



NATIONALE  
STELLE  
ZUR  
VERHÜTUNG  
VON  
FOLTER

# ANNUAL REPORT 2017

**Period under review**

1 January 2017 – 31 December 2017

© 2018 National Agency for the Prevention of Torture  
All rights reserved  
Printed by: Heimsheim Prison

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

An electronic version of this Annual Report can be found in the “Annual Reports” section of the website  
[www.nationale-stelle.de](http://www.nationale-stelle.de).

# TABLE OF CONTENTS

Preface .....	6
List of abbreviations .....	7
I General information about the work of the National Agency .....	8
1 – Background.....	9
1.1 – Institutional framework .....	9
1.2 – Tasks .....	9
1.3 – Powers .....	10
1.4 – Enquiries by individuals .....	10
2 – The National Agency in the national context .....	11
3 – The National Agency in the international context .....	12
3.1 – Worldwide torture prevention .....	12
3.2 – The National Agency’s international activities .....	12
II Standards .....	14
1 – Deportation.....	15
1.1 – Deportation of persons serving a prison sentence.....	15
1.2 – Information on the time of execution of the deportation order .....	15
1.3 – Time of collection.....	15
1.4 – Deportations from educational institutions, healthcare or care facilities .....	15
1.5 – Consideration for children and sick persons .....	15
1.6 – Information on the deportation procedure .....	15
1.7 – Communication during the entire deportation procedure .....	15
1.8 – Luggage .....	16
1.9 – Contact with legal counsel.....	16
1.10 – Telephone conversations with relatives .....	16
1.11 – Mobile phones .....	16
1.12 – Respect for the best interests of children .....	16
1.13 – Meals.....	16
1.14 – Cash lump sum .....	16
1.15 – Further training of prison staff .....	16
2 – Custody awaiting deportation and custody to secure departure .....	17
2.1 – Legal basis .....	17
2.2 – Admission meeting.....	17
2.3 – Initial medical examination .....	17
2.4 – Psychological and psychiatric care .....	17
2.5 – Staff.....	17
2.6 – Legal consultation .....	17
2.7 – Placement of minors .....	17
2.8 – External contact .....	17
2.9 – Social interaction and leisure activities .....	18
2.10 – Clothing.....	18
3 – Child and youth welfare facilities .....	19
3.1 – CCTV monitoring.....	19
3.2 – Outdoor exercise .....	19
3.3 – Information on rights .....	19
3.4 – Possibilities for complaint .....	19
4 – Prison system .....	20
4.1 – Multiple-occupancy cells .....	20
4.2 – Cell size.....	20
4.3 – Strip-searches .....	20
4.4 – Physical restraint .....	20

4.5 – Visibility of toilets .....	20
4.6 – CCTV monitoring .....	20
4.7 – Clothing worn in specially secured cells .....	21
4.8 – Use of segregation units .....	21
4.9 – Solitary confinement .....	21
4.10 – Conditions in prison cells.....	21
4.11 – Interpretation during medical consultations .....	21
4.12 – Handling confidential medical information .....	21
4.13 – Peepholes.....	21
4.14 – Showers .....	21
4.15 – Respectful treatment .....	21
5 – The police .....	22
5.1 – Physical restraint .....	22
5.2 – Shackling .....	22
5.3 – Strip-searches .....	22
5.4 – Size of custody cells .....	22
5.5 – Multiple-occupancy of custody cells .....	22
5.6 – Visibility of toilets .....	22
5.7 – CCTV monitoring .....	22
5.8 – Furnishing and fittings, conditions in custody cells .....	23
5.9 – Notice of rights.....	23
5.10 – Independent complaints and investigation bodies.....	23
5.11 – Custody documentation.....	23
5.12 – Weapons in custody.....	23
5.13 – Visibility of custody cells.....	23
5.14 – Right to medical examination .....	24
5.15 – Confidentiality of conversations.....	24
6 – Psychiatric clinics.....	25
6.1 – Physical restraint .....	25
6.2 – Documentation of coercive measures .....	25
6.3 – CCTV monitoring.....	25
6.4 – Outdoor exercise.....	25
6.5 – Respectful treatment.....	25
III Focus: Police .....	26
1 – Introduction .....	27
2 – Visits .....	28
2.1 – Positive examples .....	30
2.2 – Findings and recommendations .....	30
2.3 – Police activities at major events .....	34
2.4 – Independent complaints and investigation bodies .....	36
IV Visits .....	38
1 – Deportations.....	39
1.1 – Positive examples .....	39
1.2 – Findings and recommendations .....	39
2 – Custody awaiting deportation and custody to secure departure .....	43
2.1 – Positive examples .....	43
2.2 – Findings and recommendations .....	43
3 – Residential care and nursing homes.....	46
3.1 – Positive examples .....	46
3.2 – Findings and recommendations .....	46
4 – Federal Armed Forces.....	50
5 – Child and youth welfare facilities.....	51
5.1 – Positive examples .....	51

5.2 – Findings and recommendations .....	51
6 – Prisons .....	52
6.1 – Positive examples .....	52
6.2 – Findings and recommendations .....	52
7 – Psychiatric clinics.....	57
7.1 – Positive examples.....	57
7.2 – Findings and recommendations.....	57
 V Appendix.....	 60
1 – Chronological list of visits.....	61
2 – Members of the Federal Agency.....	64
3 – Members of the Joint Commission .....	64
4 – Activities in the period under review .....	65

## PREFACE

The National Agency for the Prevention of Torture is the body responsible in Germany for ensuring humane detention conditions and treatment of prisoners. The Agency hereby presents an annual report of its activities to the Federal Government, the German *Bundestag*, the *Länder* governments and the *Länder* parliaments. The Report covers the period from 1 January to 31 December 2017.

This activity report will first provide an introduction to the National Agency's mandate and its working methods. The next chapter describes the standards the National Agency has developed – in addition to its visits – as benchmarks for humane detention and treatment conditions in the institutions visited. These standards are derived from the Agency's recurring recommendations and are continually developed and adapted. They can also be found on the National Agency's website.

This is followed by a report on the Agency's focus of activity in 2017: the deprivation of liberty by the police. In the context of this, the Agency not only visited police stations of all *Länder*, but also observed police measures carried out at major events.

One issue that continues to arise regularly with regard to police custody is the use of physical restraints. Such use of physical restraints is permitted in some of the *Länder*, and in some facilities this measure is even applied regularly. The National Agency is critical of this, since the use of physical restraint constitutes a severe interference with rights to freedom, and involves considerable risks for the person under restraint. In most cases, police stations do not have suitable restraint systems, nor are persons being restrained supervised without interruption by a qualified person (so-called "*Sitzwache*").

This focus topic is followed by a report on the National Agency's visits in all of its other areas of competence.

Significant deficiencies were found in the Karlsruhe, Traunstein, Stuttgart and Berlin Tegel prisons. Here, the National Agency repeatedly encountered detention conditions that infringe human dignity and must be rectified.

The National Agency increased the number of its visits, especially those to care facilities and social institutions, and also conducted a number of follow-up visits in order to check on the implementation of its recommendations. The findings and recommendations made by the National Agency in the course of its visits are summarised in this Annual Report.

The National Agency only publishes the names of the institutions it visited if these are state-funded. This applies to the publication of both the visit reports and the respective statements made by the competent ministries. The reason for this is that there are considerable doubts as to whether the legal basis for the National Agency's work (the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in conjunction with the ratifying legislation of 26 August 2008) is specific enough to justify the publication of information pertaining to privately run institutions, particularly in view of their rights under Article 14 of the German Basic Law [*Grundgesetz*, GG].

This impairs the National Agency's preventive work and reduces its effectiveness.

The National Agency therefore considers it necessary that a sufficient legal basis be established, allowing the National Agency to publish the names of all the institutions it visited as well as visit reports and statements, which would enable it to fulfil its mandate in terms of prevention as provided for in the Optional Protocol.

## LIST OF ABBREVIATIONS

CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
ECHR	European Court of Human Rights
EU	European Union
NPM	National Preventive Mechanism
OPCAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
SGB	German Social Code [ <i>Sozialgesetzbuch</i> ]
SPT	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 is Germany's designated National Preventive Mechanism (NPM). By establishing this Agency, the Federal Republic of Germany abided by its obligations under international law following from the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (OPCAT). The National Agency is only responsible for places where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its explicit consent or acquiescence. The following provides an overview of the National Agency's special status, as well as further background information regarding its structure.

## 1.1 – INSTITUTIONAL FRAMEWORK

The objective of preventing torture and abuse is laid down in the OPCAT, which adds a preventive approach to the UN Convention against Torture of 1984.

Article 3 of the OPCAT requires that the States Parties set up an NPM. These independent national mechanisms engage in preventive measures and assess whether places of detention ensure humane treatment and detention conditions. The National Agency was set up as Germany's national mechanism for the prevention of torture. It comprises the Federal Agency for the Prevention of Torture (Federal Agency), which is responsible for facilities run at federal level, and the Joint Commission of the *Länder* for the Prevention of Torture (Joint Commission), which is responsible for facilities at federal-state level. The two work together as a National Agency and closely coordinate their activities.

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

The members of the Federal Agency are appointed by the Federal Ministry of Justice and Consumer Protection, while the members of the Joint Commission are appointed by the Conference of Ministers of Justice of the *Länder*. In November 2017, the Conference of Ministers of Justice decided that, "in future, civil society organisations should be involved to a greater extent when appointing the members of the Joint Commission of the National Agency for the Prevention of Torture. Therefore,

NGOs will be given the opportunity to propose to the Conference of Justice Ministers candidates for positions at the Joint Commission." Members are not subject to supervisory control or legal oversight, and are independent in the exercise of their functions. They act in an honorary capacity. Strict conditions apply for the removal of members before the end of their term in office, as set out in sections 21 and 24 of the German Judiciary Act. The full-time secretariat is based in Wiesbaden and is affiliated with the organisational structure of the Centre for Criminology [*Kriminologische Zentralstelle e.V.*].

## 1.2 – TASKS

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

At the federal level, this definition encompasses all of the approx. 280 detention facilities operated by the Federal Armed Forces, the Federal Police and the customs authorities. In addition, the Federal Agency is also responsible for monitoring deportations carried out by the Federal Police. In 2017, 25,673 persons were deported.

The vast majority of facilities fall within the remit of the Joint Commission. Last year, these comprised a total of 181 prisons with independent organisational structures,<sup>1</sup> approx. 1,270 *Land* police stations with custody cells, all courts with holding cells, six facilities for custody awaiting deportation, approx. 550 psychiatric units in specialist clinics and general hospitals, 27 child and youth welfare facilities with closed units, and approx. 3,500 homes for people with disabilities. Some 11,200 residential care and nursing homes where measures depriving people of their liberty are or can be enforced are also classified as places of detention under the above definition.

---

<sup>1</sup> Federal Statistical Office, total number of prisoners and persons in remand detention 2017, p. 6. (as at 31/08/2017).

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

### **1.3 – POWERS**

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

- + Access to all information concerning the number of persons being deprived of their liberty at places of detention as defined in Article 4 of the OPCAT, as well as the number of places of detention and their location
- + Access to all information concerning the treatment of these persons as well as their detention conditions
- + 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 directly or, where deemed necessary, through an interpreter, as well as with any other persons whom the National Agency believes may supply relevant information
- + The freedom to choose the places it wishes to visit and whom it wishes 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 (i) OP-CAT, persons who communicate information to the National Agency are not to be sanctioned or otherwise prejudiced in any way. The members and employees of the Agency are obligated to maintain confidentiality with regard to information disclosed to them in the course of their duties. This obligation shall be maintained even beyond the term of their office.

### **1.4 – ENQUIRIES BY INDIVIDUALS**

In the period under review, the National Agency received individual enquiries regarding 65 separate cases that exclusively concerned facilities within the Joint Commission's remit. Since the National Agency does not operate as an ombudsman institute, it is not authorised to remedy individual enquiries or offer legal advice. Nevertheless, details regarding concrete incidents are of practical relevance for the work of the National Agency. They provide background information for visits, and may draw attention to specific problem areas. In addition, concrete information and tips can have an influence on which facilities the National Agency visits, and on the priorities it sets as a result.

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

## 2 – THE NATIONAL AGENCY IN THE NATIONAL CONTEXT

The National Agency is committed to becoming more widely known throughout Germany and to increasing its effectiveness regarding the protection of human dignity. In order to achieve these goals, it engages in a number of activities. For example, the National Agency publishes visit reports and Ministry statements as well as its standards on its website. This might encourage supervisory authorities and facilities that were not visited to independently review and improve the detention conditions of persons deprived of their liberty to ensure the respect of human dignity.

In 2017, representatives of the National Agency visited educational institutions such as Schloss Hansenberg Boarding School, Humboldt University of Berlin and the Federal University of Public Administration in North Rhine-Westphalia in order to present the Agency's work and standards. They also conducted similar public relations work at the Expert Conference of Protestant Adult Education Institutions in Saxony, at the Annual Meeting of the Visiting Commissions for Psychiatric Establishments in Brandenburg, at the Berlin "*Vollzugsstammtisch*" (a group of prison system experts in Berlin), at a meeting of Directors-General from the different *Länder* who are responsible for measures of reform and prevention, and at a conference of *Land* desk officers dealing with the law on social care homes. The National Agency organised two expert talks in Wiesbaden, one with representatives of police complaints and investigation bodies of numerous *Länder*, and one with civil society organisations working in the area of deportations.

The National Agency maintains a regular exchange with relevant persons in positions of responsibility, such as the head of the division responsible for the Federal Police at the Federal Ministry of the Interior,

Building and Community, and the Prison Service Commissioner of North Rhine-Westphalia.

On 22 March, members of the National Agency gave a statement during a public hearing in front of the Bundestag Committee on Human Rights and Humanitarian Aid in Berlin with regard to the "Twelfth Report of the Government of the Federal Republic of Germany on its Human Rights Policy". On 24 April, a number of members gave their opinions at expert talks hosted by Tom Koenigs on the future of the National Agency, which also took place in Berlin.

In addition to this, the National Agency made contributions to discussions at selected expert conferences. A tabular overview of all such activities that the National Agency was involved in in 2017 can be found in annex "V 4 – Activities in the period under review".

On the occasion of the publication of the previous Annual Report, the National Agency, for the first time, hosted a reception in Berlin and invited representatives from the facilities it had visited as well as from state bodies and further interested parties. There, it gave a detailed presentation of its area of focus in 2016 (women's prisons) and of the most important conclusions drawn from the visits conducted the previous year. In addition, those in attendance had the chance to exchange ideas with other experts.

Lastly, the National Agency is active in social networks<sup>2</sup> where it provides concise information on its work as an NPM to the broader public.

---

<sup>2</sup> Twitter: "@NationaleStelle", Facebook: "Nationale Stelle zur Verhütung von Folter / NPM Germany".

## 3 – THE NATIONAL AGENCY IN THE INTERNATIONAL CONTEXT

At the international level, the National Agency engages in a regular exchange with numerous other mechanisms for the prevention of torture.

### 3.1 – WORLDWIDE TORTURE PREVENTION

The very first preventive mechanism worldwide was the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), inaugurated by the Council of Europe. It was established under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which came into force on 1 February 1989. The CPT last visited Germany in 2015 and published its corresponding final report in 2017.<sup>3</sup>

The OPCAT entered into force on 22 June 2006. At the end of 2017, the OPCAT had 100 signatory states and had been ratified by 86 states.<sup>4</sup> Of these 86 States Parties, 65 have already designated an NPM.<sup>5</sup> Three different models were employed to establish a mechanism. In the first model, the remits of existing ombudsman institutes were extended to include tasks concerning the prevention of torture (e.g. in Sweden, Austria and Spain). In the second model, various existing monitoring mechanisms were combined to create an NPM (e.g. in the United Kingdom). A third group of states, including France, Germany and Switzerland, set up new national preventive mechanisms.

In addition to the NPMs as national institutes, the OPCAT also established the UN Subcommittee on Prevention of Torture (SPT) to operate on an international level. It comprises 25 members, which are nominated and elected by the States Parties. Since 2012, the subcommittee has been divided into four regional sub-working groups.

