-General of the United Nations shall inform all States that have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 28

(1) The present Protocol shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

(2) For each State ratifying the present Protocol or acceding to it after the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession, the present Protocol shall enter into force on the thirtieth day after the date of deposit of its own instrument of ratification or accession.

Article 29

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 30

No reservations shall be made to the present Protocol.

Article 31

The provisions of the present Protocol shall not affect the obligations of States Parties under any regional convention instituting a system of visits to places of detention. The Subcommittee on Prevention and the bodies established under such regional conventions are encouraged to consult and cooperate with a view to avoiding duplication and promoting effectively the objectives of the present Protocol.

Article 32

The provisions of the present Protocol shall not affect the obligations of States Parties to the four Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 8 June 1977, nor the opportunity available to any State Party to authorise the International Committee of the Red Cross to visit places of detention in situations not covered by international humanitarian law.

Article 33

(1) Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the present Protocol and the Convention. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

(2) Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act or situation that may occur prior to the date on which the denunciation becomes effective, or to the actions that the Subcommittee on Prevention has decided or may decide to take with respect to the State Party concerned, nor shall denunciation prejudice in any way the continued consideration of any matter already under consideration by the Subcommittee on Prevention prior to the date on which the denunciation becomes effective.

(3) Following the date on which the denunciation of the State Party becomes effective, the Subcommittee on Prevention shall not commence consideration of any new matter regarding that State.

Article 34

(1) Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting at the conference shall be submitted by the Secretary-General of the United Nations to all States Parties for acceptance.

(2) An amendment adopted in accordance with paragraph 1 of the present article shall come into force when it has been accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.

(3) When amendments come into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment that they have accepted.

Article 35

Members of the Subcommittee on Prevention and of the national preventive mechanisms shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions. Members of the Subcommittee on Prevention shall be accorded the privileges and immunities specified in section 22 of the Convention on the Privileges and Immunities

of the United Nations of 13 February 1946, subject to the provisions of section 23 of that Convention.

Article 36

When visiting a State Party, the members of the Subcommittee on Prevention shall, without prejudice to the provisions and purposes of the present Protocol and such privileges and immunities as they may enjoy,

- a) Respect the laws and regulations of the visited State;
- b) Refrain from any action or activity incompatible with the impartial and international nature of their duties.

Article 37

(1) The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

(2) The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States.

7 – ORGANISATIONAL DECREE OF THE FEDERAL MINISTRY OF JUSTICE OF 20 NOVEMBER 2008

1. A Federal Agency for the Prevention of Torture (Federal Agency) shall be established which is to be designated to the United Nations as the National Preventive Mechanism within the meaning of Article 3 of the Optional Protocol of 18 December 2002 on the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 (Optional Protocol).

2. The Federal Agency shall have the task of visiting places under federal jurisdiction where people are deprived of their liberty within the meaning of Article 4 of the Optional Protocol in order to prevent torture, draw attention to problems and where appropriate make recommendations for improvements.

3. The Federal Agency shall have the rights and powers designated in Articles 19 and 20 of the Optional Protocol.

The Federal Agency may make recommendations to the competent authorities to improve the conditions for persons who have been deprived of their liberty. The authorities shall be obliged to examine these recommendations carefully and to make a statement to the Federal Agency within a suitable period.

Together with the Joint Commission on the Prevention of Torture, the Federal Agency shall draw up an Annual Report which shall be forwarded to the Federal Government, the *Land* Governments, the German Federal Parliament and the *Länder* Parliaments.

4. The Director of the Federal Agency shall act on an honorary basis. He/she shall be independent and not subject to any instructions. Compensation for expenditure and costs shall be granted in accordance with the provisions contained in the Federal Travel Expenses Act.

5. The Director of the Federal Agency shall be nominated by the Federal Ministry of Justice in agreement with the Federal Ministry of the Interior

and the Federal Ministry of Defence for a period of office of four years. Re-nomination shall be possible.

