

**National Agency
for the Prevention of Torture**

ANNUAL REPORT 2010/2011

Period under review
1 May 2010 – 31 December 2011

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National Agency for the Prevention of Torture
Viktoriastraße 35
65189 Wiesbaden
Tel.: 0611-160 222 818
Fax: 0611-160 222 829
E-Mail: info@antifolterstelle.de

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Article 1 of the Basic Law (*Grundgesetz*)

(1) Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority.

(2) The German people therefore acknowledge inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world.

(3) The following basic rights shall bind the legislature, the executive and the judiciary as directly applicable law.

List of specific abbreviations

APT	Association for the Prevention of Torture
CAT	Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
ECHR	European Court of Human Rights
ETS	European Treaty Series
NPM	National Preventive Mechanism
OP-CAT	Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
SPT	Subcommittee on the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

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Declaration by the National Agency for the Prevention of Torture

The National Agency for the Prevention of Torture is pleased to present the first joint Annual Report of the Federal Agency and the Joint Commission of the States (*Länder*) to the Federal Government, the German Bundestag, the *Land* Governments and the *Land* Parliaments. The Report covers the period from 1 May 2010 to 31 December 2011.

The Report is to be preceded by three core messages:

The National Agency was unable to find any signs of torture. It did however identify problems in several cases which are unacceptable. It made many recommendations to the supervisory authorities, some of which have already been implemented and have improved the situation of persons being detained.

The National Agency is unable to carry out its statutory task under the Optional Protocol with the staffing and funding available. With only five members working on an honorary basis and funds for only three research associates and one administrative assistant, the capacity available is entirely inadequate for the regular examination of several thousand detention facilities. A considerable increase in staff and funding is necessary, particularly because the National Agency does not wish to prove ineffectual, and in accordance with its statutory mandate it must make an effective contribution towards the prevention of torture and mistreatment. It is therefore the responsibility of the Federal and *Land* Governments to create a foundation enabling the National Agency to carry out its tasks, which are binding under both international and national law.

The Federal Agency and the Commission of the *Länder* operate in a trusting and cooperative manner, collaborating to carry out their shared task. The following Joint Report is proof of this.



Prof. Dr. Hansjörg Geiger
Staatssekretär ret.



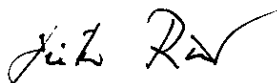
Klaus Lange-Lehngut
Ltd. Reg.Dir. ret.



Elsava Schöner
Ltd. Reg.Dir.in ret.



Albrecht Rieß
Presiding Judge, Higher Regional Court



Prof. Dr. Dieter Rössner
University Professor

A. General information about the work of the National Agency

I. History and legal foundation

The prohibition of torture and other cruel, inhuman or degrading treatment or punishment is already set out in the Universal Declaration of Human Rights from 1948.¹ The cornerstone in the active “fight against torture” was however laid by the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984² (UN Anti-Torture Convention – CAT). The Convention obliges the States to prevent any act of torture and to make torture offences punishable.

The Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 18 December 2002 (OP-CAT)³ adds to the UN Anti-Torture Convention and pursues a preventive method. It is orientated in line with the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which more than 20 years ago established a system of preventive visits in the States of the Council of Europe.⁴ The Optional Protocol also provides to strengthen protection against torture and mistreatment by means of this system of visits. To this end, Article 3 OP-CAT entails an obligation to set up national preventive mechanisms which are to supplement the work of the also newly-created Subcommittee on the prevention of torture (SPT)⁵.

Germany signed the Optional Protocol on 20 September 2006 and ratified it on 4 December 2008. The Optional Protocol came into force for the Federal Republic of Germany on 3 January 2009 in terms of international law.

The Federal Agency for the Prevention of Torture was established by means of an Administrative Order of the Federal Ministry of Justice of 20 November 2008, and started operations on 1 May 2009. The Commission of the *Länder* started its operations on the basis of a State Treaty, which entered into force on 1 September 2010 after being ratified by the *Länder*.⁶ Since the Commission of the *Länder* took up its activities, the two facilities have formed, together as the National Agency, the German preventive mechanism for the prevention of torture in accordance with the Optional Protocol to the UN Anti-Torture Convention.

Klaus Lange-Lehngut (*Leitender Regierungsdirektor*, ret.) was appointed honorary Director of the Federal Agency for a period of office of four years by the Federal Ministry of Justice in agreement with the Federal Ministries of the Interior and of Defence on 4 December 2008. The four honorary members of the Commission of the *Länder* were appointed via a resolution that was passed at the 81st Conference of Ministers of Justice held in Hamburg on 23

¹ Resolution of the UN General Assembly 217 A (III) of 10 December 1948; German Text reprinted in Federal Foreign Office (publisher), *Menschenrechte in der Welt. Konventionen, Erklärungen, Perspektiven*, 1988

² Resolution of the UN General Assembly 39/46 of 10 December 1984; German Text reprinted in the Federal Law Gazette 1990 Part II, p. 246

³ Resolution of the UN General Assembly A/RES/57/199 of 18 December 2002; German Text reprinted in the Federal Law Gazette 2008 Part II, p. 854

⁴ ETS No. 126 of 26 November 1987; German Text reprinted in the Federal Law Gazette 1993, pp. 1115 and 1118

⁵ The German translation of the UN Resolution differs by referring to the SPT as “*Unterausschuss für Prävention*” (Subcommittee for Prevention)

⁶ State Treaty on the establishment of a national mechanism of all *Länder* in accordance with Article 3 of the Optional Protocol of 18 December 2002 to the Convention of 25 June 2009 against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

and 24 June 2010 and officially took up office on 24 September 2010. The Commission of the *Länder* is chaired by Prof. Dr. Hansjörg Geiger, *Staatssekretär* ret. Additional members are Dipl.-Psych. Elsava Schöner, *Leitende Regierungsdirektorin* ret., Albrecht Rieß, Presiding Judge at Stuttgart Higher Regional Court, and Prof. Dr. Dieter Rössner, University Professor at the University of Marburg. The nomination took place for an initial period of office of four and two years, respectively, so that an extension or re-appointment for two members of the Commission will take place in 2012.