The SPT may visit the States Parties for two reasons: Firstly, it may visit places of detention in the States Parties with the aim of making recommendations regarding protecting people deprived of their liberty against torture and other

cruel, inhuman or degrading treatment or punishment. To that end it has essentially the same powers as the NPMs. Secondly, it may also conduct visits to support the States Parties in setting up their NPMs and to offer them training and technical assistance.

### 3.2 – THE NATIONAL AGENCY'S INTERNATIONAL ACTIVITIES

The National Agency's exchange with partner organisations, particularly those at Council of Europe level, and its participation in a number of international events of the NPM network were of great importance once again in 2017. One of these events, which took place in early 2017, was the consultation meeting to discuss the establishment of the so-called NPM Observatory, an advisory body for NPMs established the previous year. Furthermore, the National Agency also participated in the launching of the EU Network of NPMs and in consultations on the development of European guidelines governing custody awaiting deportation and custody to secure departure, which took place in Strasbourg. With discussions on how to measure the effectiveness of NPMs' work and their part in the setting of standards, two further important topics were covered in the framework of the NPM Network.

Lastly, the National Agency received the UN Working Group of Experts on People of African Descent at its secretariat in Wiesbaden. During their visit to Germany, the UN experts examined whether people of African descent face racism, discrimination or xenophobia in the Federal Republic of Germany and which measures Germany is taking to prevent this. The treatment of these people in detention is also important in this context, which is why the experts discussed their findings in this area with the National Agency.<sup>6</sup>

At the invitation of Germany, the annual exchange of NPMs from Germany, Austria and Switzerland took place in Berlin this year. The regular exchange primarily serves to provide a platform for discussion and to enable the further development of standards.

<sup>3</sup> CPT/Inf(2017)13.

<sup>4</sup> As at 22/12/2017, URL: <http://indicators.ohchr.org/> (retrieved on 22/12/2017).

<sup>5</sup> As at 31/12/2017, URL: <https://apt.ch/en/opcat-database/> (retrieved on 31/12/2017).

<sup>6</sup> Country Report A/HRC/36/60/Add.2 and comments by the Federal Government A/HRC/36/60/Add.4, URL: <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session36/Pages/ListReports.aspx> (retrieved on 19/04/2018).

The three NPMs are often confronted with similar challenges, which is why exchanging a variety of solutions is particularly helpful. This year's meeting focussed on police action.

# II STANDARDS

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

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

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

## **I – DEPORTATION**

### **1.1 – DEPORTATION OF PERSONS SERVING A PRISON SENTENCE**

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

### **1.2 – INFORMATION ON THE TIME OF EXECUTION OF THE DEPORTATION ORDER**

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

### **1.3 – TIME OF COLLECTION**

Collections at night should be avoided.

### **1.4 – DEPORTATIONS FROM EDUCATIONAL INSTITUTIONS, HEALTHCARE OR CARE FACILITIES**

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

### **1.5 – CONSIDERATION FOR CHILDREN AND SICK PERSONS**

When deportations are to be carried out, special consideration must be given to the needs of children and sick persons, and suitable care should be provided.

### **1.6 – INFORMATION ON THE DEPORTATION PROCEDURE**

Information on the deportation procedure must be provided to persons being deported – at the time of the collection – immediately, comprehensively, in writing and in a language they understand. This should include the following:

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

### **1.7 – COMMUNICATION DURING THE ENTIRE DEPORTATION PROCEDURE**

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

### **1.8 – LUGGAGE**

Persons being deported must be given the opportunity – taking into account all relevant circumstances – to pack personal belongings. Steps must be taken to ensure, without exception, that the person being deported is dressed appropriately for the procedure and for the country of destination, and that identity documents, necessary medication, provisions for children, and any necessary medical aids (e.g. glasses) can be packed. One of the persons carrying out the deportation should make sure that luggage is also packed for children being deported. A supply of basic hygiene products and sufficient clothing should be kept at the airport and issued as necessary.

### **1.9 – CONTACT WITH LEGAL COUNSEL**

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

### **1.10 – TELEPHONE CONVERSATIONS WITH RELATIVES**

Any person being deported should be given the opportunity to contact his/her relatives.

### **1.11 – MOBILE PHONES**

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

substantiated individual cases. If circumstances no longer require the confiscation of mobile phones, they must be returned to their owner. Before a mobile phone is confiscated, the person being deported must be given the opportunity to write down important phone numbers.

### **1.12 – RESPECT FOR THE BEST INTERESTS OF CHILDREN**

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

### **1.13 – MEALS**

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

### **1.14 – CASH LUMP SUM**

Persons being deported must have sufficient financial means to pay for the journey from the airport to the final destination as well as for meals needed during this journey.

### **1.15 – FURTHER TRAINING OF PRISON STAFF**

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



## 2 – CUSTODY AWAITING DEPORTATION AND CUSTODY TO SECURE DEPARTURE

### 2.1 – LEGAL BASIS

The detention conditions of persons in custody awaiting deportation [*Abschiebungshaft*] and custody to secure departure [*Ausreisegezwangsamt*] must differ from those of sentenced prisoners<sup>7</sup>. Furthermore, any interference with basic rights beyond the mere placement in such a detention facility requires its own legal basis<sup>8</sup>. Consequently, a specific legal basis must be established for the enforcement of custody awaiting deportation and custody to secure departure.

### 2.2 – ADMISSION MEETING

An admission meeting must be held with every newly admitted person, during which the person required to leave the country must be informed of the reason for his/her detention. The person must also be informed of his/her rights.

During these meetings, special attention must be paid to any indications of a mental disorder. If necessary, a psychologist should be involved. Therefore, the detention facility's staff members responsible for conducting admission meetings must receive specialised training enabling them to recognise signs of trauma or mental illnesses. In case of communication difficulties, an interpreter should always be called upon to assist in admission meetings.<sup>9</sup>

### 2.3 – INITIAL MEDICAL EXAMINATION

Every person required to leave the country must undergo an initial medical examination upon admission into custody awaiting deportation or custody to secure departure. It must be ensured that indications pointing to trauma or mental illness are diagnosed. In case of communication difficulties, an interpreter should always be called upon to assist in initial medical examinations.<sup>10</sup> Translation by another person required to leave the country is not appropriate for reasons of confidentiality. Moreover,

<sup>7</sup> Cf. Article 16 para. 1 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008.

<sup>8</sup> Federal Constitutional Court, judgment of 31/05/2006, 2 BvR 1673/04, NJW 2006, 2093 (2093).

<sup>9</sup> See Chapter II. 1.7 – “Communication during the entire deportation procedure”.

<sup>10</sup> Ibid.

if translations are performed by non-medical staff or other detainees awaiting deportation, there is no guarantee that technical terms and subject matter will be correctly translated into the other language.

### 2.4 – PSYCHOLOGICAL AND PSYCHIATRIC CARE

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

### 2.5 – STAFF

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

### 2.6 – LEGAL CONSULTATION

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

### 2.7 – PLACEMENT OF MINORS

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

### 2.8 – EXTERNAL CONTACT

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

## **2.9 – SOCIAL INTERACTION AND LEISURE ACTIVITIES**

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

## **2.10 – CLOTHING**

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

## **3 – CHILD AND YOUTH WELFARE FACILITIES**

### **3.1 – CCTV MONITORING**

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

### **3.2 – OUTDOOR EXERCISE**

All children and juveniles must be offered at least one hour of outdoor exercise per day.

### **3.3 – INFORMATION ON RIGHTS**

When they are admitted to the facility, children and juveniles must be informed about their rights. This

information must be given in a manner that is appropriate to their age.

### **3.4 – POSSIBILITIES FOR COMPLAINT**

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

It must be guaranteed that children and juveniles can contact such an ombudsperson confidentially and without restrictions. The complaint channels and all necessary contact details should be provided in an information leaflet worded in a child-appropriate manner, or in the facility's house rules, and explained to them when they are first admitted to the facility.

## 4 – PRISON SYSTEM

### 4.1 – MULTIPLE-OCCUPANCY CELLS

According to the case law of the German Federal Constitutional Court<sup>11</sup>, prison cells accommodating more than one person must have a completely separate toilet with separate ventilation. Multiple-occupancy without such a separation constitutes a violation of human dignity.

### 4.2 – CELL SIZE

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

### 4.3 – STRIP-SEARCHES

According to the Federal Constitutional Court, strip-searches involving a visual inspection of the prisoner's genital area represent a severe interference with the prisoner's general right of personality.<sup>12</sup> They must not be carried out routinely or independently of case-specific suspicions.<sup>13</sup> In order for this requirement to be fulfilled, general orders for strip-searches must leave room for exceptions wherever the principle of proportionality so demands. Staff must be made aware that in individual cases it may not be necessary for the prisoner to undress fully.

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

<sup>11</sup> Federal Constitutional Court, decision of 22/02/2011, file no. 1 BvR 409/09, margin no. 30.

<sup>12</sup> Federal Constitutional Court, decision of 05/03/2015, 2 BvR 746/13, juris margin no. 33–35.

<sup>13</sup> Federal Constitutional Court, decision of 10/07/2013, 2 BvR 2815/11, margin no. 16, with reference to ECHR, *van der Ven v. Netherlands*, 50901/99, 4/2/2003, margin no. 62.

### 4.4 – PHYSICAL RESTRAINT

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

The use of physical restraints is only to be ordered as a last resort, on the basis of clear and precisely defined criteria, and for the shortest possible period of time. To minimise the risk of physical harm, restraints should be applied using a strap-based system. Persons being physically restrained should, at the very least, be given paper underwear and a paper shirt to wear in order to protect their sense of modesty. A person subject to physical restraint must also be observed continuously and personally by a trained member of staff who is in direct proximity to the detainee (known as *Sitzwache*). The prisoner must also be checked on regularly by a doctor. Written reasons must be given for every instance of physical restraint. This includes documentation of which less restrictive measures had been tried in advance and why these failed.

### 4.5 – VISIBILITY OF TOILETS

Staff members should indicate their presence before entering a cell, especially if the toilet is not partitioned off. The person inside must be given the opportunity to indicate that they are using the toilet.

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

### 4.6 – CCTV MONITORING

CCTV monitoring in prisons should only be conducted in individual cases where this is imperative to protect the person concerned. The reasons for

CCTV monitoring must be documented. In addition, the person concerned must be informed of the monitoring. The mere fact that the camera is visible is not sufficient. It must be possible for the person concerned to discern whether the camera is running.

#### **4.7 – CLOTHING WORN IN SPECIALLY SECURED CELLS**

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

#### **4.8 – USE OF SEGREGATION UNITS**

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

#### **4.9 – SOLITARY CONFINEMENT**

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

#### **4.10 – CONDITIONS IN PRISON CELLS**

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

#### **4.11 – INTERPRETATION DURING MEDICAL CONSULTATIONS**

Confidentiality must be assured for medical consultations, which are subject to medical secrecy. Furthermore, it must be ensured that technical terms and subject matter are adequately translated into the other language. In case of communication difficulties, an interpreter should always be called upon to assist.<sup>14</sup> Translation by fellow inmates or any of the facility's non-medical staff is not appropriate.

---

<sup>14</sup> See Chapter II. 1.7 – “Communication during the entire deportation procedure”.

#### **4.12 – HANDLING CONFIDENTIAL MEDICAL INFORMATION**

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

#### **4.13 – PEEPHOLES**

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

Should peepholes be deemed necessary in substantiated individual cases, staff members should make themselves heard before looking through the peephole.

#### **4.14 – SHOWERS**

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

#### **4.15 – RESPECTFUL TREATMENT**

The privacy of prisoners should be protected. For example, staff members should indicate their presence in a suitable manner before entering, and should, as a rule, speak to prisoners using polite forms of address.

## 5 – THE POLICE

### 5.1 – PHYSICAL RESTRAINT

Physical restraint<sup>15</sup> should not be applied in police stations. The use of physical restraint constitutes a serious interference with a person's liberty, and also presents a serious risk of injury. Therefore, physical restraints must be subject to special requirements such as the appropriate and correct application of a strap-based system. A person under physical restraint must also be observed continuously and personally by a trained member of staff who is in direct proximity to the detainee (known as "*Sitzwache*"). The prisoner must also be checked on regularly by a doctor.

### 5.2 – SHACKLING

By contrast to physical restraint, shackling, as the National Agency understands it, is the restriction of movement by tying together arms and/or legs or by tying them to an object.

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

In order to protect the right to physical integrity, any shackling in custody should be carried out using textile hand restraint belts<sup>16</sup>, which should be kept in stock at all times.

### 5.3 – STRIP-SEARCHES

Strip-searches involving a visual inspection of the prisoner's genital area represent a severe interference with the prisoner's general right of personality.<sup>17</sup> It should therefore be decided on a case-by-case basis whether there are indications of a danger to public security and order that would justify a strip-search. Any such measures must adhere to the principle of proportionality.<sup>18</sup>

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

---

<sup>15</sup> See Chapter II. 4.4 – "Physical restraint".

<sup>16</sup> An example of this can be seen in the model used by FRONTEX during deportation flights.

<sup>17</sup> Federal Constitutional Court, decision of 05/03/2015, file no. 2 BvR 746/13.

<sup>18</sup> Cologne Administrative Court, 25/11/2015, file no. 20 K 2624/14.

### 5.4 – SIZE OF CUSTODY CELLS

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

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

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

### 5.5 – MULTIPLE-OCCUPANCY OF CUSTODY CELLS

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

### 5.6 – VISIBILITY OF TOILETS

Staff members should indicate their presence in a suitable manner before looking through a peephole, especially if the toilet in a custody cell is not partitioned off. The person inside must be given the opportunity to indicate that they are using the toilet.

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

### 5.7 – CCTV MONITORING

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

## **5.8 – FURNISHING AND FITTINGS, CONDITIONS IN CUSTODY CELLS**

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

To ensure the protection of persons placed in custody in case of a fire, it is necessary that all custody cells are equipped with a smoke detector.

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

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

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

## **5.9 – NOTICE OF RIGHTS**

Each and every person deprived of their liberty must be informed of their rights, immediately and without exception. Forms containing all the relevant information should therefore be available in various languages. They should at the very least include information about the fact that anyone who is taken into police custody has the right to be examined by a doctor, to consult a lawyer, to notify a trusted third party and, where applicable, inform the consulate of their home country. It should be documented in the police custody record book that the person taken into custody has been informed of their rights so that it is immediately clear to staff members following a shift change-over whenever the relevant information has not been communicated for any specific reason. If a person was not informed of their rights when they were brought into custody, this must be done at a later point in time.

## **5.10 – INDEPENDENT COMPLAINTS AND INVESTIGATION BODIES**

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

punishment of misconduct on the part of police officers.

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

## **5.11 – CUSTODY DOCUMENTATION**

Custody documentation at police stations must be clear and comprehensible. This serves to protect those being held in custody, but also the responsible staff members.

In all cases, the following should be documented:

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

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

## **5.12 – WEAPONS IN CUSTODY**

Firearms must be put down before entering a custody cell.

Pepper spray must not be used in a custody suite.

## **5.13 – VISIBILITY OF CUSTODY CELLS**

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

**5.14 – RIGHT TO MEDICAL EXAMINATION**

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

**5.15 – CONFIDENTIALITY OF CONVERSATIONS**

Persons in custody must be given the opportunity to have confidential conversations with their lawyers, doctors or relatives.



## 6 – PSYCHIATRIC CLINICS

### 6.1 – PHYSICAL RESTRAINT

The use of physical restraints<sup>19</sup> is only to be ordered as a last resort, on the basis of clear and precisely defined criteria, and for the shortest possible period of time. A person subject to physical restraint must also be observed continuously and personally by a trained member of staff who is in direct proximity to the detainee (known as “*Sitzwache*”). This is the only way to ensure comprehensive care and support and to establish the earliest possible time to end this use of physical restraint.