The Director may renounce his/her office at any time. Prior to expiry of the period of office, dismissal against the will of the Director may only be effected subject to the provisos of section 24 of the German Judiciary Act by the Federal Ministry of Justice in agreement with the Federal Ministry of the Interior and the Federal Ministry of Defence. In this case, the Federal Ministry of Justice shall nominate a successor for the remaining period of office in agreement with the Federal Ministry of the Interior and the Federal Ministry of Defence.

6. The Federal Agency shall have at its disposal a secretariat which shall perform the ongoing business of the Federal Agency and shall be established with the latter in accordance with the Statutes of the Centre for Criminology.

The staff of the Secretariat shall only be appointed or dismissed with the consent of the Director of the Federal Agency. It shall be in factual terms only subject to the instructions of the Director of the Federal Agency.

The seat of the Federal Agency shall be Wiesbaden.

7. The Federal Agency shall work together with the Joint Commission for the Prevention of Torture. It may make use of staffing and material together with the Commission. The details shall be governed by an administrative agreement.

8. The Federal Agency shall be funded from the budget of the Federal Ministry of Justice.

Berlin, 20 November 2008

8 – STATE TREATY ON THE ESTABLISHMENT OF A NATIONAL MECHANISM OF ALL THE *LÄNDER* IN ACCORDANCE WITH ARTICLE 3 OF THE OPTIONAL PROTOCOL OF 18 DECEMBER 2002 TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT OF 25 JUNE 2009

The *Land* Baden-Württemberg, represented by the Prime Minister, in turn represented by the Minister of Justice,

the Free State of Bavaria, represented by the Prime Minister, in turn represented by the Minister of State for Justice and for Consumer Protection,

the *Land* Berlin, represented by the Governing Mayor, in turn represented by the Senator for Justice,

the *Land* Brandenburg, represented by the Prime Minister, in turn represented by the Minister of Justice,

the Free and Hanseatic City of Bremen, represented by the Chairman of the Senate, in turn represented by the Senator for Justice and Constitution,

the Free and Hanseatic City of Hamburg, represented by the Senate, in turn represented by the Chairperson of the Ministry of Justice,

the *Land* Hesse, represented by the Prime Minister, in turn represented by the Minister of Justice, for Integration and European Affairs,

the *Land* Mecklenburg-Western Pomerania, represented by the Prime Minister, in turn represented by the Minister of Justice,

the *Land* Lower Saxony, represented by the Prime Minister, in turn represented by the Minister of Justice,

the *Land* North Rhine-Westphalia, represented by the Prime Minister, in turn represented by the Minister of Justice,

the *Land* Rhineland-Palatinate, represented by the Prime Minister, in turn represented by the Minister of Justice,

the Saarland, represented by the Prime Minister, in turn represented by the Minister for Justice, Labour Affairs, Health and Social Affairs,

the Free State of Saxony, represented by the Prime Minister, in turn represented by the Minister of State of Justice,

the *Land* Saxony-Anhalt, represented by the Prime Minister, in turn represented by the Minister of Justice,

the *Land* Schleswig-Holstein, represented by the Prime Minister, in turn represented by the Minister for Justice, Labour Affairs and Europe, and

the Free State of Thuringia, represented by the Prime Minister, in turn represented by the Minister of Justice,

herewith conclude the following State Treaty:

Preamble

The Federal Republic of Germany signed the Optional Protocol of 18 December 2002 to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “Optional Protocol”) on 20 September 2006.

The Optional Protocol provides for the establishment of national mechanisms for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as “for the

STATE TREATY ON THE ESTABLISHMENT OF A NATIONAL MECHANISM OF ALL THE LÄNDER IN ACCORDANCE WITH ARTICLE 3 OF THE OPTIONAL PROTOCOL OF 18 DECEMBER 2002 TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT OF 25 JUNE

prevention of torture”). These mechanisms are to examine the treatment of persons who have been deprived of their liberty. Since competence for measures entailing deprivation of liberty in the Federal Republic of Germany is very largely a matter for the *Länder*, such mechanisms are to be established by the *Länder* and provided with the appropriate powers. It appears expedient in place of individual commissioners of the *Länder* to create with this Treaty a joint national mechanism within the meaning of Article 3 of the Optional Protocol (Commission) which is able to act uniformly vis-à-vis the Federation, the *Länder* and the United Nations.