A more detailed description of the history is contained in Annex I.

II. The foundation created for the work of the National Agency

1. Institutional framework and legal nature

The legal and de facto requirements of the National Agency emerge from Article 18 OP-CAT. Accordingly, the States Parties are obliged to guarantee the functional independence of the national preventive mechanism as well as the independence of its personnel. These must also make sufficient funding available to the preventive mechanism to carry out its tasks.

The National Agency is one-third funded by the Federation and two-thirds by the *Länder*. It is not subject to any specialist or legal supervision. In accordance with No. 4 of the Administrative Order and Article 4 of the State Treaty, the Director of the Federal Agency and the members the Commission of the *Länder* are completely free of instructions in the performance of their office. They work on an honorary basis and may resign from office at any time. However, they may be removed from office early against their will only subject to the prerequisites of sections 21 and 24 of the German Judiciary Act (*Richtergesetz – DRiG*).

In accordance with the administrative agreement, the Federal Agency and the Commission of the *Länder* must coordinate in the planning and implementation of their projects. To this end, regular working meetings of the entire Agency take place. Joint rules of procedure are to form the basis for the work of the National Agency in future.

2. Tasks and powers

The tasks and powers of the National Agency for the Prevention of Torture are set out in the Optional Protocol, which has been transposed into national law, as well as from the Administrative Order of the Federal Ministry of Justice of 20 November 2008 and the State Treaty of 25 June 2009.

The National Agency visits “places where people are deprived of their liberty”, draws attention to problems and makes recommendations to the authorities for improvements. In accordance with Article 4 para. 1 OP-CAT, such “places where people are deprived of their liberty” are any place under the jurisdiction and control of the State where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence.

In accordance with Article 4 para. 2 OP-CAT, for the purposes of the Optional Protocol, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority. This includes in Germany: prisons, closed wings of psychiatric hospitals, police stations, detention facilities of the Federal Armed Forces, facilities of detention awaiting deportation, detention centres for asylum-seekers,

transit zones at international airports, closed homes for children and juveniles, as well as closed wards in homes for the elderly and long-term care homes.⁷ The mandate of the Federal Agency covers detention facilities of the Federal Police (*Bundespolizei*), the Federal German Defence Forces (*Bundeswehr*) and of the customs authorities. The Commission of the *Länder* is responsible for all other detention facilities.

The powers of the National Agency accrue from Articles 19 and 20 OP-CAT (read in conjunction with No. 3 of the Administrative Order and Art. 2 of the State Treaty). In accordance with Article 19, the National Agency is hence empowered

- to regularly monitor the treatment of persons who have been deprived of liberty in places where people are deprived of their liberty within the meaning of Article 4 with the aim in mind of where necessary increasing the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment;
- to make recommendations to the competent authorities with the aim in mind of improving the treatment and the conditions of persons who have been deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment in compliance with the relevant regulations of the United Nations;
- to make proposals and observations on existing or proposed legal provisions.

In accordance with Article 20 OP-CAT, the States Parties are obliged to grant to the national preventive mechanisms, that is the Federal Agency and the Commission of the *Länder*,

- access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;
- access to all information referring to the treatment of those persons as well as their conditions of detention;
- access to all places of detention and their installations and facilities;
- the opportunity to have private interviews with the persons deprived of their liberty, either personally or with a translator if deemed necessary, as well as with any other person who the national torture preventive mechanism believes may supply relevant information;
- the liberty to choose the places they want to visit and the persons they want to interview;
- the right to have contacts with the Subcommittee on Prevention, to send it information and to meet with it.

Further important rights and guarantees are set out in Articles 21 and 22 OP-CAT. In accordance with Article 21 para. 1 OP-CAT, persons who communicate information to the National Agency are not to be sanctioned or otherwise prejudiced in any way. This applies regardless of whether the information proves to be true or false, so that for instance prosecution in accordance with sections 164 and 185 et seq. of the Criminal Code (*Strafgesetzbuch – StGB*) or the ordering of disciplinary measures in accordance with sections 102 et seqq. of the Prison Act (*Strafvollzugsgesetz – StVollzG*) is ruled out.⁸ Furthermore, Article 21 para. 2 OP-CAT guarantees the protection of confidential information collected by the National Agency in the context of its work. Personal data are not published without the express consent of the person concerned. Also, no evidence may be taken with regard to such confiden-

⁷ draft Bill of the Federal Government re OP-CAT, Bundestag printed paper (*BT-Drs.*) No. 16/8249, p. 27

⁸ draft Bill of the Federal Government re OP-CAT, Bundestag printed paper No. 16/8249, pp. 31 and 34

tial information; in particular members of the National Agency may not be obliged to testify as witnesses in court in this regard (cf. section 160 subs. 4 of the Code of Criminal Procedure [StPO]).

The recommendations made by the National Agency are implemented in line with Article 22 OP-CAT, under which the competent authorities must examine the recommendations and enter into a dialogue with the National Agency on their implementation. This takes place in practice by means of a statement on the part of the competent Ministry on the state of implementation.

Article 23 OP-CAT, finally, obliges the States to publish and disseminate the Annual Reports of the national preventive mechanisms.

Because of its currently limited funding and staffing (cf. also II.3.), the National Agency is however not able to carry out the tasks assigned to it in the Optional Protocol to the degree stipulated by law. Hence, for instance, it cannot immediately review the implementation of the recommendations by follow-up visits, but must rely on accepting the information provided by the Ministries regarding implementation as accurate. Nonetheless, it will, wherever possible, re-inspect facilities which it has already visited in order to convince itself in situ that its recommendations have been implemented. It is also not possible to submit proposals for statutes or on legal provisions which are in the draft stage, given the current staffing situation.