### 6.2 – DOCUMENTATION OF COERCIVE MEASURES

All coercive measures should be documented comprehensively, comprehensibly and completely. This documentation must be done in writing and include documentation of which less restrictive measures had been tried in advance and why these failed.

---

<sup>19</sup> See Chapter II. 4.4 – “Physical restraint”.

### 6.3 – CCTV MONITORING

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

### 6.4 – OUTDOOR EXERCISE

As a rule, every person deprived of his/her liberty must be offered at least one hour of outdoor exercise per day.

### 6.5 – RESPECTFUL TREATMENT

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

# **III**

## **FOCUS: POLICE**

## I – INTRODUCTION

Every year since 2012, the National Agency has set itself an annual topic to focus its activities on. In 2017, the topic chosen was the deprivation of liberty by the police. Since taking up its responsibilities in 2009, the National Agency has visited police stations throughout all of Germany. These visits are typically conducted without prior notice.

In Germany, there are some 1,270<sup>20</sup> stations of the *Länder* Police, and 139<sup>21</sup> Federal Police facilities with custody suites.

---

<sup>20</sup> According to data from the Ministries of the Interior of the *Länder* from 2015.

<sup>21</sup> According to data from the Federal Ministry of the Interior from 2015.

In 2017, the National Agency visited a total of 43 police stations in all of Germany's 16 *Länder*. Four of these visits were follow-up visits to stations that had already been visited in Bavaria, Hamburg, Saarland and Saxony. Visits were carried out to three Federal Police facilities, two of which were follow-up visits.

Further noteworthy visits included inspections at the police mass detention center in Hamburg-Harburg, which was set up on the occasion of the G20 Summit, and at the police station at *Theresienwiese* in Munich where the annual *Oktoberfest* is held.

## 2 – VISITS

The following table provides an overview of the topics of the recommendations made after visits to police stations:

<i>Subject of recommendation</i>	<i>Physical restraint</i>	<i>Strip-searches</i>	<i>Size of custody cells</i>	<i>Visibility of toilets</i>	<i>Furnishings and fittings</i>	<i>Documentation</i>	<i>Weapons in custody suite</i>
<b><i>Federation</i></b>							
Munich Federal Police District Office		x			x		
Koblenz Federal Police Station		x			x	x	
Cologne Federal Police District Office		x			x		x
<b><i>Baden-Württemberg</i></b>							
Ludwigsburg Police Station					x		
Waiblingen Police Station				x	x		
<b><i>Bavaria</i></b>							
Rosenheim Police Station						x	
Munich Police Station 24				x			
Police Station Support Services Division 6, Munich Police HQ Station	x			x	x	x	
Munich Police Station 17 (Oktoberfest Station)			x	x			
Eichstätt Police Station					x	x	x
<b><i>Berlin</i></b>							
Berlin West Custody Facility		x				x	
Berlin South-West Custody Facility		x			x	x	
Tempelhof Custody Facility		x	x				
<b><i>Brandenburg</i></b>							
Oberhavel Police Station, Oranienburg	x	x	x	x	x		
<b><i>Bremen</i></b>							
City Centre Police Station	x				x	x	x
<b><i>Hamburg</i></b>							
Police Station 14	x		x	x	x	x	x
Police Station 15	x			x	x		x
Multiple-occupancy custody cells – G20			x		x		
<b><i>Hesse</i></b>							
South Giessen Police Station		x			x		

Frankfurt Police Station 4					x	x	
<b>Mecklenburg-Western Pomerania</b>							
Ribnitz-Damgarten Police Station					x	x	x
Wismar Police Station					x	x	x
<b>Lower Saxony</b>							
Hildesheim Police Station					x	x	x
Nienburg Police Station					x	x	x
Garbsen Police Station					x	x	x
Hannover Mitte Police Station					x	x	x
<b>North Rhine-Westphalia</b>							
Solingen Police Station	x			x	x	x	
Wuppertal Police Headquarters				x	x	x	
Cologne (Mitte) Police Station 1		x			x	x	
Euskirchen District Police Authority	x	x	x	x	x	x	
<b>Rhineland-Palatinate</b>							
Ludwigshafen I Police Station					x	x	
Worms Police Station					x	x	
<b>Saxony-Anhalt</b>							
Saxony-Anhalt South Police Headquarters, Halle		x	x	x			
<b>Schleswig-Holstein</b>							
Bad Segeberg Police Station		x			x	x	
Kiel Police Custody		x			x	x	
Brunsbüttel Central Police Station		x			x	x	
Itzehoe Police Headquarters							
Elmshorn Police Station		x					
<b>Saarland</b>							
Homburg Police Station					x	x	
Saarbrücken-St. Johann Police Station			x			x	x
<b>Saxony</b>							
Chemnitz North East Police Station					x		
Freiberg Police Station			x	x	x		
<b>Thuringia</b>							
Jena Police Station					x	x	
Weimar Police Station		x			x		
Gotha Police Station					x	x	

## 2.1 – POSITIVE EXAMPLES

The National Agency highlighted several positive examples during its visits. These included:

In the police stations in Berlin, an information leaflet was available specifically for juveniles. This leaflet informs juveniles of their rights and obligations in age-appropriate language.

Tempelhof Custody Unit has good facilities with plenty of space. For example, there are custody cells that are specifically designated as waiting rooms with tables and seating, as single and multiple-occupancy custody cells for persons remaining in custody overnight, and as cells appropriate for persons suffering from claustrophobia.

The National Agency also welcomes provisions in Police Custody Regulations that include specific rules on fundamental rights issues and preventive measures. The Police Custody Regulations of the *Land* of Rhineland-Palatinate, for example, stipulate that the emergency call bell must be tested before and after each occupancy to ensure it is working correctly. The Code also requires that written notice of rights be provided, regardless of the reason for the deprivation of liberty. A further provision establishes that strip-searches may only be conducted when there are factual indications that justify this intrusive measure.

In Munich Police Station Support Services Division 6, an information board is displayed in the entrance area to the custody cells that provides information in numerous languages on the rights of persons deprived of their liberty. In Garbsen Police Station in Lower Saxony, a notice is displayed with information in various languages about emergency legal services.

A particularly positive initiative was found in Mitte Police Station in Hannover, where the text informing detainees of their rights had been recorded on tape in various languages. This makes it possible to provide information, as required by the German Code of Criminal Procedure [*Strafprozessordnung*], to persons who are unable to read by simply playing the sound-recording of the text.

The Regional Police Headquarters of Saxony-Anhalt South ensures that there is staffing assigned exclusively to custody facilities throughout every shift. A benefit of this is that the officers concerned have extensive experience with persons being detained in custody. The same measures are also in place in the stations visited in Hamburg.

## 2.2 – FINDINGS AND RECOMMENDATIONS

### 2.2.1 – Physical restraint

In a number of police stations in the *Länder* Bavaria, Brandenburg, Bremen, Hamburg and North Rhine-Westphalia, physical restraint<sup>22</sup> is still used.

Physical restraint should not be applied<sup>23</sup> in police stations. The use of physical restraint constitutes a serious interference with a person's freedom, and also poses considerable health risks. Therefore, the use of physical restraints must be subject to special requirements such as the appropriate and correct application of a strap-based system. A person subject to physical restraint must also be observed continuously and personally by a trained member of staff who is in direct proximity to the detainee (known as "*Sitzwache*"). The detainee must also be examined regularly by a doctor.

Physical restraints are not used at all, for example, by the Federal Police or by the *Länder* Police in Baden-Württemberg, Berlin, Mecklenburg-Western Pomerania, Rhineland-Palatinate, Saarland, Saxony, Saxony-Anhalt, Schleswig-Holstein and Thuringia. In cases where these police forces find that a person does need to be physically restrained, the person is transferred to a psychiatric clinic. In its latest report on its visit to Germany, the CPT also calls upon the police authorities to put an end to the practice of physical restraint.<sup>24</sup>

### 2.2.2 – Shackles

In numerous police stations, shackling<sup>25</sup> is used in custody facilities in the form of metal handcuffs or disposable plastic cuffs similar to cable ties. However, these can cause bruising or pinched nerves.

In order to protect the right to physical integrity, any shackling in custody should be carried out using textile hand restraint belts<sup>26</sup>, which should be kept in stock at all times.

In one police station in Brandenburg, there were wall recesses with metal fixtures for shackling detainees in custody cells and in the corridor of the custody suite. The National Agency finds that tying persons to the wall violates their human dignity and must be avoided without exception.

<sup>22</sup> See Chapter II. 4.4 – "Physical restraint".

<sup>23</sup> Ibid.

<sup>24</sup> See CPT report on its visit to Germany in 2015, CPT/Inf (2017) 13, margin no. 33.

<sup>25</sup> See Chapter II. 5.2 – "Shackling".

<sup>26</sup> An example of this can be seen in the model used by FRONTEX during deportation flights.

### 2.2.3 – Strip-searches

When police custody facilities are in use, strip-searches are regularly conducted involving a visual inspection of the detainee's genital area. This constitutes a serious interference with detainees' general rights of personality.<sup>27</sup> It should therefore be decided on a case-by-case basis whether there are indications of a danger to public security and order that would justify a strip-search. Any such measures must adhere to the principle of proportionality.<sup>28</sup> If a strip-search is carried out, the reasons for this should be documented in a clear and comprehensible manner. Furthermore, the search should be conducted as respectfully as possible, for example involving two stages where half the body remains dressed in each stage.

### 2.2.4 – Size of custody cells

Custody cells in police stations must be of an adequate size. The National Agency deems a floor space of at least seven square metres per person generally necessary to ensure humane detention conditions in police custody.<sup>29</sup>

However, in the course of its visits, the National Agency saw the need to establish minimum standards that should be adhered to at all times. This was observed in particular with regard to short-term detention.

A single-occupancy custody cell must have a floor space of at least 4.5 square metres. Multiple-occupancy custody cells must have a floor space of at least 3.5 square metres per person. Facing walls must be separated by a distance of at least two metres, and the ceiling must be considerably higher than two metres.<sup>30</sup>

### 2.2.5 – Visibility of toilets

Custody cells were visited in Baden-Württemberg, Bavaria, Brandenburg, Hamburg, North Rhine-Westphalia, Saxony-Anhalt and Saxony where the toilets were visible either through a peephole or via CCTV monitoring.

The right to privacy must be upheld in custody facilities. Observation of persons whilst they are using the toilet constitutes a serious interference with their rights of personality.

Staff members should indicate their presence in a suitable manner before looking through a peephole, especially if the toilet in a custody cell is not partitioned off. The person inside must be given the opportunity to indicate that they are using the toilet.

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

### 2.2.6 – CCTV monitoring

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

### 2.2.7 – Furnishings and fittings, conditions in custody cells

The conditions in police custody cells, including furnishings and fittings, must be respectful of the human dignity of detainees. In Bremen City Centre Police Station, for instance, there were visible Nazi symbols that had been etched into the doors of the custody cells. Any comments or drawings with anti-constitutional content must be removed immediately.

Every custody cell should be equipped with a smoke detector, an emergency button, adjustable lighting, a non-flammable, washable mattress, a blanket and a pillow. Where a custody cell is only equipped with a low bed, it must have additional seating at standard height.

To ensure the protection of persons placed in custody in case of a fire, it is necessary that all custody cells are equipped with a smoke detector. In police stations, these are often located only in the corridor of the custody facility.

In addition, it must be possible for persons deprived of their liberty to call for attention through an emergency button. In emergency situations, it is particularly important that assistance can be called for immediately. It must be guaranteed that the alarm system is working. This must be checked before each use of a custody cell. A positive example was seen in

<sup>27</sup> Federal Constitutional Court, decision of 4 February 2009, file no. 2 BvR 455/08; Federal Constitutional Court, decision of 5 March 2015, file no. 2 BvR 746/13.

<sup>28</sup> Cologne Administrative Court, 25/11/2015, file no. 20 K 2624/14.

<sup>29</sup> See also: CPT/Inf (92) 3, p. 13, no. 43.

<sup>30</sup> Ibid.

this regard at Oberhavel Police Station in Brandenburg. Once the call system there had been pressed, officers could only switch it off again from inside the custody cell itself.

Where the custody suite is located separately from the guard room or if it is in another part of the building, an intercom system is advisable.

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

It is recommended that access to natural light be provided, even for short periods of detention.

### **2.2.8 – Notice of rights**

In Brandenburg, Hamburg and Mecklenburg-Western Pomerania, persons who have been taken into custody under the Police Acts of those *Länder* are not informed of their rights in writing. Information leaflets are only provided in cases of deprivation of liberty under the Code of Criminal Procedure.

In Hannover Mitte Police Station, information leaflets for persons taken into custody under the Police Act were only available in German.

Regardless of the legal basis on which persons are taken into custody, they must be informed of their rights in writing, immediately and in a language they understand.

### **2.2.9 – Custody documentation**

In most of the police stations visited, the custody documentation was incomplete. Moreover, in some stations the custody record book does not even allow for records of important aspects, such as whether information on rights was provided.<sup>31</sup>

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

### **2.2.10 – Weapons in custody**

In a number of police stations in Bavaria, Bremen, Hamburg, Mecklenburg-Western Pomerania and Lower Saxony, police officers carry weapons in the custody suite. Weapons pose a risk in custody facilities and should be laid down before entering the custody suite.

The same applies to the use of pepper spray in a custody suite. Police stations of the Federal Police and the Saarland Police Force have the option of using pepper spray. However, due to the significant health

risks entailed, its use in confined spaces is not a proportionate measure under any circumstances. Pepper spray should therefore be avoided in custody facilities.<sup>32</sup>

### **2.2.11 – Visibility of custody cells**

Bremen City Centre Police Station has a short-term custody cell adjacent to the guard room which is visible to visitors. This custody cell is used to accommodate juveniles and other persons who should not be detained in standard custody cells.

When physical restraint is applied in Police Station 14 in Hamburg, a room is used that is visible from the station's guard room through a glass pane. This means that persons other than the station staff present in the guard room are also able to see into the room.

When using such areas, it should be ensured that they are not visible to unauthorised persons.

### **2.2.12 – Right to medical examination**

In Solingen Police Station, one officer took it upon himself to decide whether or not to grant the request of a person detained in custody to be examined by a doctor of their choosing.

Every person taken into custody has the right to consult a doctor. This must be guaranteed in every case and without exception.

### **2.2.13 – Respectful treatment**

Respect for the privacy of persons detained in custody should be ensured at all times. For instance, staff members should indicate their presence in a suitable manner before looking through a peephole. The detainee should be given enough time to get ready before being observed.

Generally, detainees should be spoken to using polite forms of address.

### **2.2.14 – Confidentiality of conversations**

Persons in custody must be given the opportunity to have confidential conversations with their lawyers, doctors or relatives. The CPT has previously stated that there is no justification for police officers regularly being present during medical examinations.<sup>33</sup>

### **2.2.15 – Basic and further training**

Further training on the topics of rights of persons deprived of liberty, intercultural skills, suicide prevention and de-escalation are of great importance

<sup>32</sup> ECHR, *Tali v. Estonia*, 66393/10, 13/02/2014, margin no. 78; CPT/Inf (2008) 33, margin no. 86.

<sup>33</sup> CPT Report of 28/07/2006, CPT/Inf (2006) 36, margin no. 28.

<sup>31</sup> See Chapter II. 5.11 – “Custody documentation”.



for police officers. Such measures can develop officers' confidence in dealing with the particular situations they encounter in custody.

A high degree of sensitivity is required when it comes to the issue of discrimination. In certain police stations, disrespectful comments were made during the visits concerning persons in custody. This would suggest a lack of knowledge and awareness with regard to the problem of discrimination. Persons in custody should be treated without discrimination as a matter of course. Nor should the individual opinions of the officers influence treatment in custody. The topics mentioned above should form a core part of training and also be addressed in mandatory further training.

#### **2.2.16 – Name badges**

Name badges can have a preventive effect, as they make it possible to identify officers and reduce the risk of assaults. Name badges also enable persons deprived of their liberty to communicate with officers in a more personal manner. This can have a positive effect on how they interact with the officers. The National Agency finds wearing name badges to be beneficial in custody facilities, as is currently practised, for example, in Brandenburg and Saxony-Anhalt.