Additionally, the Federation establishes a Federal Agency for the Prevention of Torture as a further national mechanism which shall perform the corresponding tasks for individuals who have been deprived of their liberty under federal jurisdiction. The Commission shall work closely together with this agency, in particular in reporting.

The Commission is to use the infrastructure of the Centre for Criminology (Kriminologische Zentralstelle e.V.) as extensively as possible. The necessary secretariat is to be established with the Centre for Criminology.

Article 1
Establishment of the Commission
for the Prevention of Torture

The *Länder* concluding the present Treaty shall establish a Joint Commission for the Prevention of Torture which shall be designated to the United Nations as the national mechanism for the prevention of torture within the meaning of Article 3 of the Optional Protocol.

Article 2
Tasks and powers

(1) The Commission shall have the task of visiting places of detention within the meaning of Article 4 of the Optional Protocol under the jurisdiction of the *Länder* in order to prevent torture, drawing attention to problems and where appropriate making recommendations for improvements.

(2) The members of the Commission, individually or together, shall have the powers named in Article 19 of the Optional Protocol. The *Länder* shall grant to them the rights and powers named in Article 20 of the Optional Protocol.

(3) The Commission may make recommendations to the competent authorities in order to improve the conditions for persons who have been deprived of their liberty. The authorities shall be obliged to carefully examine these recommendations and to

make a statement to the Commission within a suitable period.

(4) The Commission shall draft an Annual Report together with the Federal Agency for the Prevention of Torture, which shall be forwarded to the Federal Government, the *Land* Governments, the German Federal Parliament and the *Land* Parliaments.

Article 3
Confidentiality

The members of the Commission shall be obliged to maintain the confidentiality of information becoming known to them within the framework of their tasks, also beyond the duration of their period of office.

Article 4
Members

(1) The Commission shall consist of four members who act on an honorary basis. The members shall be independent and not subject to any instructions. The number of the Commission members may be changed by a unanimous resolution of the Conference of Ministers of Justice.

(2) The members of the Commission shall be nominated by the Conference of Ministers of Justice for a four-year period of office. In derogation therefrom, on nomination of the first four members of the Commission, two members shall be nominated for four years and two members for two years. A renewed nomination shall be possible. They may lay down their office at any time. A member of the Commission may only be dismissed against his/her will prior to expiry of his/her period of office subject to the provisos of sections 21 and 24 of the German Judiciary Act by a unanimous resolution of the Conference of Ministers of Justice. In such cases, the Conference of Ministers of Justice shall nominate a successor for the remaining period of office.

(3) The Commission shall submit its reports and recommendations uniformly. The chair of the Commission shall be held by a member of the Commission who shall each be nominated for two years by the Conference of Ministers of Justice. A renewed nomination shall be possible.

(4) The members of the Commission shall be persons with acknowledged expertise in the field of the prison service or of the placement of offenders with mental disorders in psychiatric institutions, the police, psychiatry, criminology or in comparable fields. It should be ensured in the composition of the Commission that members are represented who are versed in various specialist fields. A balanced representation of the genders shall be ensured. The

members of the Commission should not be older than 70 on their nomination.

(5) The members of the Commission shall receive compensation for expenditure and costs in accordance with the provisions contained in the Federal Travel Expenses Act.

Article 5

Secretariat

(1) The Commission shall have a secretariat at its disposal which shall perform the ongoing business of the Commission and which is to be established with the latter in accordance with the Statutes of the Centre for Criminology.

(2) The staff of the secretariat shall only be appointed or dismissed with the consent of the Commission. It shall only be subject to the instructions of the Commission from a factual point of view.

Article 6

Headquarters

The Commission shall be headquartered in Wiesbaden.

Article 7

Modus operandi and rules of procedure

The Commission shall issue rules of procedure. It shall be free in determining its strategies and modi operandi.