3. Provision with staff and funding

The National Agency has five honorary members and a full-time Secretariat, which is headquartered in Wiesbaden. In organisational terms, it is part of the Centre for Criminology (*Kriminologische Zentralstelle e.V. – KrimZ*), a research and documentation facility of the Federation and the *Länder*. The National Agency uses the existing infrastructure (such as the library) of the Centre for Criminology and receives considerable support from the latter, especially in terms of budgeting, accounting and personnel. This is set out in section 4 of the administrative agreement.

The Federal Agency is funded from the budget of the Federal Ministry of Justice. The Federal Agency has at its disposal EUR 100,000.00 in funds per year. Euro 200,000 are available for the Commission of the *Länder*, provided by the individual Federal *Länder* in proportions determined by the Königstein Key. The budget of the National Agency makes it possible to appoint a maximum of three full-time research associates and one administrative assistant.

The Administrative Order provides for only one person to act as the honorary Director of the Federal Agency and makes no provision for a deputy. The Director of the Federal Agency, Klaus Lange-Lehngut, is hence responsible for roughly 360 detention facilities of the Federation and is the sole representative of the Federal Agency. Should he be absent, for instance through illness, no inspection visits can therefore be carried out. As far as can be determined from the figures submitted by the *Länder*, the four members of the Commission of the *Länder* are responsible for the inspection of 186 prisons (plus the affiliated complexes), as well as nine facilities for the detention of persons awaiting deportation, 1,430 *Land* police facilities, 245 psychiatric hospitals, 81 prison clinics for the placement of offenders with mental disorders in psychiatric institutions and roughly 16 closed facilities for youth welfare. How many of the approximately 11,000 long-term facilities for the elderly have closed wings, which should also be inspected, does not yet emerge from the reports available from the *Länder*. There is hence no possibility to make regular visits, as called for by the Optional Protocol, given the National Agency's current staffing situation. It can therefore only do limited justice to the mul-

tidisciplinary balance provided for in the OP-CAT. The National Agency does avail itself of the possibility to consult external experts on inspection visits. It nonetheless appears necessary for persons with medical or psychological expertise for instance to become members of the National Agency. In order to even come close to complying with the requirements of the Optional Protocol, the Commission of the *Länder* would need at least 16 honorary members. Such a significant expansion of the number of honorary members would then however also entail a considerable increase in the number of staff at the secretariat in Wiesbaden.

However, the level of staffing is of fundamental significance, and not only with regard to the proper performance of the mandate issued by the Optional Protocol to the National Agency for the Prevention of Torture. The latter also plays a major role when it comes to the international impact. Germany, which in international terms is regarded as one of the forerunners in the field of human rights protection, could also serve as a role model to other states with regard to the resources provided to its national preventive mechanism, and should not be taken as a negative example.

The inadequate staffing of the National Agency is also recognisable if one makes an international comparison with the preventive mechanisms of other countries. For instance, the national preventive mechanism of France is responsible for 4,896 facilities, as its activity report reveals.⁹ It alone has 16 full-time “*contrôleurs*”, as well as 16 part-time “*contrôleurs*” and additional staff in its secretariat. It had a budget of EUR 3,346,308 in 2010.¹⁰ With this staffing and funding, it has been able to inspect almost one-third of all the facilities within its remit since taking up work in the autumn of 2008.¹¹

The Swiss National Commission for the Prevention of Torture has twelve honorary members and a current budget of 360,000 Francs per year,¹² roughly corresponding to EUR 290,980. Approximately 358 facilities fall within its remit, 13 of which it inspected in 2011.

⁹ cf. *Contrôleur général des lieux de privation de liberté – Rapport de l’année 2010*, pp. 270-271

¹⁰ cf. <http://www.cglpl.fr/en/> [most recently retrieved on 10 November 2011]

¹¹ cf. *Contrôleur général des lieux de privation de liberté – Rapport de l’année 2010*, pp. 270-271

¹² cf. National Commission for the Prevention of Torture, <http://www.nkvf.admin.ch/nkvf/de/home.html>

B. Implementation of the National Agency's inspection visits

All in all, 42 inspection visits took place in the period under review from 1 May 2010 to 31 December 2011. The Federal Agency inspected 17 facilities of the Federal Police (including return areas at airports and observation of the transfer of returnees onto the aircraft), five Federal Armed Forces barracks and two customs investigation offices. The Commission of the *Länder* inspected seven prisons, eight police units of the *Länder*, two psychiatric clinics and a facility for detention awaiting deportation. The prisons included one youth prison and two women's prisons with a mother-and-child wing. The department for persons held in preventive detention was also inspected in one of the facilities. This enabled the Commission of the *Länder* to already inspect most of the different categories of facilities falling within its remit in the first year of its existence. Only facilities of youth welfare and long-term care homes have not yet been visited. More information regarding the methods and the precise procedure adopted in the respective inspection visits is provided in B.IV.

I. Basis

The National Agency applies above all valid German law, the case-law of the Federal Constitutional Court and that of the Federal and Higher Regional Courts when carrying out its visits. Furthermore, where appropriate the National Agency includes international agreements relevant to its remit, as well as international case-law including that of the European Court of Human Rights. Equally, it includes the recommendations of the Subcommittee on the prevention of torture and of the European Committee for the Prevention of Torture (CPT), in its decision-making.

The requirements as to the planning and implementation of visits are contained in the rules of procedure of the Commission of the *Länder*, as well as in the working guidelines of the Federal Agency. Borrowing from the "Standards"¹³ developed by the CPT, a detailed list of questions was drawn up which is used as a basis for work in visits and updated on a continual basis.

The places to be visited are selected according to several criteria. As a matter of principle, the Federal Agency and the Commission of the *Länder*, in line with their preventive mandate, visit as many facilities as possible which have a wide range of tasks. Efforts are furthermore made to ensure a suitable geographic spread. The Federal Agency deviates from this in the sense that it does not make a selection from among the Federal *Länder*, but orientates itself towards the assignments made by the Federal Police, the Federal Armed Forces and the customs authorities. The main results of the individual inspection visits can be found in items C and D.