#### **2.2.17 – Noise pollution**

A custody cell in Berlin South-West Custody Facility is fitted with a very noisy ventilation system that cannot be switched off. The custody cells in Rosenheim Police Station are fitted with ventilators that make a clearly audible noise while operating, which detainees find to be an annoyance. As the custody facilities are often occupied at night, the fixtures and fittings in the cells must enable detainees to sleep. Noisy ventilators should therefore be replaced.

#### **2.2.18 – Staff**

During several visits, the National Agency received reports that the planning of the duty roster did not always ensure there was one officer available at all times. The Police Custody Regulations of the *Land* of Thuringia states under Point 7 paragraph 4 that persons being held in custody should only be supervised by officers of the same gender; however, "if this is not possible then there must be at least two officers on duty." In custody facilities, it must be ensured that detainees can be supervised by officers of the same gender. An officer of the same gender is indispensable, for example, when conducting searches on detainees.

The custody facilities in Berlin are staffed by a small number of police officers, who are flanked mostly by public service employees who have received only six weeks' training for the post. In the course of their work, these employees perform sovereign duties. According to a statement from the Berlin Senate Department for the Interior and Sport, the employees' training includes components such as first aid and dealing with suicide attempts. However, there are doubts as to whether such a short programme can provide employees with sufficient training, in particular for responding to critical situations. Such public service employees should also take part in regular mandatory further training on important topics in police custody, such as suicide prevention, de-escalation and intercultural skills.

In Frankfurt Police Station 4, the visiting commission was informed that the station's remit had been significantly enlarged in recent years, while at the same time staff numbers had been reduced. The resulting staff shortage, the commission heard, meant that officers often had to come on duty at short notice on their days off for special operations such as securing a demonstration. This policy had a negative impact on job satisfaction and the atmosphere in the station, officers stated.

As dissatisfaction among the officers can have an impact on interaction with persons detained in custody, measures should be taken to guarantee more reliable planning of officers' duty rosters.

#### **2.2.19 – Access to custody facilities**

In some *Land* police stations, the custody facilities are located at basement level. Often, these are accessed via a steep flight of stairs, which can cause a risk of falling when bringing people into custody. The National Agency recommends creating level access to custody facilities.

#### **2.2.20 – Multiple occupancy without partitioned toilet areas**

In Munich Police Station Support Services Division 6 and Euskirchen District Police Authority, the toilet areas in the multiple-occupancy custody cells are not completely separate with separate ventilation.

In order to ensure humane detention conditions, it is indispensable that custody cells accommodating more than one person have a completely separate toilet with separate ventilation. Indeed, past decisions of the Federal Constitutional Court have found that detention in multiple-occupancy cells without

separate toilets constitutes a violation of the detainees' human dignity.<sup>34</sup>

#### **2.2.21 – Hygiene products**

Essential hygiene products should be kept in stock in police stations for persons detained in custody.

#### **2.2.22 – Custody suites located separately from guard rooms**

The custody suite at Worms Police Station is located in another part of the building from the guard room. It takes several minutes' walk to reach the custody suite. This relatively long distance makes work harder for the officers, for example when conducting inspections, and also takes up a considerable amount of time. It is also not possible to ensure the detainees receive assistance promptly when required, which is a particular concern in emergency situations.

#### **2.2.23 – Documentation of incidents**

In Chemnitz North East Police Station, no access is available to documentation on self-harm incidents in custody. The station stated that no such search function had been programmed into the electronic custody record book, nor was it required.

The National Agency believes it is necessary to document self-harm incidents in such a way that the information can be accessed subsequently. This makes it possible to analyse reasons for self-harm, to take suitable preventive measures, and thereby better fulfil the State's duty to protect persons being deprived of their liberty.

### **2.3 – POLICE ACTIVITIES AT MAJOR EVENTS**

As part of its focus in the period under review, the National Agency also observed police activity in connection with major events. A visit was undertaken for this purpose to the Neuland police mass detention center in Hamburg-Harburg, which had been set up for the duration of the G20 Summit in Hamburg.

The mass detention center was first visited approximately one month before the G20 Summit to conduct a visual inspection of the facilities. According to the authority in charge, the mass detention center was only planned for short-term detention of only a few hours. Even prior to the initial visit, the National Agency took a critical view of the size of the cells, as the single-occupancy custody cells measured only 3.3

square metres, and multiple-occupancy custody cells for up to five persons measured 9 square metres.<sup>35</sup> Furthermore, a recommendation was made to consider the use of textile hand restraint belts, should shackling be necessary in the custody cells.

In order to expedite processes and limit detention to the shortest possible period, an outpost of Hamburg Local Court was set up where there were judges and interpreters present continuously throughout the entire duration of the Summit.

During its visit, the National Agency inspected the actual processes and detention conditions during the on-going operations at the mass detention center.

#### **2.3.1 – Missing documentation at mass detention center**

Information requested by the National Agency directly after the visit to the mass detention center was not supplied, or not supplied in full. The documents had been added to bit by bit, and were in parts contradictory. This gave the impression that the authority in charge did not have an overview of the duration or details of the detentions that took place at the mass detention center during the Summit. Given the imperative of prevention, this is not acceptable.

#### **2.3.2 – Duration of transfer to custody at the mass detention center**

Assuming the relevant documents supplied are correct, it appears that in a large number of cases several hours elapsed between the time the person was arrested in the street and the point when they were brought into the mass detention center. It was not clear from the documentation where these persons had been held in this period of time, or what had caused their transfer to the mass detention center to be delayed by several hours.

#### **2.3.3 – Duration of detention and size of custody cells**

For persons taken into custody under police law, the mass detention center had 250 places in multiple-occupancy cells for up to five persons. For persons arrested under the Code of Criminal Procedure, there were a further 150 places in both single and multiple-occupancy cells. The single-occupancy custody cells had a floor space of 3.3 square meters, while multiple-occupancy custody cells measured 9 square meters.

In assessing how humane detention conditions and treatment are, a decisive factor is the duration of the detention in connection with the size of the custody cells. The documents and interviews with detainees

<sup>34</sup> Federal Constitutional Court, Decision of 22/02/2011, file no. 1 BvR 409/09, margin no. 30.

<sup>35</sup> See Chapter II. 5.4 – “Size of custody cells”.

revealed that some people were detained in the mass detention center for over 20 hours, or even several days. This clearly does not correspond with the short detention periods of just a few hours that had been planned by Hamburg Police. The National Agency takes a critical view of this finding. Some multiple-occupancy cells, which according to the National Agency's minimum standards should not have held more than two detainees, were used to detain three persons over an extensive period of time.

Minimum standards in terms of cell size must also apply to detention in a mass detention center, regardless of the duration of the placement. For single-occupancy custody cells, the National Agency has set a minimum standard of at least 4,5 square meters of floor space. For multiple-occupancy custody cells, a minimum floor space of 3,5 square meters per person, as well as adequate seating, are required. Facing walls in custody cells must be separated by a distance of at least two metres, and the ceiling must be considerably higher than two metres.

#### **2.3.4 – Access to a lawyer**

Throughout the duration of the Summit, the emergency legal services ensured lawyers could be contacted at all times. A coordinating group within the mass detention center was responsible for assisting detainees in contacting a lawyer. On site, it was found that in some cases it took several hours for detainees to be able to contact a lawyer. Given the provisions made at the assembly point, it is not clear why this was the case.

#### **2.3.5 – Prompt judicial hearing**

The documents provided and interviews with detainees and one judge revealed that it took several hours – in one particular case, seven hours – until detainees were brought before a judge. However, no clear reasons could be seen that would justify such a delay. This leads to doubts as to whether persons detained in the mass detention center were assured a prompt judicial hearing in all cases.

#### **2.3.6 – Length of time before release**

The documents consulted showed that in a large number of cases several hours passed between the judicial hearing and release. If the judicial hearing does not result in a detention order being issued, the person concerned would have to be released immediately.

#### **2.3.7 – Mattresses in custody cells**

During the visit to the mass detention center at the time of the Summit, it was found in a number of individual cases at least that detainees were held overnight without being given a mattress. Instead, they had received only a thin blanket. It became apparent that these individuals had not been informed that they could have a mattress, and therefore did not request one.

## 2.4 – INDEPENDENT COMPLAINTS AND INVESTIGATION BODIES

As part of its duties, the National Agency has for a long time been concerned with the issue of potential violence by police officers in custody, and the question of how assaults can be prevented. An essential element of such prevention is the detection, prosecution and punishment of misconduct on the part of police officers. Accusations of police violence and their subsequent investigation are also dealt with by the European Court of Human Rights (ECtHR). The ECtHR issued its first judgment in such a case against Germany in November 2017.<sup>36</sup>

In an internal event, the National Agency entered into a dialogue with representatives of complaints and investigation bodies from several *Länder*. This enabled a discussion on what can be done to ensure complaints and investigation bodies are perceived by victims and witnesses as independent and impartial points of contact, and to strengthen trust in independent investigations.

The CPT also regularly focuses on the issue of complaints and investigation bodies in its state visits. In its Report published in 2017 on the visit to Germany in 2015, the CPT strongly criticised the situation in Germany with regard to complaints and investigation bodies. Indeed, such criticism had already been expressed in previous visits.<sup>37</sup> At the same time, there had been positive developments in recent years with the establishment of such bodies in many of the *Länder*. Now, there are complaints bodies in the *Länder* of Baden-Württemberg, Lower Saxony, Mecklenburg-Western Pomerania, Rhineland-Palatinate, Saxony, Saxony-Anhalt, Schleswig-Holstein and Thuringia. Bavaria, Bremen and Hamburg already have long-established separate investigation bodies.

### 2.4.1 – Investigation bodies

In order for an investigation body to be seen as a trusted point of contact, it must be perceived by the public to be independent.

A study on independent police complaints bodies summarises the case-law of the European Court of Human Rights on the topic as follows: by *independent*, the Court means “there may be no institutional or hierarchical connections between the investigating officers and the accused officers, and it must be guaranteed that the investigations are fully

independent in practice.”<sup>38</sup> Such bodies must therefore be clearly separate from the police force’s internal mechanisms for complaints management.<sup>39</sup> However, it is not clear from the case-law precisely what types of organisational structures they should have in order to fulfil these criteria.<sup>40</sup> This opinion is also shared by the CPT.<sup>41</sup> As well as the institutional independence of such bodies, the independence of their staff members is also a decisive factor.<sup>42</sup> According to the ECtHR, the independence of investigating bodies is compromised significantly if the staff members are seconded police officers.<sup>43</sup> The staff must have maximum professional distance, while at the same time coming from a police background.<sup>44</sup> Ensuring that teams have interdisciplinary expertise and are not made up entirely of former police officers can increase independence in practice, as well as improve perceptions of independence.

Every *Land* should set up such independent investigation bodies.

### 2.4.2 – Complaints bodies

Furthermore, it is recommended that independent police complaints bodies be established in every *Land* and at Federal level. Such complaints bodies can serve as a point of contact for witnesses and victims of misconduct on the part of police officers. Their approaches differ to those of investigation bodies and make it possible to arrive at mutually agreed solutions, for example via mediation procedures. In addition, they can also examine the outcome of investigations into accusations of police violence.

It is equally vital that these bodies are also perceived by citizens as being independent. This can be achieved, for example, through affiliation with the *Land* parliament. Such bodies should also have comprehensive powers to establish the facts of individual accusations, as is the case, for example, at the Ombudsman of the *Land* of Schleswig-Holstein. Finally, complaints bodies must have enough

<sup>36</sup> Hentschel and Stark v. Germany, Application no: 47274/15, Judgment of 9/11/2017.

<sup>37</sup> CPT/Inf (2017) 13, p. 15 et seqq.

<sup>38</sup> Töpfer (2014), Unabhängige Polizei-Beschwerdestellen. Eckpunkte für die Ausgestaltung, p. 10.

<sup>39</sup> Klein (2015), Polizeigewalt: Rahmenbedingungen, Umgang und Transparenz, Verlag für Polizeiwissenschaft, Frankfurt, p. 100.

<sup>40</sup> Töpfer (2014), p. 10.

<sup>41</sup> CPT/Inf (2017) 13, p. 15 et seqq.

<sup>42</sup> Majetschak/Ritte (2016), Beschwerdestellen über Polizeiverhalten, Working Paper 15 der Humboldt Law Clinic Grund- und Menschenrechte, p. 38, URL: [http://hlcmr.de/wp-content/uploads/2017/09/WP-15\\_HLCMR.pdf](http://hlcmr.de/wp-content/uploads/2017/09/WP-15_HLCMR.pdf) (retrieved on 17 April 2018).

<sup>43</sup> Töpfer (2014), p. 17.

<sup>44</sup> Töpfer (2014), Unabhängige Polizeibeswerdestellen. Eckpunkte für die Ausgestaltung. Policy Paper, p. 11.

financing and human resources to carry out their duties effectively.

# IV VISITS

# I – DEPORTATIONS

In 2017, the National Agency observed the following deportation operations:

- 11 January: Halle/Leipzig to Tunisia
- 23 January: Frankfurt to Afghanistan
- 8 February: Berlin Schönefeld to Italy
- 24 April: Munich to Afghanistan
- 21 June: Halle/Leipzig to Tunisia
- 1 August: Ingolstadt to Albania
- 12 September: Düsseldorf to Afghanistan
- 13 September: Frankfurt to Albania

Deportations fall within the remit of the foreigners authorities of the *Länder* and the police of the *Länder*. The Federal Police then takes charge of operations onwards from the airport all the way to handing the persons over in the country of destination. The procedures followed by the individual *Länder* vary considerably. Equally, the Federal Police's procedures during deportations also vary depending on the airport. In order to improve the protection of fundamental rights during deportation operations, the National Agency sees the need to develop standards for deportations. Consequently, the Agency requested information from the responsible ministries of the *Länder* concerning rules on procedures followed during deportations. It also met with representatives from civil society concerned with the issue of deportation. This enabled the National Agency to gain a deeper understanding of the deportation procedures followed by authorities across Germany.

## 1.1 – POSITIVE EXAMPLES

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

During a charter flight deportation from Munich Airport to Kabul, the strip-searches were not conducted by the same police officers who accompanied the persons concerned throughout the entire flight. According to the person in charge of the operation, this procedure helps create a better relationship between the accompanying police officers and the person being deported.

## 1.2 – FINDINGS AND RECOMMENDATIONS

The enforcement authorities were given recommendations on the following main topics:

### 1.2.1 – Deportations of persons serving a prison sentence

The National Agency observed cases where persons awaiting deportation were taken into custody to secure departure directly after serving a prison sentence, or released and then arrested again using coercive measures in order to be deported.

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

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

According to section 59 (1) of the Residence Act [*Aufenthaltsgesetz*], after expiry of the deadline for voluntary departure, a person required to leave the country may not be informed of the exact date of the deportation. Generally, the person does not even receive an indication of the approximate timeframe for the deportation. However, the short notice provided ahead of deportation does give the persons concerned the chance to ensure they are organised and mentally prepared to leave the country. This can help prevent situations where the person experiences severe stress or anxiety, which can result in resistance, or long-term personal injury.<sup>45</sup> This is particularly relevant for vulnerable groups such as families with children, or sick or disabled persons. In North Rhine-Westphalia, the responsible authorities reported that it was already standard practice to provide such notification.

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

### 1.2.3 – Time of collection

The National Agency observed that persons awaiting deportation are often collected at night time. This practice should be avoided.

---

<sup>45</sup> CPT/Inf (2016) 35 margin nos. 14 and 17.



#### **1.2.4 – Deportations from educational institutions, healthcare or care facilities**

The National Agency received reports that persons were collected for deportation from schools and hospitals. In such facilities, it is important that the persons concerned feel safe, otherwise the facilities are unable to fulfil their essential purpose. Added to this, the threat of deportation from such facilities could mean that the persons concerned might avoid them out of fear of being deported. For these reasons, the responsible authorities in Berlin, Mecklenburg-Western Pomerania and Thuringia generally do not conduct deportation procedures from such facilities.