Article 8

Cooperation

The Commission shall cooperate with the Federal Agency for the Prevention of Torture. It may use staff and equipment together with the Federal Agency. The details shall be regulated by an administrative agreement.

Article 9

Funding

(1) The sharing of the costs for the Commission shall be effected in accordance with the Königstein Key.

(2) The funding shall be effected in the shape of subsidies being provided to the Centre for Criminology.⁶² The pro rata amounts shall become due in the course of each respective accounting year in two instalments on 31 May and 30 November in accordance with the valuations of the budget plan. The staffing and material expenditure shall be advanced by the Hesse Ministry of Justice, for Integration and European Affairs.

Article 10

Term, termination

(1) The present Treaty shall be concluded for an indefinite period; it may be terminated by each *Land* by written declaration to the other *Länder* with a termination period of one year as per the end of a calendar year.

(2) The effectiveness of the Treaty between the other *Länder* shall not be affected by the resignation of a *Land* therefrom.

(3) If a *Land* effectively terminates as per the end of a calendar year, the cost distribution between the remaining *Länder* shall be calculated in accordance with the correspondingly adjusted Königstein Key.

Article 11

Entry into force

The present Treaty shall require ratification. It shall enter into force on the first of the month following the month in which the last ratification certificate of the *Länder* concluding the present Treaty is received by the Hesse Ministry of Justice, for Integration and European Affairs. The Hesse State Chancellery shall inform the other *Länder* involved of the time when the last ratification certificate was deposited.

Dresden, 25 June 2009

⁶² The *Länder* agree that the subsidies for the Commission are not counted in the calculation of cuts in the budget valuations based on the resolution of the Conference of Heads of Government of the *Länder* of 30 March 2006.

9 – ADMINISTRATIVE AGREEMENT ON THE NATIONAL AGENCY FOR THE PREVENTION OF TORTURE IN ACCORDANCE WITH THE OPTIONAL PROTOCOL OF 18 DECEMBER 2002 TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

The Federal Republic of Germany, represented by the Federal Ministry of Justice,

and

the *Land* Baden-Württemberg, represented by the Prime Minister, the latter in turn represented by the Minister of Justice,

the Free State of Bavaria, represented by the Prime Minister, in turn represented by the Minister of State for Justice and for Consumer Protection,

the *Land* Berlin, represented by the Governing Mayor, in turn represented by the Senator for Justice,

the *Land* Brandenburg, represented by the Prime Minister, in turn represented by the Minister of Justice,

the Free and Hanseatic City of Bremen, represented by the Senator for Justice and Constitution,

the Free and Hanseatic City of Hamburg, represented by the Senate, in turn represented by the Chairperson of the Ministry of Justice,

the *Land* Hesse, represented by the Prime Minister, in turn represented by the Minister of Justice, for Integration and European Affairs,

the *Land* Mecklenburg-Western Pomerania, represented by the Prime Minister, the latter in turn represented by the Minister of Justice,

the *Land* Lower Saxony, represented by the Prime Minister, in turn represented by the Minister of Justice,

the *Land* North Rhine-Westphalia, represented by the Prime Minister, the latter in turn represented by the Minister of Justice,

the *Land* Rhineland-Palatinate, represented by the Prime Minister, in turn represented by the Minister the Justice,

the Saarland, represented by the Prime Minister, in turn represented by the Minister of Justice,

the Free State of Saxony, represented by the Prime Minister, in turn represented by the Minister of State for Justice and for Europe,

the *Land* Saxony-Anhalt, represented by the Prime Minister, in turn represented by the Minister of Justice,

the *Land* Schleswig-Holstein, represented by the Prime Minister, in turn represented by the Minister for Justice, Equality and Integration and

the Free State of Thuringia, represented by the Prime Minister, the latter in turn represented by the Minister of Justice,

conclude the following Administrative Agreement:

Preamble

The Federal Republic of Germany signed the Optional Protocol of 18 December 2002 to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “Optional Protocol”) on 20 September 2006. The German Federal Parliament approved the Optional Protocol by Act of 26 August 2008 (Federal Law Gazette II p. 854). The Federal Republic of Germany deposited the ratification certificate on the Optional Protocol at the United Nations in New York on 4 December 2008. The Optional Protocol came into force for the Federal Republic of Germany on 3 January 2009 (Federal Law Gazette II p. 536).