II. Procedure followed in the inspection visits

For the implementation of the National Agency's inspection visits, a fixed system has become established as experience has increased. However, the visiting procedure varies, depending on the type of facility to be visited and the local circumstances. The following description of the visiting procedure particularly relates to the inspection of prisons, to detention

¹³ Council of Europe, 2006, The Standards of the CPT (hereinafter CPT Standards).

facilities of the police units of the Federation and the *Länder*, as well as to the detention facilities of the Federal Armed Forces and of the customs authorities, since the majority of inspection visits took place in such facilities.

As a rule, the Commission of the *Länder* announces a visit to a facility to the competent supervisory authority roughly 30 minutes prior to the beginning of the visit in order to accelerate entrance to the facility that is to be visited. The Federal Agency announces inspection visits well in advance in order to ensure that the relevant contacts are on site.

Topics such as the accommodation of the detainees, the level of employment, possibilities for contact both within and outside the facility, therapeutic activities, the staffing situation, the handling of relaxations of the detention regime, as well as pre-release measures, are first of all discussed in an initial exchange that is carried out when prisons are inspected. The following areas are subsequently focussed on: the detention area and specially-secured cell containing no dangerous objects, the accommodation area, the sanitary area, the admissions area, the security area, the visiting area, the sickbay, the treatment and leisure areas, as well as workshops. Special departments, such as the department for persons held in preventive detention, social therapy or the mother-and-child department, are included in the inspection, depending on the focus. The members of the Commission carry on discussions with inmates of various wings whom they select, the prisoners' co-responsibility body, the staff council and other staff, including staff members of the specialist services. Furthermore, the Commission of the *Länder* inspects documents and inmates' personnel files (for details cf. B. III). Moreover, it requests written information to be compiled on the respective facility and the procedure which is followed in the deprivation of liberty. These discussions particularly relate to capacity and occupancy, special incidents (e.g. suicides, violent acts), special security measures (e.g. fixation, solitary confinement), disciplinary measures (e.g. detention), complaints against staff members, concerns of the prisoners' co-responsibility body, relaxations of the detention regime and leave, employment offered and level, vocational skill-building possibilities and leisure opportunities. The main results of the visit are to be discussed in a final talk with the head of the facility. Subsequent to several visits, the National Agency had received additional important information from inmates relating to the facility visited in each case. It addressed a further query to the heads of the facilities in question in such cases in order to clarify the facts.

The inspection of detention facilities of the Federal and *Land* Police, the Federal Armed Forces and of the customs authorities proceeds roughly as follows: In an introductory talk with the head of the unit, the National Agency first of all gathers general information on the unit, its responsibility and particular problems. Furthermore, it requests the head of the unit to compile documents, particularly on the staff, the detention cells, accommodation in detention, complaints against officers in connection with detention, any special incidents such as fixation, information sheets for individuals in custody regarding their rights, as well as any additional specific training activities for officers in the detention area. The members of the National Agency then inspect the entire detention area and the documents available, such as detention records. If the National Agency finds that individuals are being held in custody, it will take the opportunity to have a private talk with them. Equally, interviews will be carried out where necessary with officers on duty, with the staff representative as well as with social workers, for example. Furthermore, files of the individuals in custody are inspected (cf. B.III). In each case a final talk takes place with the head of the unit in which the main outcome is notified in advance. A detailed description of the focus of the inspection visits can be found at B.V.

So far, almost all visits have given rise to a number of recommendations, in some cases against the background of unacceptable problems. A detailed list of the recommendations and of the reactions of the supervisory authorities as to their implementation can be found in Parts C and D of this report.

III. Inspection of the files

As has already been stated, during their inspection visits the members of the National Agency regularly inspect files of individuals who are deprived of their liberty. In prisons, these are generally files on individuals who have been accommodated in the specially-secured cell or in a disciplinary detention cell, for whom solitary confinement has been ordered or on whom disciplinary measures have been imposed. When inspecting police units, those files are particularly important which document special incidents such as fixation or attempted suicide. Furthermore, complaints against officers are important.

The Commission of the *Länder* twice encountered difficulties with regard to the inspection of files or when enquiring about incidents in two cases when inspecting police units. At one police station, it was noticed during the inspection of the detention documentation that the detention record only contained general information on the individuals in custody. It did not note special incidents such as fixation, which according to the statement of the officers were only mentioned in reports on the individual incidents. The request of the Commission of the *Länder* to inspect the reports kept at the station was not complied with.

At another police station, the Commission of the *Länder* also requested to inspect a selection of complaints against police officers of the unit. Here too it was informed that the complaints were with the competent public prosecution office since, as a rule, such complaints led simultaneously to criminal charges. In this case, the Commission of the *Länder* applied to inspect the files at the public prosecution office with regard to the complaint, and this request was indeed met. After viewing the files, the Commission of the *Länder* requested a statement with regard to two of these incidents. At least one of the two cases has not yet been adequately clarified.

Inspection of files and documents is fundamental to the activity of the National Agency. It can only carry out its job of preventing mistreatment and inhuman or degrading treatment if it is provided with all the information relevant to do so. Complaints and the conduct of officers which they document, as well as special incidents in connection with the deprivation of liberty, are particularly important here. The right of the National Agency to access all relevant information is set out in Article 20 para. b of the Optional Protocol. This reads as follows: "In order to enable the national preventive mechanisms to fulfil their mandate, the States Parties to the present Protocol undertake to grant them: [...] Access to all information referring to the treatment of those persons as well as their conditions of detention."

When requesting to inspect files from the public prosecution office, the National Agency is not concerned with evaluating the accusations in criminal law terms, but merely with the treatment of the individuals in custody. The reference to the public prosecution office however leads to a considerable delay in providing the necessary documents, and hence makes the inspection visits in situ more difficult. This also considerably delays the quick drafting of the reports by the National Agency.