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

#### **1.2.5 – Consideration for children and sick persons**

When deportations are to be carried out, special consideration must be given to the needs of children and sick persons, and suitable care should be provided.

#### **1.2.6 – Information on the deportation procedure**

Written information on the deportation procedure and the rights of the persons concerned is rarely provided. However, such information could help to reduce the stress experienced and the potential for resistance amongst deportees.<sup>46</sup>

Information on the deportation procedure must be provided to persons about to be deported – at the time of the collection – immediately, comprehensively, in writing and in a language they understand. This information leaflet should include the following:

- The schedule of the deportation including flight times;
- Information on luggage;
- Rights during the deportation procedure.

#### **1.2.7 – Communication during the entire deportation procedure**

During most of the deportation procedures observed by the National Agency, interpreters were only available at the airport, even though there had already been communication difficulties at earlier stages.

It should be borne in mind that persons facing deportation may have a wide range of questions during the procedure, often concerning issues beyond the

procedure itself, and may require translation. If the persons concerned are not able to communicate, their anxieties may be heightened, which can in turn lead to resistance.

It must be possible for persons about to be deported to communicate with the responsible officers during the entire deportation procedure. The written information on the person's rights and the schedule of the deportation cannot replace the service of an interpreter<sup>47</sup>.

#### **1.2.8 – Luggage**

The National Agency observed many cases where persons awaiting deportation were apprehended outside of their accommodation and brought straight to the airport, with no opportunity to pack their luggage. The National Agency also observed the deportation of a family with children where nobody was responsible for the children's luggage, with the result that not even nappies or food had been packed for one of the children. The National Agency was repeatedly assured that the luggage would be forwarded. It therefore requested in its reports to receive confirmation of this once carried out. However, despite assurances by the authorities that such confirmation would be received, this only happened in one of the cases observed.

To ensure a dignified return, the person concerned should at least be given the opportunity to pack whatever personal belongings they need.<sup>48</sup> Deportation procedures should not lead to the person concerned losing their personal belongings.

Every person awaiting deportation must be given the opportunity – taking into account all relevant circumstances – to pack personal belongings. Steps must be taken to ensure, without exception, that the person being deported is dressed appropriately for the procedure and for the country of destination, and that identity documents, necessary medication, provisions for children, and any necessary medical aids (e.g. glasses) can be packed. One of the staff-members carrying out the deportation should be responsible for ensuring that luggage is also packed for children facing deportation.

The National Agency observed a deportation during which a lady suffered from involuntary incontinence. The same woman was also not wearing any shoes during the procedure. Deporting people in clothing they have involuntarily urinated in is inhumane and degrading.

<sup>46</sup> CPT/Inf(2003) margin no. 41. See also CPT/Inf(2016) 35, margin no. 17. Council of Europe, Twenty Guidelines on Forced Return, September 2005, Guideline no. 4, p. 18.

<sup>47</sup> See Chapter II. 1.7 – “Communication during the entire deportation procedure”.

<sup>48</sup> Council of Europe, Twenty Guidelines on Forced Return, September 2005, Guideline no. 15, p. 44.



A supply of basic hygiene products and sufficient clothing should be kept at the airport and issued as necessary.

#### **1.2.9 – Effective legal protection and access to a lawyer**

Any unsettled legal questions should be resolved before deportation. The ability to contact a lawyer during the deportation procedure is an important safeguard to protect deportees from unlawful treatment.<sup>49</sup>

Where an application has been submitted during deportation procedures for a temporary suspension of deportation, the procedures must be halted until a decision is issued.<sup>50</sup> During the deportation procedure, persons awaiting deportation must be allowed to contact legal counsel. Such contact must be made possible at the beginning of the deportation procedure so that any necessary legal measures can be taken in due time. In case the person concerned has so far had no contact with a lawyer, they must be given contact details for emergency legal services.

#### **1.2.10 – Telephone conversations with relatives**

In general, the opportunity to contact relatives during deportation helps to make the situation less stressful.<sup>51</sup>

Any person awaiting deportation should be given the opportunity to contact his/her relatives.

#### **1.2.11 – Mobile phones**

In most of the deportation procedures observed, the National Agency saw that it was routine practice to confiscate mobile phones from persons being deported for the entire duration of the procedure. According to statements by the Bavarian *Land* Police, one of the reasons for this is to prevent third parties from being informed of the procedure, which could prevent or endanger the operations. During deportation procedures from Munich Airport, the National Agency observed how Federal Police officers returned mobile phones to all persons being deported once having arrived at the airport. Only shortly before boarding and for the duration of the flight were they required to hand the phones over again. According to

statements by the officers, there were no security concerns over mobile phones at the airport. This practice made the experience less stressful, the officers reported, and therefore helped deescalate the situation.

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

#### **1.2.12 – Respect for the best interests of children**

Article 3 para. 1 of the Convention on the Rights of the Child provides that, in all actions concerning children, the best interests of the child shall be a primary consideration.

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

#### **1.2.13 – Meals**

The National Agency only observed charter operations, i.e. deportations in which persons are deported separately from public air transport. During these operations, sufficient food and drinks are usually available at the airport for the persons being deported. The National Agency observed that food is generally not provided during transport from the place of residence to the airport. However, it should be borne in mind that most journeys to the airport begin with no prior notification in the early morning hours, and can take several hours.

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

#### **1.2.14 – Health and safety measures, and medical attention**

The National Agency observed a deportation procedure in which at least one of the persons being deported suffered from a psychological disturbance. The accompanying physician was a general practitioner.

If medical care is required during deportation procedures, the professional chosen should have sufficient expertise.

<sup>49</sup> APT (“Association for the Prevention of Torture”), “Legal Safeguards to Prevent Torture – The Right of Access to Lawyers for Persons Deprived of Liberty”, p. 16.

<sup>50</sup> Regulations to this effect exist in Brandenburg (no. 6.9.6. of the Organisational Decree of the Ministry of the Interior on the Implementation of the Asylum Procedure Act in Brandenburg of 6 March 1997), Berlin, North Rhine - Westphalia, Saxony-Anhalt and Schleswig-Holstein.

<sup>51</sup> CPT/Inf (2016) 35, margin no. 23.

During another deportation procedure, the doctor accompanying the measure based his verdict of one person's fitness to travel primarily on a court decision dealing with the formalities of a medical certificate that had been issued at an earlier date. The doctor accompanying a deportation procedure should primarily be bound by the standards of medical ethics. The basis for any assessment of fitness to travel should be the medical professional's expert opinion gained in person on site. The medical file should be secondary in this assessment.

During the same deportation procedure, two doctors gave differing opinions in on-site assessments of one person's fitness to travel. Despite this, the deportation order was still enforced.

If there are any doubts about a person's fitness to travel, the deportation should not be carried out.

#### **1.2.15 – Cash lump sum**

The payment of a lump sum in cash is the responsibility of the respective foreigner authority of the *Länder*, and is not handled consistently.<sup>52</sup> The National Agency observed that people being deported were frequently handed over to the Federal Police at the airport without any financial means of their own. According to the Federal Police, it sometimes pays a cash lump sum to persons being deported, with this sum being requested subsequently from the respective foreigner authority. At certain airports, the church's deportation monitoring service voluntarily provides cash lump sums to persons being deported. This, however, is not reimbursed to the church.

No person being deported should be left without any financial means of their own. All deportees must have sufficient financial means to pay for the journey from the airport to the final destination, as well as for meals needed during this journey.

#### **1.2.16 – Further training of prison staff**

Deportation operations put the person being deported in exceptional circumstances. For this reason, staff-members accompanying deportation operations must be appropriately trained and prepared for the individual procedures. The Federal Police and the Berlin Police<sup>53</sup> currently organise and train staff accordingly.

Not all *Länder* have compiled instructions for their employees regarding the organisation and the procedural aspects of deportation operations. From the point of view of the National Agency, however, such instructions help to provide staff with certainty in this exceptional situation, and to ensure a consistent approach by the authorities. Deportations should be carried out by members of staff who are sufficiently qualified.

#### **1.2.17 – Deportation monitoring**

Deportation monitoring at airports and regular exchanges with authorities and non-state actors help to uncover alleged abuses or misconduct during deportation operations.

In North Rhine-Westphalia, a deportation monitoring mission and the "Airports in NRW Forum" were established in 2000. Within the forum, representatives of governmental and non-governmental organisations are involved in monitoring deportation operations. In Berlin and Brandenburg, a deportation monitoring mission and the Berlin-Brandenburg Deportation Monitoring Forum were founded in 2013.

The National Agency recommends that deportation monitoring be established at all airports where deportations take place. A dialogue should then be maintained between these services and the competent authorities.

---

<sup>52</sup> Only the *Länder* of Brandenburg, Berlin, Baden-Württemberg, Hesse, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate and Thuringia have specific regulations regarding cash lump sums.

<sup>53</sup> In Berlin, arrests are handled by the working group responsible locally for missions of the *Land* police that have an intercultural nature. This working group consists of staff in plain clothes who are specially trained, have relevant language skills, and are experienced in dealing with refugees.

## 2 – CUSTODY AWAITING DEPORTATION AND CUSTODY TO SECURE DEPARTURE

In 2017, the National Agency visited the Hamburg facility for custody to secure departure and the Eichstätt facility for custody awaiting deportation. Both facilities had opened just a few months prior to the visits. The Hamburg facility is responsible for enforcing custody to secure departure as stipulated by the newly created section 62b of the Residence Act [*Aufenthaltsgesetz*], which states that a foreigner may, under certain circumstances, be placed in custody by judicial order for the purpose of ensuring that the deportation can be carried out. The Hamburg facility for custody to secure departure is the first facility of its kind in Germany. In addition custody to secure departure, the Hamburg facility also enforces custody awaiting deportation.

Custody to secure departure differs from custody awaiting deportation on account of the newly created statutory framework and its associated legal preconditions, such as the maximum period of detention. However, the two types of custody are also similar in many ways, such as the type of detainees, the particular circumstances of those facing deportation and the special challenges the custody facilities must overcome. For this reason, the same fundamental standards are taken as a basis for the assessment of detention conditions.

### 2.1 – POSITIVE EXAMPLES

The National Agency highlighted several positive examples during its visits.

In the Hamburg facility for custody awaiting departure, for example, detainees awaiting departure are generally permitted to use their own mobile phone. They also have access to free WiFi. Furthermore, the generous daily visitation rights are particularly worthy of note.

Another particular positive was the availability of two psychologists in the Eichstätt facility for custody awaiting deportation. Generally speaking, there is a considerable need for psychological care in such facilities, as the immigration detainees have frequently undergone traumatic experiences while fleeing their country of origin, and their deportation back there is often accompanied by feelings of fear and anxiety.

### 2.2 – FINDINGS AND RECOMMENDATIONS

The visited facilities were given recommendations on the following main topics:

#### 2.2.1 – Legal basis

At the time of the visits, neither Bavaria nor Hamburg had established a specific legal basis for the enforcement of custody awaiting deportation or custody to secure departure. The Federal Constitutional Court has ruled that “any interference with basic rights which goes beyond a *per se* deprivation of liberty must, regardless of any good or even compelling factual reasons for it, have its own underlying legal basis which sufficiently specifies the necessary conditions for interference”.<sup>54</sup> Both of the visited facilities took special security measures, such as holding the detainees in specially secured rooms free from potentially dangerous objects.

The detention conditions of persons in custody awaiting deportation and custody to secure departure must differ from those of sentenced prisoners.<sup>55</sup>

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

#### 2.2.2 – Physical restraint

In the Hamburg facility for custody to secure departure, the application of physical restraint is possible via a strap-based system. Psychological restraints<sup>56</sup> are applied by the facility’s staff who – other than a brief instruction – have no relevant professional training or experience in carrying out security measures of this nature. Furthermore, the facility does not have any specific forms with which to document the security measure to the necessary extent.

The use of physical restraint constitutes a serious interference with a person’s liberty, and also presents a serious risk of injury. Physical restraints must therefore be subject to special requirements such as the appropriate and correct application of a strap-based system. A person under physical restraint must

<sup>54</sup> Federal Constitutional Court, judgment of 31/05/2006, 2 BvR 1673/04, NJW 2006, 2093 (2093).

<sup>55</sup> Cf. Article 16 para. 1 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008.

<sup>56</sup> See chapter II. 4.4 – “Physical restraint”.

also be observed continuously and personally by a trained member of staff who is in direct proximity to the detainee (known as “Sitzwache”). The detainee must also be examined regularly by a doctor.

### 2.2.3 – Initial medical examination

An initial medical examination is not carried out in the Hamburg facility for custody to secure departure. According to the facility, a doctor can be requested if and when the need arises.<sup>57</sup>

As the detainees are facing imminent deportation, they find themselves in a difficult situation from a psychological perspective. This may result in somatic symptoms and/or an increased risk of self-harm or suicide attempts. It must be ensured that facilities can reliably identify signs of physical or mental trauma and mental disorders, as these may be exacerbated while the person concerned is held in detention. For this reason, in its resolution back in 2011, the 114th German Medical Assembly stated that “sick and traumatised persons in custody awaiting deportation should be examined by specially trained doctors at the beginning of their detention”.<sup>58</sup>

In addition, a professional interpreter<sup>59</sup> should always be called upon to assist with initial medical examinations whenever communication issues arise. For reasons of confidentiality, translations should not be performed by other detainees awaiting deportation. Furthermore, if translations are performed by non-medical staff or other detainees awaiting deportation, there is no guarantee that technical terms and subject matter will be correctly communicated in the other language.

### 2.2.4 – Psychological care

The Hamburg facility for custody to secure departure does not provide any in-house psychological care. Where there are indications that treatment may be necessary, it must therefore be ensured that a psychologist visits the person in question without delay.

In the Eichstätt facility for custody awaiting deportation, discussions with psychologists are sometimes translated by other detainees awaiting deportation. For reasons of confidentiality, translations should always be performed by a professional interpreter.<sup>60</sup>

<sup>57</sup> Cf. CPT, General Report 97 (19), para. 82.

<sup>58</sup> German Medical Association (2011), 114th German Medical Assembly, resolution transcript, p. 125.

<sup>59</sup> See chapter II. 1.7 – “Communication during the entire deportation procedure”.

<sup>60</sup> Ibid.

### 2.2.5 – Staff

In the Hamburg facility for custody to secure departure, the admission meeting is conducted by the facility’s staff. In addition, as the permanent and in most cases only point of contact for detainees awaiting deportation, these staff have the most contact with this target group despite having received no training regarding the group’s specific features and problem areas. Staff working in a facility for custody to secure departure or custody awaiting deportation must be able to recognise signs of mental health problems so that they can call in psychologists or medical professionals if required.<sup>61</sup> The National Agency also recommends further training courses on how to carefully handle situations involving persons who have been ordered to leave the country. This would help staff to feel safe when dealing with such detainees, while also teaching them how to act appropriately in potential crisis situations.<sup>62</sup>

### 2.2.6 – Visibility of toilets

In the Eichstätt facility for custody awaiting deportation, the CCTV monitoring in one of the specially secured cells also covers the toilet area.

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

### 2.2.7 – CCTV monitoring

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

<sup>61</sup> Cf. CPT/Inf (2015) 30, Luxembourg, para 111; CPT/Inf (2015) 18, Visit Czech Republic, para 37.

<sup>62</sup> Cf. also European Prison Rules no. 77; Council of Europe, Twenty Guidelines on Forced Return, no. 10.3.

#### **2.2.8 – Work and recreational activities**

In both of the visited facilities, there was room for improvement in terms of the available work and recreational activities.

#### **2.2.9 – Personal belongings**

At the Hamburg facility for custody to secure departure, persons who are apprehended during a visit to the authorities are taken to the custody facility directly. Personal items from their previous place of residence are generally brought to the detainee by family or friends in the days following their apprehension. In cases where it would have been impossible for the person being deported to predict that they would be apprehended, it should be possible for the person concerned to pack their personal belongings before being taken to the facility.