The Optional Protocol provides for the creation of national preventive mechanisms for the prevention of torture. Their tasks are carried out under the jurisdiction of the *Länder* by the Joint Commission for the Prevention of Torture in accordance with the State Treaty on the establishment of a national mechanism of all *Länder* in accordance with Article 3 of the Optional Protocol of 18 December 2002 to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “Joint Commission”), and are carried out under federal jurisdiction by the Federal Agency for the Prevention of Torture (hereinafter referred to as “Federal Agency”).

The Federal Agency and the Joint Commission shall together form the National Agency for the Prevention of Torture. They shall work together in accordance with the present Administrative Agreement.

Section 1 *Subject-matter*

The subject-matter of the present administrative agreement is the cooperation between the Federal Agency and the Joint Commission within the framework of the National Agency for the Prevention of Torture.

Section 2 *Cooperation*

(1) The Federal Agency and the Joint Commission shall work together as the National Agency for the Prevention of Torture, and shall also express the same in their external appearance. They shall always orientate their activities to optimally achieve the objectives of the Optional Protocol.

(2) The Federal Agency and the Joint Commission shall coordinate in the planning and implementation of their projects, in particular with the aim in mind of making efficient use of their resources.

(3) The Federal Agency and the Joint Commission may avail themselves of the services of interpreters and experts as their respective funds permit.

Section 3 *Headquarters*

The seat of the National Agency for the Prevention of Torture shall be Wiesbaden.

Section 4 *Secretariat*

(1) The National Agency for the Prevention of Torture shall avail itself of the infrastructure of the Centre for Criminology (Kriminologische Zentralstelle e.V.). To this end, the Centre for Criminology shall provide a secretariat which shall

carry out the everyday business of the National Agency for the Prevention of Torture and support the latter with staff and equipment.

The staff of the secretariat of the National Agency for the Prevention of Torture shall only be appointed or dismissed with the consent of the Federal Agency and of the Joint Commission. It shall in specialist terms only be subject to the instructions of the Federal Agency and of the Joint Commission.

Section 5 *Funding*

(1) The funding requirement of the National Agency for the Prevention of Torture may be a maximum of EUR 300,000 per year. A maximum amount of EUR 100,000 of this sum shall be accounted for by the Federal Agency, which shall be met from the budget of the Federation, and a maximum amount of EUR 200,000 by the Joint Commission, which shall be met from the budgets of the *Länder*. The distribution of the shares accounted for by the respective *Länder* shall be effected in accordance with the Königstein Key. One third of the joint costs shall be met by the Federation and two thirds by the *Länder*.

(2) The staff and material expenditure shall be met by the Hesse Ministry of Justice, for Integration and European Affairs. The proportions of the Federation and the *Länder* shall become due in the course of each accounting year in two instalments on 31 May and 30 November in accordance with the methods followed in the budget plan of the Centre for Criminology. Over- and under-payments by the Federation regarding the Federal Agency or by the *Länder* with regard to the Joint Commission towards the funding needed in accordance with the annual account shall be balanced in the second sub-amount of the following accounting year.

(3) The disbursement by the Hesse Ministry of Justice, for Integration and European Affairs to the Centre for Criminology shall be effected in the shape of a monthly advance payment which shall cover the fixed costs of both the Joint Commission and of the Federal Agency. Further staff and equipment shall be disbursed on an ad hoc basis as funds permit.

(4) The respectively valid version of sections 14 and 15 of the Statutes of the Centre for Criminology shall apply mutatis mutandis to drawing up the budget plan and the annual account.

(5) The satisfaction of the obligations from the present Agreement shall be subject to the proviso of the provision of budget funding in the budget plan of the party respectively affected.