IV. Submission of recommendations and reactions by the authorities

Each inspection visit is followed by the National Agency drawing up a report. The latter is addressed to the competent supervisory authority and is also forwarded to the visited facility for its information. In accordance with Article 22 OP-CAT, authorities are obliged to examine the recommendations of the National Agency and to enter into a dialogue on them.

Initial suggestions and recommendations of the National Agency were already taken up in situ in some cases. As a matter of principle, however, the supervisory authority in question makes statements on the report and provides information on the implementation of the recommendations by the facility visited. The experience of the National Agency here is that the response to the visit reports takes place at the ministerial level as a rule. This is welcome as it makes clear the considerable significance attached to the topic there. However, this statement was not made in a timely manner in all cases. The request for documents even had to be repeated in some cases. The Commission was unable to draft the visit report until the documents had been provided. In future, therefore, the National Agency will have already requested a statement as to when it may expect a statement when it sends the report. It considers a processing period of four weeks after receipt of the report to be appropriate here as a rule. The content of the responses of the supervisory authorities was unsatisfactory in several cases. Some did not explore the shortcomings that had been ascertained. The National Agency has not been able to follow up in all cases so far because of its restricted staffing capacity.

The supervisory authorities were however frequently very open to the recommendations. This makes it clear that the activity of the National Agency is taken seriously and that the system of regular inspection visits can indeed lead to an improvement in the conditions for individuals in custody.

In addition to submitting recommendations, it is also the job of the National Agency to examine their implementation, for instance through a follow-up visit. However, as has already been noted, this is currently only possible to a very limited degree because of the current staffing situation. The National Agency however presumes that where a Ministry has announced that it will examine a circumstance, the outcome of this examination will be provided without being requested.

V. The spotlight of the visits by the National Agency and examples of best practice

As a matter of principle, the attention of the National Agency in an inspection is focussed on the general accommodation conditions, and particularly on measures which can lead to a tightening up of detention conditions. Furthermore, security concepts, as well as therapeutic, suicide and violence prophylactic concepts, are informative. Moreover, specific foci emerge from the respective area of responsibility of the facilities which must be taken into account in an inspection visit. In the long term, the activity of the National Agency is also to promote an exchange of particularly successful practical examples between the *Länder*. The examples below can only provide an initial insight into the concrete implementation practice. The National Agency is very much interested in further positive examples.

Prisons

The following inspection spotlights relate mainly to prisons since the Commission of the *Län-*

der already has the most experience in this field. They are, however, also partly transferrable to psychiatric clinics and facilities for prisoners in detention awaiting deportation. Further specific foci will also be added in the future in this regard as the number of visits to these facilities increases.

Detention area and specially-secured cell

The inspections focus on particularly sensitive areas such as the detention cells and the specially-secured cell containing no dangerous objects. In addition to the nature, duration and frequency of accommodation, the cleanliness and hygiene of the sanitary facilities, the nature of the monitoring, the state of the clothing of those concerned, as well as the measures taken in advance to avoid these security measures, are interesting in this regard. If the specially-secured cell or a detention cell is subject to video monitoring, the surveillance normally also includes the toilet area. The latter particularly impinges on the privacy of the accommodated person. Particularly when portraying the person concerned on the monitor, therefore, a way must be found, firstly, to avoid any suicidal acts on the part of the person accommodated and, secondly, to guarantee protection of privacy as far as possible. The toilet area should be roughly pixelated on the surveillance monitor. If a special security situation exists in which pixelisation constitutes a risk, direct supervision by an officer must take place. The measure is then to be given detailed reasoning and documented. The person accommodated should always be dressed in suicide-preventing clothes. If this is not possible for security reasons, the surveillance should only be carried out by staff of the same sex as a matter of principle.

Solitary confinement

The implementation of security measures, such as solitary confinement, is an extraordinary strain for the detainees concerned. The CPT presumes that solitary confinement may constitute inhuman and degrading treatment under certain circumstances. It is to be kept as short as at all possible in each case.¹⁴ In order to alleviate the negative impact of solitary confinement on the mental and physical health of the person concerned, they should be given adequate opportunities to engage in meaningful activities and for appropriate human contact (for instance through extended visiting hours). Those concerned should also receive regular psychiatric, psychological as well as pastoral care. This should take place in a confidential framework that is suited to the discussion situation.

Fixation

If a person is fixated, particularly clear, strict criteria must be applied in order to protect the person concerned against injury and to preserve their dignity.

Exemplary requirements for the implementation of fixation can be found in the Bavarian prison system. They apply not only to prisons, however, but are also largely transferrable to police units. These requirements also satisfy the demands of the National Agency on the implementation of fixation. This measure is only ordered as a last resort in the Bavarian prison system as a special security measure. It is not permissible as a punishment. Fixation (where appropriate with handcuffs) by fixing to metal rings anchored in the ground is not practiced in Bavarian prisons. In particular systems are used, such as a bandage system developed for psychiatrics, which ensures that fixation causes as little damage as possible and minimises the risk of injury. A variety of different terms are used for the same non-damaging fixation,

¹⁴ cf. CPT Standards, CPT/Inf/E (2002) 1 - Rev. 2010, p. 20, marginal no. 56.

including the 'belt system'.

The duration of fixation is restricted to the absolute maximum period of time, frequently lasts only a few minutes, and as a rule not for more than 24 hours. Regular medical checks are carried out during fixation. The ordering, implementation, examination of the continuation and the discontinuation of fixation, as well as the visits by the medical service, and other care or treatment measures, are comprehensively recorded in writing and documented. Furthermore, fixated persons must be continuously and directly monitored by an officer in all cases.

General accommodation conditions

The general accommodation conditions are naturally significant when it comes to dignified deprivation of liberty, that is above all the cells and common rooms.