#### **2.2.10 – Clothing**

In the Eichstätt facility for custody awaiting deportation, both male and female detainees wore prison clothing, despite the fact that female detainees awaiting deportation are generally allowed to wear their own clothes. The detainees were unaware of this fact, however. Male detainees awaiting deportation were prohibited from wearing their own clothes due to the lack of laundry facilities. All detainees awaiting deportation should be permitted to wear their own clothes, as the restrictions imposed by custody awaiting deportation beyond the deprivation of liberty should be kept to a minimum.

## 3 – RESIDENTIAL CARE AND NURSING HOMES

In the year under review, the National Agency visited eight residential care and nursing homes in Berlin, Brandenburg, Hesse, Lower Saxony, Rhineland-Palatinate, Saarland and Schleswig-Holstein. Three of these were follow-up visits to check the implementation of the National Agency's recommendations during its first visit.

On top of these visits, the National Agency handled a case in which the residents' committee of one facility contacted the National Agency on a Sunday. The committee informed the National Agency of serious staff shortages and their subsequent fears that a basic level of care could not be guaranteed. The residents had already informed the police and fire brigade, but were told by these bodies that the matter did not fall under their jurisdiction. The subsequent review – carried out by the supervisory authority once it had been informed – confirmed the severe shortage of staff. Other deficiencies were also found. The supervisory authority reported that appropriate countermeasures had been taken and that it was working closely with the facility to ensure their implementation.

The National Agency was highly critical of the reply letter sent by the competent Ministry concerning the report of a visit in Saarland. The letter stated that, for staffing and organisational reasons, the Ministry was unable to comply with the request for a statement on the points raised in the report.

The Ministry therefore failed to fulfil the obligation set out in Article 22 of the OPCAT, which states: "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". There are also doubts as to whether the Ministry is fulfilling its supervisory duties.

In 2018, the National Agency will focus on elderly care. To this end, it will visit more residential care facilities for the elderly and draw up appropriate standards.

### 3.1 – POSITIVE EXAMPLES

The National Agency highlighted several positive examples during its visits.

In one facility, regular case reviews were carried out every three months regarding the necessity of continuing authorised measures involving a deprivation of liberty.

In another facility, exits were clearly marked as such. This facilitated orientation for the residents and allowed them to be more independent.

In the care unit for dementia sufferers in one facility, touchpads had been installed on the wall in order to stimulate tactile perception; in another facility, trained therapy dogs are used to help care for this target group, which helps improve interactions between caregivers and residents.

All of the facilities cooperate with medical specialists. The National Agency noted in particular that some facilities ensure that residents receive dental and eye care. In one facility, a notice board displaying the dates of all periodic doctors' visits was also noted positively. This enables residents and their relatives or legal caregivers to directly contact specific doctors.

### 3.2 – FINDINGS AND RECOMMENDATIONS

The visited facilities were given recommendations on the following main topics:

#### 3.2.1 – Accessibility

The National Agency was critical of the lack of barrier-free access to the outside area in four facilities, as well as the lack of access to the balconies in one facility. In all cases, the presence of a small threshold posed a tripping hazard which, furthermore, could not generally be negotiated by residents who were alone in a wheelchair.

Residents have the fundamental right to move around freely. For this reason, residential care and nursing homes must also ensure barrier-free access from the inside area to the outdoor area and vice versa.

#### 3.2.2 – Deprivation of liberty

The use of bed rails may constitute a deprivation of liberty. In some of the facilities, the National Agency examined voluntary declarations consenting to the use of bed railings. In one case, the resident's personal details had not been fully documented. In another case, a resident had not been informed that she could withdraw her declaration at any time without citing reasons for doing so.

As the use of bed rails represents an interference with a person's right to liberty, voluntary declarations consenting to this measure should always be clearly



documented with all of the relevant information. This includes always informing the person that they can withdraw their declaration of consent at any time. Furthermore, persons who have made such a declaration should be asked at regular intervals (e.g. every three months) whether their declaration still applies. This response should be documented, dated and signed by the resident to confirm the validity of the declaration. Facilities should ensure that these measures are implemented and establish appropriate procedures.

### **3.2.3 – Restrictions of independence**

The main exit door in one facility was covered by an adhesive foil print, making it hard to identify. The door itself was not locked, and a sign labelled “exit” was fitted above the door.

Elements which might potentially confuse residents represent a violation of their rights of personality. Furthermore, the services provided by long-term care insurance must be such that persons in need of care are able to lead an independent and self-determined life to the greatest possible extent.<sup>63</sup> This also includes establishing conditions which help residents’ orientation. Facilities must take this requirement into account.

### **3.2.4 – Health care guardianship**

In three of the visited facilities, the National Agency found that guardians responsible for health care were not involved to the extent their role requires. A guardian is appointed to actively represent the interests of the person under guardianship towards third parties in accordance with their assigned area of responsibility. This applies equally to authorised representatives with the same responsibilities.

It is therefore necessary that legal representatives are comprehensively informed in advance of the intention behind any changes in treatment or medication to be made by the attending physician (including reasoning, potential effects and alternatives) and that representatives make an informed decision on this basis regarding the intended changes. Facilities must establish suitable workflows to ensure this is the case.

### **3.2.5 – Administration of medicine**

During one visit, the National Agency observed various types of pills being ground together so that the resulting powder could be administered to the

resident by mixing it with their food. For many of these pills, the manufacturer’s instructions stated that the medicine should not be crushed. Furthermore, the mixing of medicine into food contravenes basic medical rules on the administration of medicine.

Medicines are chemically active substances which interfere with the physiological processes of an organism. When administered incorrectly, the intended effect can be altered and the health of the person concerned may be at risk. Facilities must respect the rights of residents to the protection of their physical and mental integrity, and ensure that the applicable rules and regulations are adhered to in the administration of medicine.

### **3.2.6 – Emergency calls**

In two facilities, residents were either unable to reach the emergency call system or were limited in their ability to do so. In one case, the bell cord had been torn off, making it impossible to trigger an emergency call. In another case, residents in the care unit for dementia sufferers were not given an extension cable in their rooms so they could access the emergency call bell above their beds. As a result, it is not always possible for them to reach the emergency call bell. This is particularly true when the residents are in their room but not in their bed. Checks were carried out every 1-2 hours.

Residents must always be able to attract the attention of staff and request assistance. It must be ensured that the emergency call system is always reachable and in working order.

### **3.2.7 – Fire protection**

One of the visited facilities had no fire protection concept. Furthermore, the smoke detectors were out of order and emergency exits were not always kept clear.

Facilities must ensure an appropriate level of fire protection for residents.

### **3.2.8 – Protection against infection**

The National Agency criticised two facilities for the degree of protection they provided against infection. In one facility it was found that caregivers did not wear protective clothing even when it was evidently necessary to do so. In another facility, the National Agency noted that a large number of residents were carrying MRSA<sup>64</sup>. This was said to have been caused by a previous hospital stay. The effected rooms were labelled accordingly, with material storage stations placed in front of each one so that protective

<sup>63</sup> Section 2 (1), Book XI, of the German Social Code (SGB XI) concerning social long-term care insurance.

<sup>64</sup> Strains of methicillin-resistant *Staphylococcus aureus*.

measures could be taken. However, hygiene regulations were not always complied with, and protective clothing was not worn or removed consistently or correctly.

Facilities must ensure compliance with hygiene regulations and guarantee that residents are protected from infection. In the case of MRSA, this means ensuring basic standards of hygiene by implementing appropriate personal, technical and organisational measures, as well as taking further steps such as wearing protective clothing when in contact with patients.<sup>65</sup>

### 3.2.9 – Nutrition

In two of the visited facilities, the National Agency encountered fundamental deficiencies with regard to nutrition. It took particular issue with the fact that food portions were often too small, and that side dishes were often only handed out after being expressly requested by the residents. Other shortcomings included the quality of the food (oily, overcooked or underdone), its unappetising appearance, the repetition of the same menu within a short period of time, and the long lead-time (up to four weeks in some cases) for residents to choose their desired menu.

An unbalanced diet, poor meal quality and insufficient quantities of food can lead to symptoms of deficiency.

Care facilities have an obligation to provide proper nutrition in accordance with the relevant standards<sup>66</sup>. Furthermore, it must be ensured that residents are given all of the elements that make up a particular meal. Ensuring that meals have a suitable appearance is, above all, a matter of respect towards residents. Facilities should ensure there is a reasonable amount of time between the deadline for selecting a meal and the corresponding meal time.

### 3.2.10 – Staff

Several facilities reported a less than satisfactory staffing situation. In one facility, for example, freelancers and temp workers were hired in order to tackle staff shortages. This results in the frequent use

of substitute staff who do not have sufficient language skills to communicate with residents. In another facility, the complaints concerned inappropriate treatment of residents, deficiencies in cleanliness and hygiene, neglect with regard to care and the repeated theft of money and jewellery. In another facility, there were reports of chronic staff shortages, persistently high levels of sick leave and low staff morale. However, according to information provided to the resident's committee on behalf of the facility's management, staff working hours had been reduced due to the "dark winter period" and would be re-adjusted accordingly in the summer. It was also evident from the facility's complaints record that basic tasks were frequently not completed in a reliable manner or within an appropriate period of time. One resident, for example, called the fire brigade on a weekend to inform them that she had been lying in her own faeces for several hours and had not received any care. There were further complaints of breakfast not being received, morning medication not being administered, and excessive and repeated delays in the provision of hygiene care.

It is unacceptable for such situations to arise for staff-related reasons.

In order to ensure that the care and support provided by facilities is geared towards the individual needs and wishes of the residents, sustainable relationships between residents and caregivers are essential. This necessitates a certain level of staff consistency. It must be ensured furthermore that communication between caregivers and residents is not hindered by language problems. Frequent changes in personnel and the repeated employment of temporary staff are therefore highly detrimental to residents.

Facilities should take measures which allow the staffing situation to be geared more explicitly and sustainably towards the needs of their residents.

### 3.2.11 – Documentation

In one facility, care-related data was recorded electronically, with selected documents and information additionally recorded in paper form. Having inspected the documentation of one resident, the National Agency noted the lack of cross-references for data that were only stored in one of the aforementioned formats.

As several persons are always involved in the process of caring for each resident, there are doubts as to whether it can be guaranteed that all parties are fully informed about the relevant care data. A procedure should therefore be established whereby a person's care data are stored in a single location.

---

<sup>65</sup> Robert-Koch-Institut: Empfehlungen zur Prävention und Kontrolle von Methicillin-resistenten *Staphylococcus aureus*-Stämmen (MRSA) in medizinischen und pflegerischen Einrichtungen (Bundesgesundheitsblatt 6/2014).

<sup>66</sup> Deutsches Netzwerk für Qualitätsentwicklung in der Pflege (ed.): Expertenstandard „Ernährungsmanagement zur Sicherung und Förderung der oralen Ernährung in der Pflege“, first update 2017. Deutsche Gesellschaft für Ernährung e.V.: DGE-Qualitätsstandard für die Verpflegung in stationären Senioreneinrichtungen, third edition 2015.



### **3.2.12 – Further training**

Based on the further training certificates in one facility, the topics “measures involving deprivation of liberty” and “behaviour to prevent infections” were each dealt with for just 20 minutes.

It is not clear how caregivers can receive appropriate and sustainable further training in such a short period of time.

## **4 – FEDERAL ARMED FORCES**

In the period under review, the National Agency visited Uckermarck Barracks in Prenzlau. The visit gave no cause for recommendations.

## 5 – CHILD AND YOUTH WELFARE FACILITIES

In 2017, the National Agency visited five educational support facilities in which children and juveniles are deprived of their liberty in the Federal *Länder* Bavaria, Hesse and North Rhine-Westphalia.

### 5.1 – POSITIVE EXAMPLES

The National Agency highlighted several positive examples during its visits.

In all of the visited facilities, the high levels of staff meant that young people could receive the close, personal care that is crucial for this target group. In one facility in particular, the National Agency noted the highly personalised way in which staff members worked with the children and juveniles.

In one of the visited facilities, an initial medical examination is carried out by a GP upon admission. This is particularly worthy of note, as examinations of this kind are rarely carried out in closed facilities with similar objectives.

During its visits, the National Agency encountered many positive examples of children and juveniles being taught their rights in an age-appropriate way, with participation also encouraged. One facility had a child and youth parliament, for example, while in another facility spokespersons from all groups took part in meetings of the facility's internal council (*Heimrat*). Another facility also holds further training courses for staff on the topic of participation.

Daily outdoor exercise from the first day onwards was ensured at all of the visited locations due to appropriate outdoor facilities.

### 5.2 – FINDINGS AND RECOMMENDATIONS

The visited facilities were given recommendations on the following main topics:

#### 5.2.1 – Possibilities for complaint

Children and juveniles in child and youth welfare facilities must be able to submit complaints to a suitable complaints body. Although internal contact persons are always available within the facilities, there are a number of facilities (e.g. in Bavaria) which do not have an external, independent ombudsman. In facilities which did have an ombudsman, it was either not always possible to establish unimpeded and confidential contact, or there was insufficient awareness of the body's existence. In some facilities,

members of the ombudsman office introduce themselves to all newly admitted children and juveniles in person, which the National Agency considers a suitable method of ensuring awareness of the ombudsman's approachability. In one facility, the National Agency recommended the creation of a binding procedure for processing complaints, which would require that complaints be systematically documented and evaluated in writing.

#### 5.2.2 – School lessons

At the time of the visit to two facilities in North Rhine-Westphalia, children and juveniles of school age had gone months without receiving school lessons. Regular school lessons must be provided to children and juveniles of school age. This is enshrined in the legislation of all Federal *Länder*.<sup>67</sup> Furthermore, implementing the right to education is an international treaty obligation laid down in the UN Convention on the Rights of the Child.<sup>68</sup>

#### 5.2.3 – CCTV monitoring

One of the visited facilities used uninterrupted CCTV monitoring in corridors and common rooms.

Children and juveniles should not be subjected to uninterrupted and indiscriminate CCTV monitoring. Under no circumstances can CCTV monitoring replace the presence of members of staff.

It is therefore all the more pleasing that another visited facility did not use CCTV monitoring anywhere in the building – including in the time-out room.

<sup>67</sup> See *inter alia* sections 34 et seqq. of the School Act of North Rhine-Westphalia.

<sup>68</sup> Convention on the Rights of the Child, Article 28, version promulgated on 10 July 1992, Federal Law Gazette II, p. 990.

## 6 – PRISONS

In 2017, the National Agency visited five prisons in Burg, Karlsruhe, Stuttgart, Berlin Tegel und Traunstein.

In many of the visited facilities, the National Agency encountered conditions which constitute a violation of human dignity and have been declared unconstitutional by the Federal Constitutional Court.

Some of these failings were down to structural factors such as the design or size of the prison cells. Karlsruhe Prison, for example, was built in 1897, and is structurally unsuitable for a prison system geared towards prisoners' well-being. The same is true of Traunstein Prison. Division II of Tegel Prison is also unsuitable for the demands of a modern prison system.

In order to ensure humane detention conditions, it is absolutely essential that these shortcomings are addressed.

### 6.1 – POSITIVE EXAMPLES

The National Agency highlighted several positive examples during its visits.

The wide range of exercise and employment opportunities, for example, is particularly positive, as are the long out-of-cell times, the provision of healthcare, and the number of locum doctors who offer regular office hours at Burg Prison in fields such as neurology, urology, orthopaedics and gastroenterology.

Karlsruhe Prison operates without the use of means of restraint. Positive mention should also be made of the fact that staff at Karlsruhe Prison are developing an assistance guidebook which aims to facilitate communication between staff and prisoners whenever language barriers arise.

### 6.2 – FINDINGS AND RECOMMENDATIONS

The visited facilities were given recommendations on the following main topics:

#### 6.2.1 – Multiple-occupancy cells

A large number of cells in Karlsruhe Prison and Stuttgart Prison are shared by multiple prisoners, even though the cells do not have a fully partitioned toilet with separate ventilation.