ADMINISTRATIVE AGREEMENT ON THE NATIONAL AGENCY FOR THE PREVENTION OF TORTURE IN ACCORDANCE WITH THE OPTIONAL PROTOCOL OF 18 DECEMBER 2002 TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Section 6

Annual Report

The National Agency for the Prevention of Torture shall draw up a joint Annual Report which shall be forwarded to the Federal Government, the *Land* Governments, the German Federal Parliament and the *Land* Parliaments.

Section 7

Term

(1) The present Administrative Agreement is herewith concluded for an indefinite period. It may be terminated by any party by written declaration towards the other parties with a one year's notice period to the end of a calendar year.

(2) The departure of one party shall not affect the effectiveness of the agreement between the other parties.

(3) Should a *Land* effectively terminate to the end of a calendar year, the cost distribution between the remaining *Länder* shall be calculated in accordance with the correspondingly adjusted Königstein Key.

Section 8

Transitional provision

In derogation from section 5, the Hesse Ministry of Justice, for Integration and European Affairs shall only advance the portion accounted for by the *Länder* for the Joint Commission for the year 2010. The breakdown of the share respectively accounted for by the *Länder* shall also be effected in this respect in accordance with the Königstein Key.

The share for 2010 accounted for by the Federal Agency shall be attributed directly by the Federation to the Centre for Criminology.

Section 9

Entry into force

The present Administrative Agreement shall enter into force on the first day of the month after next after having been signed by all parties concluding the present Agreement.

10 – RULES OF PROCEDURE OF THE NATIONAL AGENCY FOR THE PREVENTION OF TORTURE

Adopted at the joint meeting of the Federal Agency for the Prevention of Torture and the Joint Commission for the Prevention of Torture held on 2 September 2013

Part 1 Structure

Section 1 Bodies

(1) Pursuant to section 2 of the Administrative Agreement on the National Agency for the Prevention of Torture, the Federal Agency for the Prevention of Torture (Federal Agency) and the Joint Commission for the Prevention of Torture (Joint Commission) shall together form the National Agency for the Prevention of Torture (National Agency). They shall cooperate under this name.

(2) The members of the Federal Agency and of the Joint Commission are members of the National Agency.

Section 2 Representation

The Director of the Federal Agency and the Chair of the Joint Commission shall together represent the National Agency externally.

Part 2 Modus operandi of the National Agency

Section 3 Basic principles

(1) The members of the National Agency shall coordinate their modus operandi with each other, they shall draw up guiding principles and an annual programme.

(2) The Director of the Federal Agency and the Chair of the Joint Commission shall coordinate the use of staff in the Secretariat.

Section 4 Meetings

(1) As a rule at least two meetings of the members of the National Agency shall be held each year.

(2) As a rule the Secretariat shall be involved in these meetings.

(3) The Director of the Federal Agency and the Chair of the Joint Commission shall reach agreement on who chairs these meetings.

(4) Minutes shall be kept of each of these meetings.

(5) The minutes shall be presented to members for approval as soon as possible after the end of the meeting. The minutes shall be regarded as approved if no objections are raised within two weeks after their being forwarded.

Section 5 Voting

(1) Motions are carried if they receive the majority of the votes cast.

(2) Motions pertaining to the National Agency are only carried if the Director of the National Agency has not voted “no”. Joint decisions of both bodies shall be reached by consensus.

Section 6 Circular procedure

(1) Decisions may also be taken by circular procedure.

(2) The result of the vote shall be determined two weeks after the motion has been forwarded to members.

Section 7 Secretariat

(1) The Secretariat supports the Federal Agency and the Joint Commission in fulfilling their tasks.

(2) The work of the Secretariat shall be regulated on the basis of a distribution of business plan.

Part 3 The Federal Agency

Section 8 Competence and structure

(1) The competence and structure of the Federal Agency are set out in the Organisational Decree of the Federal Ministry of Justice of 20 November 2008.

(2) The Director of the Federal Agency and his or her deputy shall coordinate their activities with each other and with the Secretariat. They shall inform the National Agency about key results as soon as possible via the Secretariat.

Section 9
Meetings

Section 4 (2) to (5) and sections 5 and 6 shall apply mutatis mutandis to meetings of the Federal Agency.