Sufficient daylight and fresh air are important. Cells should therefore not be equipped with so-called sight guards, which prevent a view from the windows and considerably hinder the entrance of light and fresh air. For instance, a good compromise was found in Bernau prison in this respect, such that a large glass area in new windows, which cannot be opened, remains unguarded and ensures that a considerable amount of light can enter. Two smaller side window panes can be opened, which enables fresh air to enter. Perforated screens are only fitted to small window panes, so that the overall entrance of light is restricted only minimally.

Significance is also attached to the size of the cells. It should be asked in particular whether a single cell is doubly occupied. In the case of multiple occupancy, there absolutely must be a toilet area which is entirely partitioned off. This is also desirable in single cells. The Commission of the *Länder* made the following statement with regard to the double occupancy of single cells, and to the minimum area which an inmate should have in his/her cell, after the visit to Bernau am Chiemsee prison:

"The Commission takes note that the Bavarian State Government intends to continue to do all it can to reduce overoccupancy and to bring multiple occupancy down to the minimum that is necessary to prevent suicide.

Regarding present conditions, the Commission finds that cells in Bernau prison which do not have completely partitioned sanitary areas are only occupied by more than one person in special exceptional cases, and only for a few hours at a time. Because of additional cases of multiple occupancy, the Commission has taken your statement as an opportunity to re-examine conditions in Bernau. In doing so, the view obtained in the course of the visit has been confirmed that single cells in which the sanitary area is completely partitioned may not be occupied by two inmates who are accommodated there for a prolonged period.

The precise floorplan of the cells emerges from the measurements, which Bernau prison has kindly provided to us, and which is enclosed. Accordingly, the total area of the cells is 8.22 m² each. Of this, somewhat more than 1 m² is taken up by the separate area of the washroom and washbasin. Hence, roughly 7.2 m² are left for the accommodation of two inmates, containing the bunkbed as well as additional furniture, such as a locker, a table and chairs. The Commission's subjective impression on its visit was that the cells are very cramped and permit virtually no movement if they are occupied by two inmates.

The multiple occupancy of single cells practiced in Bernau prison is at least objectionable in accordance with the Bavarian Prison Act (Strafvollzugsgesetz). Art. 20 para. 1 sentence 2 of

the Act permits, with the inmates' consent, to also accommodate them together during the rest period if no negative influence is to be feared. The draft Bill of the Land Government (Landtag printed paper [LT-Drs] 15/8101 p. 55) states on this provision amongst other things that the constitutionally-required protection of privacy could also be maintained with joint accommodation and should be taken into account when planning the detention regime and in the size and design of the cells. The administrative provision on Art. 20 of the Bavarian Prison Act accordingly only permits the joint accommodation of two inmates in a single cell in exceptional cases. The double occupancy that is systematically practiced in Bernau is not exceptional in this sense. The cells also do not comply with the increased requirements made of cells in which inmates may be regularly accommodated jointly. In accordance with Art. 170 para. 2 of the Bavarian Prison Act, cells for accommodation during the rest and leisure period must have sufficient air, amongst other things. The reasoning for the statute on this provision indicates that details are to be regulated by an administrative provision. In accordance with para. 1 of the administrative provision which was issued on this matter, single cells are to be planned such that they have a floor area of at least 9 m², including the toilet cubicle. These requirements are not met by the respective cells in Bernau, even when used as single cells. According to the evaluation of the administrative provision, which completes the statutory measure, multiple occupancy is therefore not possible. A floor area of at least 6 to 7 m² per accommodated inmate is required as a standard of multiple occupancy in most cases in Germany (cf. for instance the documentation in the Order of the Federal Constitutional Court of 13 November 2007, 2 BvR 2201/05, JURIS marginal no. 16). The surface area is therefore well below that required in the case of the multiple occupancy of single cells in Bernau.

Moreover, multiple occupancy of these single cells may also violate inmates' human dignity. The cells are too small for multiple occupancy, even if the inmates are not additionally burdened by inadequately partitioned toilets.

The Federal Constitutional Court derives from Art. 1 para. 1 of the Basic Law, in conjunction with the principle of the social welfare state, the obligation incumbent on the State to also ensure a minimum livelihood which constitutes a dignified existence in prisons. It primarily considers the floor area per inmate and the situation of the sanitary facilities, namely the partitioning and ventilation of the toilet, to constitute factors which indicate a violation of human dignity resulting from spatial detention conditions. The shortening of the daily lock-up period can be considered as a relaxation of detention (Order of 22 February 2011, 1 BvR 409/09, JURIS marginal nos. 29 et seqq.). Above all to date, non-divided sanitary facilities have led to the accusation of undignified imprisonment. As far as is known, the Federal Constitutional Court has not so far ruled on cases in which only the small floor area was complained of. However, the reasoning of the Court also shows that a lower limit is to be adhered to in this regard notwithstanding other additional factors.

A standard for this lower limit is found in the case-law of the European Court of Human Rights regarding Art. 3 of the European Convention on Human Rights. This case-law is orientated towards the guidelines of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), which has favoured 4 m² per inmate in a prison cell as a suitable guideline. You have already referred to the judgment of 12 July 2007 in the case of Testa vs. Croatia (EuGRZ 2008, 21, 23). This standard, which also applies to countries with completely different social circumstances, would be just about adhered to if the separate toilet area was added.

The Federal Court of Justice did find in its judgment of 11 March 2010 (III ZR 124/09) that it was not possible to clarify in abstract or in general terms when the spatial circumstances in a prison are so cramped that the accommodation of an inmate violates human dignity. It was said that this should be left to the evaluation of the trial court judge. At the same time, however, it did not explicitly object to the previous evaluation by Hamm Higher Regional Court that accommodation of less than 5 m² per inmate was undignified in accordance with the standards of the Basic Law, and stated that such an evaluation is also possible if the minimum standards are still adhered to in accordance with Art. 3 of the European Convention on Human Rights.