This constitutes a violation of human dignity according to the past decisions of the Federal

Constitutional Court.<sup>69</sup> Whether or not prisoners have agreed to be detained together is irrelevant, as the fundamental right to human dignity is a protected legal interest that cannot simply be dispensed with.<sup>70</sup> According to the Federal Constitutional Court, “human dignity is inviolable and thus cannot be restricted [...] on the basis of a statutory provision”.<sup>71</sup> However, pursuant to section 8 (2) sentence 1, Book One of the Baden-Württemberg Prison Code (JVollzGB I), multiple occupancy is permissible with the written consent of the prisoners, even if the sanitary facilities are not separate and do not have separate ventilation. The National Agency considers section 8 (2) JVollzGB I to be unconstitutional.

This type of occupancy must be stopped as a matter of urgency.

#### 6.2.2 – Cell size

In both Karlsruhe Prison and Stuttgart Prison, multiple-occupancy was observed in undersized prison cells. The National Agency also criticised the practice of shared accommodation in Traunstein Prison due to the insufficient size of the cells.

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

#### 6.2.3 – Physical restraint

In Tegel Prison, the National Agency recommended using a specific form in order to document in detail the use of physical restraint.<sup>72</sup> The documentation of coercive measures must be clear, detailed and complete. Furthermore, the measure must be documented in writing. This includes documenting which less severe measures have already been tried and an explanation of why they failed.

<sup>69</sup> Federal Constitutional Court, decision of 22/02/2011, 1 BvR 409/09, margin no. 30.

<sup>70</sup> Federal Administrative Court, judgment of 17/10/2000, file no. 2 WD 12/00.

<sup>71</sup> Federal Constitutional Court, decision by the Third Chamber of the Second Panel of 27/02/2002 – 2 BvR 553/01 –, NJW 2002, page 2699 et seq.

<sup>72</sup> See chapter II. 4.4 – “Physical restraint”.

#### 6.2.4 – Disciplinary detention rooms

The disciplinary detention room at Traunstein Prison is located in the basement and does not have any windows. Only the anteroom – which is separated by bars – has a small overhead light at a height of over two metres, covered by a perforated sheet. The room is extremely dark, and the view outside is severely limited by the position of the window. Furthermore, prisoners held in disciplinary detention are given no reading material other than the bible or the Qur'an. Holding prisoners in disciplinary detention under these conditions is considered to be inhumane.

#### 6.2.5 – Daylight and fresh air

The cells in the men's units of Traunstein Prison have only very small windows, which are over two metres high and covered by perforated sheets. This greatly limits the amount of daylight in the cells and makes any view outside practically impossible.

The size of the windows must be significantly increased.

#### 6.2.6 – Visibility of toilets

In Tegel Prison, CCTV monitoring in the specially secured cells also covers the toilet area, resulting in insufficient protection of prisoners' privacy. The specially secured cells in Karlsruhe Prison are fitted with peepholes through which the toilet is visible.

Staff members should indicate their presence in an appropriate manner before entering a cell, especially if the toilet is not partitioned off. The person in the cell must be given the opportunity to indicate that they are using the toilet.

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

#### 6.2.7 – Strip-searches

All prisoners of Burg Prison and Karlsruhe Prison were strip-searched before entering the prison.

According to the Federal Constitutional Court, strip-searches involving a visual inspection of the prisoner's genital area represent a severe interference

with the prisoner's general right of personality.<sup>73</sup> They must not be carried out routinely or in the absence of case-specific suspicions.<sup>74</sup> To satisfy this requirement, general strip-search orders must allow for exceptions if the principle of proportionality so demands. Staff must be made aware that in individual cases it may not be necessary for the prisoner to undress fully.

It is also recommended that the search be conducted in a respectful procedure, for example involving two stages where half the body remains dressed in each stage.

#### 6.2.8 – Inadequate hygiene

In Karlsruhe Prison, a cockroach infestation was found in the area of the specially secured cells. The National Agency also noted a strong smell of urine in the special secured cells. Hygiene conditions in the specially secured cell at Tegel Prison were considered inhumane.

These conditions are unacceptable and must be rectified immediately.

#### 6.2.9 – Special security unit

Prisoners in special security unit B1 of Tegel Prison are unable to work, cannot take part in any sport or recreational activities, are not permitted to use TVs and are allocated just one hour each day to exercise in the prison yard. No mental health care was provided at the time of the visit. However, a psychologist had been employed and tasked with providing counselling in the special security unit and in other units in the facility. Prisoners also have the opportunity to speak to a psychiatrist every fortnight.

In Tegel Prison, there were 20 instances of solitary confinement in 2016, some of which lasted several months. Protective measures such as solitary confinement can place a huge strain on prisoners.<sup>75</sup> To mitigate the negative consequences of solitary confinement on mental and physical health, detainees should be provided with sufficient opportunities for human contact (e.g. extended visiting times) and to engage in meaningful activities. Those placed in

<sup>73</sup> Federal Constitutional Court, decision of 05/03/2015, 2 BvR 746/13, juris margin no. 33 – 35.

<sup>74</sup> Federal Constitutional Court, decision of 10/07/2013, 2 BvR 2815/11, margin no. 16, with reference to ECHR, *Van der Ven v. the Netherlands*, 50901/99, 04/02/2003, margin no. 62.

<sup>75</sup> According to the CPT, solitary confinement may constitute inhuman and degrading treatment under certain circumstances. It is the CPT's view that the period of solitary confinement should always be kept as short as possible. Cf. CPT Standards, CPT/Inf/E (2002) 1 - Rev. 2010, p. 20, margin no. 56.

solitary confinement should also be regularly visited by a psychiatrist/psychologist.

It should therefore be ensured that the new psychologist has sufficient capacity to provide care in the special security unit. The documents sent to the National Agency revealed that, in many cases, prisoners were held in solitary confinement for several months at a time. More rigorous measures should be taken to reduce the duration of solitary confinement. Furthermore, prisoners in the special security unit urgently need access to a wider range of possible activities and greater potential for personal contact.<sup>76</sup>

#### **6.2.10 – Staff**

Both Karlsruhe Prison and Division II of Tegel Prison had fewer members of staff working than was indicated by the organisational chart. This creates considerable restrictions for prisoners in these facilities and can potentially pose a safety risk to both prisoners and staff.

#### **6.2.11 – Discrimination**

During a visit to Karlsruhe Prison, the National Agency overheard disrespectful remarks by one member of staff on the subject of foreign prisoners. This prompted the delegation to point out that further training should be provided on the subject of discrimination in order to raise awareness among prison staff.

#### **6.2.12 – Out-of-cell time, recreational activities and work opportunities**

In Traunstein Prison, prisoners are given just one hour of out-of-cell time per day and one hour to exercise in the prison yard. Work opportunities for the prisoners are scarce. The short out-of-cell time, coupled with the lack of opportunities for work and recreation, mean that prisoners are forced to spend the vast majority of the day inactive, in cells which are structurally unsuitable. This situation must be rectified as a matter of urgency. If work opportunities are difficult to organise, prisoners should at the very least be permitted to spend more time outside of their cells and must have sufficient access to appropriate recreational activities.

The lack of staff at Karlsruhe Prison also had a negative impact on lock-in times. Apart from the one hour of yard exercise required by law, all prisoners – apart from those with a job – are locked in their cells

all day long. Longer out-of-cell times should also be permitted at this facility.

#### **6.2.13 – Condition and design of the cells**

The cells in Division II of Tegel Prison are extremely cramped, while the furniture shows considerable signs of wear and tear. Furthermore, the toilet in single-occupancy cells is often not shielded from view. Prisoners also complained of extremely high temperatures in some of the cells, particularly during the summer months.

Overall, the structural shortcomings, the current fittings and furnishings of the cells, as well as the need for a greater staff presence in Division II due to its structural design, raise doubts as to the building's suitability as a place to hold prisoners in detention.

Further doubts exist regarding Karlsruhe Prison. The windows in the prison cells are located in the upper third of the outer wall, which allows only a limited view outside and restricts the amount of daylight in the cell. The poor ventilation and air circulation in the cells could prove particularly problematic during the summer months. During its visit, the delegation also received reports of prisoners pouring water onto the floor of their cells on hot summer's days to at least achieve a slight cooling effect.

Furthermore, the group transport cells at Stuttgart Prison are insufficiently insulated, meaning that weather conditions are clearly felt in winter and the middle of summer. In addition, prisoners detained in these cells are only able to shower on Tuesdays and Thursdays. On the other days of the week, they only have access to a very small basin with which to take care of their personal hygiene and wash their dishes. Prison management also reported of an outbreak of tuberculosis among the women detained in the group transport cell, which led to their temporary relocation to another area.

Measures should be taken to counteract the extremely hot and cold temperatures in the cells. This is especially important when pregnant women or sick people are held there. Furthermore, multiple-occupancy cells should be cleaned more frequently in order to prevent infectious diseases.

#### **6.2.14 – Drug tests**

The drug tests carried out in Traunstein Prison require prisoners to submit a urine sample under the observation of general prison officers. In addition to the submission of urine while under observation, at least one alternative method of drug testing should be available (e.g. a mouth swab or marker system) so that

<sup>76</sup> During its visit to the special security unit in 2005, the CPT criticised the lack of activities and opportunities for exercise as being an "unacceptable situation".

prisoners can choose the method they consider less intrusive.

#### **6.2.15 – Medical care**

Both Traunstein Prison and Karlsruhe Prison have shortages in the area of medical care.

Traunstein Prison does not have a physician of its own. Instead, a contracted doctor visits the prison just once a week. Prisoners have described this situation as insufficient. The provision of medical care in Traunstein Prison should be improved both on weekdays and at the weekend.

The medical service of Karlsruhe Prison is not occupied at night. Given the prison's high level of occupancy, the medical service should be occupied at all times.

#### **6.2.16 – Interpretation during medical consultations**

In Karlsruhe, Tegel, and Traunstein prisons, members of staff or prisoners are often called upon to interpret medical consultations when communication problems arise. This can restrict the ability to discuss issues relating to privacy or matters subject to medical confidentiality.<sup>77</sup> Furthermore, if translations are performed by prisoners or members of staff, there can be no guarantee that technical terms or subject matter will be correctly communicated in the other language.

For this reason, a professional interpreter<sup>78</sup> should always be used if communication problems arise during medical consultations. Prisons should only deviate from this principle in an emergency.

#### **6.2.17 – Showers**

The communal showers in Karlsruhe Prison and Stuttgart Prison do not have partition walls or any other measures to protect privacy. Persons who have been deprived of their liberty should be given the opportunity to shower alone if they wish to do so. At least one shower should be partitioned off in communal shower rooms.

Prisoners in the group transport cell of Stuttgart Prison can only shower on two days of the week. It should be possible to shower at least every other day. It is also recommended that measures be taken to protect detainees' privacy.

<sup>77</sup> Cf. Rule 11 of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), UN Doc A/RES/65/229, 16 March 2011.

<sup>78</sup> See Chapter II. 1.7 "Communication during the entire deportation procedure".

#### **6.2.18 – Access areas**

Large parts of the walls in the access areas of Tegel Prison and Karlsruhe Prison were dirty. In Tegel Prison, the walls were often covered with graffiti, some of which constituted anti-constitutional content. The toilet in this room was also extremely dirty. Care should be taken to ensure that the premises are kept clean and in a suitable state of repair. Any comments or drawings containing anti-constitutional content must be removed immediately.

#### **6.2.19 – Enforcement plans and preparations for release**

Due to staff shortages, Tegel Prison had problems adhering to and updating enforcement plans.

Given the significance of the enforcement plan to a prisoner's rehabilitation, prison management must ensure that each prisoner possesses an up-to-date enforcement plan and is able to work with the person responsible to achieve their enforcement objectives.

#### **6.2.20 – Prisoner separation**

In Traunstein Prison, convicted criminals are not held separate from remand detainees, as the lack of space renders it impossible to separate the two groups physically or in an organisational sense.<sup>79</sup>

Exceptions to the separation principle set forth in Article 5 of the Act on the Execution of Remand Detention in Bavaria are only permissible on a temporary basis. In Traunstein Prison, however, this is not a temporary measure: it is a permanent state of affairs that cannot be changed due to the lack of space and the unsuitable layout of the prison.

Convicted criminals must be held physically separate from remand detainees.

#### **6.2.21 – Transparency regarding length of stay in drug dealer isolation unit**

Prisoners in the isolation unit for drug dealers at Tegel Prison are subject to special restrictions. For example, they have to wear prison issue clothing and are not allowed to work. There is no transparency or logic regarding the length of stay in the isolation unit. This should be subject to clearly defined criteria.

<sup>79</sup> However, Article 5 (1) sentence 1 and 2 of the Act on the Execution of Remand Detention in Bavaria states: "Remand detainees must not be held in the same room as prisoners subject to other types of detention. They must also be otherwise separated from prisoners subject to other types of detention."



#### **6.2.22 – External contact**

Because of the personnel situation, visiting hours in Traunstein Prison are limited to the period between Monday and midday on Friday. Visits are not possible in the evening, on Friday afternoon or at the weekend, which is problematic for relatives who have jobs, families who have children at school, or relatives who must travel long distances to get there. A similar rule is in place at Stuttgart Prison. In addition, the house rules at Traunstein Prison only permit telephone calls in urgent cases.

Visiting hours should be extended to include the weekend. Furthermore, telephone calls should be permitted more frequently and not just in especially urgent cases.

#### **6.2.23 – Respectful treatment**

In Karlsruhe Prison and Traunstein Prison, staff did not always knock before entering an occupied prison cell.

Prisoners' privacy should be respected. This includes staff indicating their presence in a suitable manner before entering the prison cell.

#### **6.2.24 – Change of bed linen**

Prisoners in Traunstein Prison receive clean bed linen every three weeks. During the visit, prison management stated that it was not possible to wash bed linen more frequently due to the lack of capacity of their washing machines and dryers. The National Agency recommended that prisoners who require clean bed linen more frequently (e.g. for health reasons) be allowed a change of bed linen on a more frequent basis. According to information from the supervisory authority, bed linen was subsequently changed on a fortnightly basis.



## 7 – PSYCHIATRIC CLINICS

In 2017, the National Agency visited five general psychiatric clinics, four clinics for forensic psychiatry and three child and youth psychiatric clinics in Baden-Württemberg, Bavaria, Berlin, Bremen, Lower Saxony, North Rhine-Westphalia and Saxony. Three of these visits were follow-up visits.

During one follow-up visit, the National Agency found that the recommendations from its first visit in 2015 had not been implemented, even though the clinic and the competent supervisory authority had given a statement providing assurances to the contrary. Only one of the recommendations was implemented during the follow-up visit.

### 7.1 – POSITIVE EXAMPLES

The National Agency highlighted several positive examples during its visits.

The visited facilities offer in-house and interdisciplinary training courses, particularly on the subjects of de-escalation, non-violent communication and dealing with aggression. Theoretical preparation, coupled with practical exercises on how to employ patient-friendly flight and defence techniques, are extremely important for all staff working in a psychiatric setting. They provide a methodological tool for the prevention or management of crisis situations, and thereby help to reduce the use of restraints and prevent physical attacks.

An inspection of the files in some of the facilities revealed that the forms for ordering and documenting coercive measures included a text box for describing the current situation, the risk of self-harm or harm to others, and the measures taken towards de-escalation. The National Agency welcomes this procedure, as it creates a larger obstacle to the ordering of physical restraints than simply ticking a box with pre-specified reasons, for example.

### 7.2 – FINDINGS AND RECOMMENDATIONS

The visited facilities were given recommendations on the following main topics:

#### 7.2.1 – Physical restraint

In Baden-Württemberg and Bavaria, persons under physical restraint<sup>80</sup> are not always supervised by a trained member of staff in their immediate vicinity (known as “Sitzwache”). Staff merely carried out

<sup>80</sup> See chapter II. 4.4 – “Physical restraint”.

regular checks on the restraining measure or monitored it via CCTV. Both of these facilities were being visited for the second time. The National Agency had already recommended during its first visit that these facilities ensure the presence of a “Sitzwache” for patients under physical restraint. This recommendation should be implemented as a matter of urgency.