Part 4
The Joint Commission

Section 10
Competence and structure

- (1) The competence and structure of the Joint Commission are set out in the State Treaty on the Establishment of a National Mechanism of all the *Länder* in accordance with Article 3 of the Optional Protocol of 18 December 2002 to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 25 June 2009.
- (2) The Chair of the Joint Commission shall represent the Joint Commission externally. He or she may be represented by a deputy.
- (3) Members shall coordinate their activities with each other and with the Secretariat. They shall inform members of the National Agency about key results as soon as possible via the Secretariat.

Section 11
Meetings

Section 4 (2) to (5) and sections 5 and 6 shall apply mutatis mutandis to meetings of the Joint Commission.

Part 5
**Joint modus operandi of the Federal Agency
and the Joint Commission**

1. Visits

Section 12
Planning visits

- (1) For each calendar year the Federal Agency and the Joint Commission shall draw up a provisional list of places they wish to visit.
- (2) The Federal Agency and Joint Commission shall reach agreement when planning their visits, with the aim of making balanced use of the resources available to the Secretariat.

Section 13
Conducting visits

- (1) A visiting delegation shall comprise one or several members of the competent body and staff of the Secretariat.
- (2) External experts or interpreters may be involved in individual visits.
- (3) The members of the visiting delegation shall appoint one of its members to head the delegation.
- (4) The head of the delegation shall hold an initial meeting and a final meeting with the head of the

facility visited. He or she shall inform the competent superior supervisory authority as soon as possible of the preliminary result of the visit.

Section 14
Reports

- (1) The Secretariat shall draw up a report following each visit in which it summarises the course of the visit, the determinations made, as well as, where indicated, recommendations and suggestions for improving the situation of detainees.
- (2) The Secretariat may request additional documents and information from the facility visited before writing its report.
- (3) The report shall be coordinated with the head of the delegation. It shall be signed by the members who took part in the visit.
- (4) The Director of the Federal Agency or the Chair of the Joint Commission shall forward the report to the competent ministry and request a statement. The facility visited shall receive a copy of the report.
- (5) A summary of the report and the ministry's response shall be published on the National Agency's website.

2. Enquiries by individuals

Section 15
Procedure

- (1) The Secretariat shall keep a record of any information supplied by individuals.
- (2) Where information submitted by individuals provides any indications of serious shortcomings, the Federal Agency or the Joint Commission may take further steps with the consent of the person submitting the enquiry.

3. Annual Report

Section 16
Reporting period and content

- (1) The Federal Agency and the Joint Commission shall each year publish a joint report (Annual Report).
- (2) The Annual Report shall cover the activities of the National Agency in the previous year. It shall, in particular, contain the outcome of the visits and the responses of the relevant ministries regarding implementation of any recommendations made.
- (3) The Federal Agency and the Joint Commission shall write those parts of the Annual Report referring to their own activities under their own responsibility.

Section 17
Publication

The Annual Report shall be forwarded to the Federal Government, the *Land* governments, the German Bundestag and the *Land* parliaments. It shall also be published on the National Agency's website.

4. Other provisions

Section 18

Suspicion of partiality

Members of the National Agency shall not conduct any visits and shall abstain from voting where there is any suspicion of partiality. This is the case where a ground is suitable for justifying a suspicion of the member's impartiality.

Section 19

Confidentiality

(1) The members of the National Agency and the staff in the Secretariat shall be obliged to maintain secrecy concerning any confidential information becoming known to them in the course of their activities. This obligation shall extend beyond the duration of their period in office.

(2) Documents containing personal or confidential data must be kept secured and may not be made accessible to third parties.

(3) Personal data may only be passed on with the explicit consent of the person concerned.

Part 6

Concluding provisions

Section 20

Entry into force

(1) These Rules of Procedure shall enter into force on 1 January 2014.

(2) The Rules of Procedure of the Joint Commission of 24 September 2010, as last amended on 26 February 2013, shall cease to be effective upon the entry into force of these Rules of Procedure.