The case-law of the Higher Regional Courts in this matter relates to individual cases and is not quite uniform. However, a clear line is also found in the established case-law of Hamm Higher Regional Court, which you quote, which at least evaluates joint accommodation in detention as undignified, and hence as constituting a breach of official duty requiring compensation, if the inmates have a floor-space in the cell of less than 5 m² per accommodated inmate (most recently for instance in the order of 23 February 2011, 11 U 254/09). As has been described, this case-law has been approved by the Federal Court of Justice in response to an appeal on points of law. The more recent case-law of the Higher Regional Courts, which had referred to imprisonment under conditions such as in the multiple-occupied cells in Bernau as still lawful, is not available to the Commission of the Länder.

Taking these standards into consideration, the Commission is of the view that the single cells in Bernau prison may only be double occupied by way of exception if the inmates there are only accommodated for a short time and have the possibility to spend at least a considerable part of the day outside this cell during the week, for instance in a workshop. The Commission hence asks once more to reduce double occupancy and at most to practice it in the manner described.”

Visiting rooms and the procedure for visits

The maintenance of social contacts plays a major role for individuals who are deprived of their liberty. These contacts are however highly significant, particularly for re-integration into society. Hence, the design and atmosphere of the rooms, as well as the time regulations for visits by relatives and friends of those concerned, are of considerable interest for the National Agency. In addition to the construction of the visiting area, it is primarily their atmosphere and design which are examined, and these must be suitable for maintaining contacts over a prolonged period. Special arrangements for spouses, partners and children of individuals who are deprived of their liberty, the frequency and duration of the visiting possibilities, for instance on weekends also, and flexible arrangements for special groups of inmates such as persons held in preventive detention, are major aspects of an evaluation.

Sanitary facilities

The hygienic condition of the jointly-used sanitary facilities is important, in particular, in facilities where individuals are deprived of their freedom for a prolonged period. Common shower rooms frequently do not have a partition between the individual showers. This does not do adequate justice to the privacy of the individuals concerned. Partitions between the showers do not necessarily have to prevent the inspection of the shower room, and hence do not increase the probability of attacks in the view of the National Agency.

Food

One point of criticism which is regularly expressed by prison inmates is the quality of the food. A varied, healthy diet is conducive to inmates' well-being and is also particularly important for their satisfaction with their accommodation situation. Hence, the National Agency always also examines the food on offer. Happily, the standard in this regard is generally high and the facilities successfully endeavour to offer sufficient varieties of food which also take into consideration vegetarian, religious or medical needs and, for instance, the special needs of women.

The atmosphere in the facility and the relationship between detainees and officers

The relationship between inmates and officers is essential to the climate of the entire facility and a dignified deprivation of liberty. Discussions, particularly with the individuals in custody or inmates, as well as with the officers – are highly informative for the National Agency in this regard. However, the number and the content of complaints against officers are also an important source of information in this regard.

Therapeutic and suicide prophylactic concepts

The suicide prophylactic concept in Lower Saxony

A convincing programme has been developed in Lower Saxony in order to prevent acts of suicide in remand detention: During the first 14 days after being detained in their cells, the remand detainees are enabled to anonymously telephone a chaplain in the period from 7:00 p.m. to 7:00 a.m. 100 cells were equipped with the appropriate technology in a pilot project operated in a total of four prisons; 25 members of the prison chaplaincy were available for talks at night. The course of the project was documented and evaluated by the Criminological Service of Lower Saxony. The trial phase was evaluated by all concerned as being so successful that four prisons in Lower Saxony are now practicing this concept. On the occasion of its inspection visit to Rosdorf prison, the Commission of the *Länder* was itself convinced of the concept and suggests expanding it to other prisons.

Furthermore, the Commission was pointed towards an additional suicide prophylactic concept in Bavaria:

The suicide prophylactic concept in Bavaria

The use of so-called "listeners" has been trialled in Munich prison since February 2011 in order to prevent suicides among new arrivals in Bavarian prisons.

The concept is based on the following idea: Inmates who are regarded as being latently at risk of suicide are assigned a trained co-inmate from the Social Therapeutic Department of Violent Crime as a so-called listener for their first night in prison. The listener offers to engage the inmates who are to be cared for in conversation, and is hence able to help take away their fear of the prison experience by giving advice. The concept was evaluated by almost all the inmates involved as making sense and being very helpful.

Police units

Notices to individuals in custody

The National Agency finds that individuals in custody are not always comprehensively and promptly informed of their rights, in particular in police units, as well as in the Federal Armed Forces. Emphasis is to be placed here above all on the right to inform family members or

another trusted individual, on the right to consult a physician, as well as on the right to the support of an attorney. These rights are also always stressed by the CPT.¹⁵ This applies regardless of whether the individuals are in detention on the basis of police law or of criminal procedure law.

The National Agency takes the view that the individuals concerned must be informed of their rights in writing as soon as possible and that the information must be documented in a comprehensible manner. This ensures that the designated information is actually provided in practice. A short, comprehensive information form such as the “Information sheet for individuals detained/temporarily apprehended in police custody” of the *Land* Lower Saxony can serve as a model here.

Examination of ability to be held in detention

The determination of an individual’s ability to be held in detention is an absolute prerequisite for their being taken into custody, and emerges from the care and welfare duty of the police. If there are doubts as to the inmate’s ability to be held in detention, the prompt consultation of a physician is needed in each case, even if the person is only taken into detention for a short period. So that a medical examination and treatment are not delayed unnecessarily, the assumption of costs must also be regulated in the sense that the *Land* at least initially meets the cost incurred for the examination. This should also be clearly regulated in the Police Custody Codes of all Federal *Länder*.

Surveillance using wide-angle spy-holes and video cameras

The National Agency has found in various cases that the toilet area is included in surveillance, both in the surveillance of individuals in custody by wide-angle spy-holes and in surveillance by video cameras. There are considerable reservations against this with regard to the maintenance of privacy. However, the National Agency is not unaware that there may be cases in which security requirements need to be particularly taken into account. The National Agency will continue to seek solutions for this tension in the talks with the agencies concerned.