Only the personal supervision of a therapist or caregiver in the immediate vicinity of the person being restrained can ensure comprehensive care and assistance while reducing the significant risk of injury. This is also stipulated by section 25 (3) of the Baden-Württemberg Mental Health Act (*Psychisch-Kranken-Hilfe-Gesetz des Landes Baden-Württemberg*). The guidelines of the German Society for Psychiatry, Psychotherapy and Nervous Diseases (*Deutsche Gesellschaft für Psychiatrie und Psychotherapie, Psychosomatik und Nervenheilkunde e.V., DGPPN*) call for one-to-one supervision with personal contact for patients under physical restraint.<sup>81</sup> Furthermore, direct supervision enables staff to identify the earliest point at which the restraint can be ended.

#### 7.2.2 – Documentation of coercive measures

Having examined the forms used for ordering and documenting coercive measures, the National Agency noted in facilities in Bavaria, Berlin, Bremen, North Rhine-Westphalia and Saxony that the use of means of restraint was insufficiently documented in some cases.

The use of physical restraints should only be ordered as a last resort. The National Agency takes the view that the reasons for physical restraint must be fully documented for each individual case, and that restraints should not, for example, be ordered by simply ticking the relevant boxes. This includes documenting which less severe measures have already been tried and an explanation of why they failed.

#### 7.2.3 – Segregation

In forensic psychiatry clinics, patients can be segregated in crisis situations. In one facility, all

<sup>81</sup> DGPPN, S2-Leitlinie “Therapeutische Maßnahmen bei aggressivem Verhalten in der Psychiatrie und Psychotherapie” (2009), URL: [https://www.dgppn.de/\\_Resources/Persistent/fa128e27b086d7a72813034b7532cee62c025848/S2-LL\\_Aggres.Verhalten\\_Kurzversion\\_21.10.2009.pdf](https://www.dgppn.de/_Resources/Persistent/fa128e27b086d7a72813034b7532cee62c025848/S2-LL_Aggres.Verhalten_Kurzversion_21.10.2009.pdf) (retrieved on 04/01/2018).

newly-admitted patients are segregated as a precautionary measure. The facility does not make case-by-case decisions on whether segregation is necessary for each new arrival.

In another facility, it was clear from the patient files that some patients had been segregated without interruption for a period of several months, with no access to the clinic's wider community.

One facility had segregation rooms containing only a bed and a non-partitioned toilet. The amount of daylight entering the room is limited by frosted glass. Furthermore, segregated patients had nothing with which to occupy themselves – like a book, for example. Segregation constitutes a huge interference with rights of personality and should be limited to the shortest possible period of time. This matter must be reviewed closely in order to bring about a relaxation of the measure as soon as possible.

In psychiatric institutions in particular, it is important to avoid any negative effects on mental health which might arise when patients have insufficient social contacts and are in constant isolation – particularly when they have no way of occupying themselves. Interpersonal contact helps achieve the aim of rehabilitating criminal patients.

#### **7.2.4 – CCTV monitoring**

In some facilities, certain areas and patient rooms are monitored via CCTV.

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

In North Rhine-Westphalia, visual recordings in psychiatric institutions are in fact prohibited under section 20 of the *Land* Mental Health Act.

#### **7.2.5 – Outdoor exercise**

Not all of the visited facilities gave patients the opportunity to exercise outdoors on a daily basis. Due to an unsuitable building design and the lack of suitable outdoor areas, only a small balcony was available for spending time outdoors in facilities in Baden-Württemberg and Bavaria when staff were unable to accompany patients outside.

As is the case in prisons, all patients deprived of their liberty must be given at least one hour of outdoor exercise per day.<sup>82</sup>

#### **7.2.6 – Over-occupancy**

There have been repeated cases of over-occupancy in several of the visited psychiatric facilities.

In one facility in Baden-Württemberg, patients were accommodated in corridor beds. This is not an appropriate form of accommodation, as patients do not have the option of spending time alone.

In one facility in Bavaria, an additional mattress with no bed frame was placed on the floor of the patient room whenever over-occupancy occurred. In such cases, lying on a mattress on the floor is humiliating for the person concerned.

In cases of over-occupancy, several facilities in Bavaria, Lower Saxony and North Rhine-Westphalia also accommodated patients in rooms that were already at full capacity. This meant that patients had only a very confined space available to them, with no protection afforded to their privacy.

As a general rule, over-occupancy should be avoided. However, humane living conditions must be guaranteed whenever over-occupancy does occur.

#### **7.2.7 – Ability to lodge a complaint**

In some facilities in Baden-Württemberg, Bavaria and Lower Saxony, patients were unable to lodge an anonymous complaint. Other facilities, for example, provide complaints boxes on the wards. A complaints box outside of a closed ward cannot be accessed by patients who are not allowed to use any of the exits.

Mentally ill patients on closed wards in particular may encounter huge difficulties when trying to contact a complaints body. A patient advocate can act as an intermediary in such situations. Publishing the contact details of patient advocates or an ombudsman can make it possible for patients to lodge a complaint. The necessary contact details should be hung up in the wards so they are clearly visible to patients.

#### **7.2.8 – Confidentiality of phone calls**

In the visited wards in Baden-Württemberg, Bavaria and Saxony, the National Agency observed that phone calls could either be made in the corridor of the living area without partitions, or only in the presence of a member of staff.

Measures should be introduced to ensure that phone calls can be made confidentially. Examples from other facilities include phone booths, cordless

<sup>82</sup>Cf. CPT/Inf (2007) 18, paragraph 161 (Neustadt Psychiatric Centre) and, most recently, CPT/Inf (2014) 25, paragraph 139.

phones for patients to use in the patient room or allowing patients to use their own mobile phone.

#### **7.2.9 – Staff**

Staff in many facilities reported staff shortages in the areas of nursing and mental health care. In the opinion of the National Agency, situations where staff appear to be overstretched can pose a risk to the humane treatment of persons accommodated in the facility. A healthy balance between nursing staff, therapeutic personnel and patients is necessary in order to ensure professional care and support, and ultimately helps create a safe environment for everyone involved.

A change of therapist during an in-patient stay should be avoided wherever possible. The facilities concerned should examine how they can ensure a suitable staff-patient ratio and consistent, uninterrupted mental health care.

# V APPENDIX

## I – CHRONOLOGICAL LIST OF VISITS

<i>Date</i>	<i>Visit</i>
11/01/2017	Accompanying a deportation procedure: Charter operation Leipzig/Halle – Enfidha (Tunisia)
17/01/2017	Jena Police Station, Weimar Police Station
18/01/2017	Gotha Police Station
23-24/01/2017	Accompanying a deportation procedure: FRONTEX operation Frankfurt – Kabul (Afghanistan)
08/02/2017	Accompanying a deportation procedure: Charter operation Berlin – Turin (Italy)
09/02/2017	Clinic for forensic psychiatry, North Rhine-Westphalia
20/02/2017	South Giessen Police Station, Frankfurt Police Station 4
22/02/2017	Residential care and nursing home, Lower Saxony
23/02/2017	Psychiatric hospital (general psychiatry), Lower Saxony
21/03/2017	Police stations 14 and 15, Hamburg
22/03/2017	Hamburg facility for custody to secure departure
24/03/2017	Karlsruhe Prison
24/03/2017	Residential care and nursing home, Schleswig-Holstein
27/03/2017	Child and youth welfare facility
29/03/2017	Child and youth welfare facility
10/04/2017	Tegel Prison
20/04/2017	Rosenheim Police Station
21/04/2017	Traunstein Prison
24/04/2017	Observing FRONTEX deportation procedure Munich – Kabul (Afghanistan)
26/04/2017	Bad Segeberg Police Station, Central Custody Unit of Kiel Police Headquarters
27/04/2017	Brunsbüttel Central Police Station, Itzehoe Police Headquarters, Elmshorn Police Station
27/04/2017	Psychiatric hospital (child and youth psychiatry), Baden-Württemberg
27/04/2017	Uckermark Barracks, Prenzlau
12/05/2017	West Custody Facility and South-West Custody Facility, Berlin
17/05/2017	Homburg Police Station and Saarbrücken-St. Johann Police Station
18/05/2017	Residential care and nursing home, Saarland
23/05/2017	Munich Police Station 24 (Perlach)
24/05/2017	Police Station Support Services Division 6, Munich Police HQ Station
07/06/2017	Solingen Police Station and Wuppertal Police Headquarters
07/06/2017	Neuland Mass detention center in Hamburg-Harburg on the occasion of the G20 Summit - Pre-visit
14/06/2017	Residential care and nursing home, Berlin
15/06/2017	Psychiatric hospital (forensic psychiatry)

20/06/2017	Child and youth welfare facility
21/06/2017	Accompanying a deportation procedure: Charter operation Leipzig/Halle – Enfidha (Tunisia)
28/06/2017	Ludwigshafen 1 Police Station and Worms Police Station
05/07/2017	Psychiatric hospital (general psychiatry), Bavaria
06-07/07/2017	Neuland Mass detention center in Hamburg-Harburg on the occasion of the G20 Summit
10/07/2017	Saxony-Anhalt South Police Headquarters
11/07/2017	Burg Prison
17/07/2017	Hildesheim Police Station, Bremen City Centre Police Station
18/07/2017	Nienburg Police Station, Garbsen Police Station, Hannover Mitte Police Station
18/07/2017	Ludwigsburg Police Station
19/07/2017	Transport cell for female prisoners in Stuttgart Prison, Waiblingen Police Station
26/07/2017	Child and youth welfare facility
01/08/2017	Observing a deportation procedure from collection point in Ingolstadt to Munich Airport, Munich Federal Police District Office
01/08/2017	Munich Federal Police District Office
08/08/2017	Bad-Doberan Police Headquarters, Ribnitz-Damgarten Police Station, Wismar Police Station
09/08/2017	Freiberg Police Station
10/08/2017	Chemnitz North East Police Station
10/08/2017	Psychiatric hospital (general psychiatry), Saxony
28/08/2017	Residential care and nursing home, Hesse
05/09/2017	Psychiatric hospital (forensic psychiatry), Bavaria
11/09/2017	Eichstätt Police Station
12/09/2017	Eichstätt facility for custody awaiting deportation
12/09/2017	Observing FRONTEX deportation procedure Düsseldorf – Kabul (Afghanistan)
13/09/2017	Accompanying a deportation procedure: Charter operation Frankfurt – Tirana (Albania)
14/09/2017	Psychiatric hospital (child and youth psychiatry), Bavaria
15/09/2017	Psychiatric hospital (child and youth psychiatry), Bavaria
29/09/2017	Residential care and nursing home, Baden-Württemberg
30/09/2017	Munich Police Station 17 (Oktoberfest Station)
23/10/2017	Tempelhof Custody Facility, Berlin
23/10/2017	Residential care and nursing home, Brandenburg
26/10/2017	Overhavel Police Station
15/11/2017	Cologne (Mitte) Police Station 1
16/11/2017	Child and youth welfare facility
23/11/2017	Koblenz Federal Police Station, Cologne Federal Police District Office
23/11/2017	Euskirchen District Police Authority
24/11/2017	Psychiatric hospital (general psychiatry)

30/11/2017	Residential care and nursing home, Bremen
01/12/2017	Psychiatric hospital (forensic psychiatry)
05/12/2017	Psychiatric hospital (general psychiatry), Baden-Württemberg

## 2 – MEMBERS OF THE FEDERAL AGENCY

<i>Name</i>	<i>Official title</i>	<i>Since</i>	<i>Position</i>
Klaus Lange-Lehngut	Ltd. Regierungsdirektor (retd)	12/2008	Director
Ralph-Günther Adam	Ltd. Sozialdirektor (retd)	06/2013	Deputy Director

## 3 – MEMBERS OF THE JOINT COMMISSION

<i>Name</i>	<i>Official title / occupation</i>	<i>Since</i>	<i>Position</i>
Rainer Dopp	State Secretary (retd)	09/2012	Chair
Petra Heß	Employee of Thuringia State Chancellery	09/2012	Member
Dr Helmut Roos	Ministerialdirigent (retd)	07/2013	Member
Michael Thewalt	Ltd. Regierungsdirektor (retd)	07/2013	Member
Dr Monika Deuerlein	Certified psychologist (Dipl.-Psy.)	01/2015	Member
Prof. Dirk Lorenzen	Psychological psychotherapist	01/2015	Member
Margret Suzuko Osterfeld	Psychiatrist, psychotherapist	01/2015	Member
Hartmut Seltmann	Director of Police (retd)	01/2015	Member



## 4 – ACTIVITIES IN THE PERIOD UNDER REVIEW

<i>Date</i>	<i>Location</i>	<i>Activity</i>
17/01/2017	Kassel	Meeting of Directors-General responsible for secure psychiatric detention
19/01/2017	Bochum	Symposium on “Psychiatry and Human Rights”
10/02/2017	Cologne	Discussion with the Prison Service Commissioner of the <i>Land</i> North Rhine-Westphalia
13-14/02/2017	Paris	Consultation meeting on NPM Observatory
23/02/2017	Wiesbaden	Discussion with UN Working Group of Experts on People of African Descent
04/03/2017	Berlin	5th Green Police Conference
10/03/2017	Düsseldorf	Interdisciplinary symposium – “See torture victims – find clinical pathways”
15/03/2017	Geisenheim-Johannisberg	Presentation, Schloss Hansenberg Boarding School
22/03/2017	Berlin	Public hearing in front of the Bundestag Committee on Human Rights and Humanitarian Aid: Statement regarding the “Twelfth Report of the Government of the Federal Republic of Germany on its Human Rights Policy”
23/03/2017	Klingenmünster	Symposium on “Secure psychiatric detention and civil society”
28-29/03/2017	Düsseldorf	German Youth Welfare Day
29/03/2017	Berlin	Discussion with the Federal Ministry of the Interior regarding the execution of deportation procedures
04-05/04/2017	Strasbourg	Founding Conference of EU NPM Network
05/04/2017	Leipzig	Expert Conference of Protestant Adult Education Institutions in Saxony, presentation on “Deportations as an area of conflict”
24/04/2017	Berlin	Expert talk by Tom Koenigs: The future of the National Agency
11/05/2017	Berlin	Lecture at the Humboldt Law Clinic: Fundamental and human rights
11/05/2017	Berlin	Delivery of Annual Report 2016 to the Federal Government
19/05/2017	Mainz	Delivery of Annual Report 2016 to the Federal <i>Länder</i>

31/05-01/06/2017	Strasbourg	Consultation on the development of European guidelines governing custody awaiting deportation and custody to secure departure, Council of Europe
01-02/06/2017	Trier	ERA seminar on “The improvement of conditions relating to detention at an EU level”
20/07/2017	Munich	Workshop: Legal bases for handling challenging behaviour
21/07/2017	Munich	5th symposium on the “Werdenfelser” approach
15/08/2017	Münster	CEPOL (Collège Européen de Police) seminar
30/08/2017	Wiesbaden	Expert discussion – Police complaints bodies
07/09/2017	Munich	Conference of desk officers dealing with the law on social care homes
07-08/09/2017	Paris	Meeting of European NPMs on measuring the effectiveness of NPMs
13/09/2017	Berlin	Group of prison system experts ( <i>Vollzugsstammtisch</i> )
20/09/2017	Wiesbaden	Expert discussion – Monitoring deportation procedures
27/09/2017	Berlin	International workshop “Challenges facing National Preventive Mechanisms (NPMs) in community-based psychiatric care”
17/10/2017	Münster	Human Rights Day, Federal University of Public Administration in North Rhine-Westphalia
23-25/10/2017	Berlin	Exchange of experiences between German-speaking NPMs
06-07/11/2017	Andernach	14th Forensics Conference, Nette-Gut Clinic
14-15/11/2017	Prague	Meeting of European NPMs to discuss the setting of standards by NPMs
22/11/2017	Potsdam	Annual Meeting of the Visiting Commissions for Psychiatric Establishments in Brandenburg
15/12/2017	Berlin	Expert discussion to prepare for the 9th meeting of the UN Open Ended Working Group on Ageing