Further foci in visits to police units are:

- the use of bandage systems as a means of fixation (not handcuffs) and clear rules for the implementation of fixation (direct supervision by an officer)
- the size, the state of construction and the cleanliness of the detention cells, access to daylight and fresh air
- fire protection
- keeping of detention records, careful documentation of entrance to the cells by officers and of all special incidents
- video surveillance, respect for privacy, especially on the toilet
- the availability of blankets and washable, non-flammable mattresses
- the availability of dimmable night lighting
- name badges to be worn by officers

¹⁵ cf. CPT Standards, 2006, p. 6, marginal nos. 36-37

C. Presentation of the main results of the Federal Agency's visits

Neither the visit reports of the Federal Agency nor the statements of the supervisory authorities are reproduced in full. Only a summary of the contents of the main results is presented below.

I. Federal Police

The Federal Agency was provided with an updated list of detention facilities by the Federal Ministry of the Interior in the summer of 2010. Accordingly, a total of 163 facilities of the Federal Police are in existence in the entire federal territory. The list however also includes cells which are no longer in use or the use of which is soon to be terminated.

The Federal Agency aims to visit facilities from all nine directorates per period under review where possible¹⁶. It visited facilities which fall within the organisational sphere of the Federal police directorates in Munich, Berlin, Hanover, Stuttgart, Sankt Augustin and Pirna in the period under review from 1 May 2010 to 31 December 2011. Facilities had previously been visited from the organisational sphere of Bad Bramstedt, Berlin and Sankt Augustin Federal police directorates (cf. Annual Report 2009/2010).

1. Munich Airport and Munich Main Station Federal Police Stations, as well as Munich Eastern Station Federal Police Station in May 2010

On 19 and 20 May 2010, the Federal Agency carried out an inspection visit at the Munich and Munich Airport Federal Police Stations, the second-largest German airport after Frankfurt Airport, as well as the Munich Eastern Station Federal Police Station.

The Federal Agency inspected the detention and the return areas of Munich Airport. A total of two individuals were in custody at different airport stations at the time of the inspection. Furthermore, the Federal Agency found a person who was to be returned with her small child. One individual was in custody at the time of the inspection of Munich Main Station Federal Police Station.

Recommendations of the Federal Agency	Reaction of the Federal Ministry of the Interior
The privacy of a person is also to be respected in detention at all times. Hence, the need to use a wide-angel spy-hole in the toilet doors of the detention areas of the Federal Police Station at Munich Airport (North station) and of the Federal Police Station at Munich Eastern Station should be examined. The legal evaluation of wide-angel spy-holes is referred to on page 24.	Although considerable importance is to be allotted to respect for privacy, it is said that the wide-angel spy-hole could not be removed from the toilet doors of the detention cells for deployment-related reasons. As an alternative to the use of the wide-angel spy-hole, opening the toilet doors could be considered if suspicion (e.g. staying longer in the toilet) made it appear necessary to take a look. In this respect, taking a look through the wide-angel spy-

¹⁶ These are the following directorates: Bad Bramstedt, Berlin, Hanover, Koblenz, Munich, Pirna, Sankt Augustin, Stuttgart, Frankfurt/Main.

	hole was said to appear to be more appropriate.
The Federal Agency also recommends to extend the use of cell occupancy sheets as practiced by Munich Federal Police Station, on which the precise control times are also noted, to other Federal Police Stations. This practice ensures the complete, comprehensible documentation of the checks in the interest of the individuals in custody as well as that of the police officers.	The procedure practiced of using cell occupancy sheets is said to lead to the risk of double recording in the detention record and in the cell occupancy sheet, and hence to a risk of contradictions occurring between the two documents. What is more, the added value is said to depend on the location of the detention cells. It would therefore not be generally extended to other Federal Police units. It was said to be necessary to take a closer look at the procedure, which might lead to an ad hoc extension to include suitable Federal Police Stations.
The detention cells of the Federal Police Station at Munich Main Station should be equipped with washable mattresses and with dimnable lighting .	Munich Federal police directorate will soon equip the detention cells with washable mattresses as well as with dimmers for the light switches.

2. Berlin-Schönefeld Airport Federal Police Station in July 2010

The Federal Agency implemented an inspection visit to Berlin-Schönefeld Airport Federal Police Station on 19 July 2010, during which it also observed the transfer of returnees to the aircraft during a mass return to Vietnam. A mass return of Vietnamese nationals from Berlin Schönefeld Airport also took place on 6 December 2010. On this occasion, the Director of the Federal Agency also observed the entire procedure at the airport. No objections were raised, so that the recommendations below exclusively refer to the visit on 19 July 2010.

Recommendations of the Federal Agency	Reaction of the Federal Ministry of the Interior
The Federal Agency expressly welcomes the fact that the Federal Police makes available food parcels for the returnees for their transit stay in Moscow. The Federal Agency was however informed in an individual talk by one person concerned that he had already had to manage for more than twelve hours with no substantial food (including the time of delivery and his stay in return custody). The Federal Agency is aware that, in accordance with No. 4.2 of the Police Custody Code for Places of Custody in Units of the Federal Police (<i>Polizeigewahrsamsordnung für Gewahrsamsräume bei Dienststellen der Bundespolizei</i>	The Federal Police was unable to verify the correctness of the returnee's statement. None of the returnees had complained of hunger to the officers of the Federal Police deployed on the day of the flight. In principle, a quick, unbureaucratic solution would have been possible in such a case since surplus lunch packets were available as a rule (not all persons were transferred on the flight day) or such food could have been organised at short notice via the officers deployed. Appropriate lunch packets were provided by the Federal Police for the longer transit stay at

<p><i>PGO-BPOL</i>), the Federal Police is only obliged to feed individuals in custody after six and 12 hours, respectively, and that the main responsibility for this lies with the respective <i>Land</i> authorities. The Federal Agency would nonetheless like to point out that it is unacceptable to leave people without food for such a long period. A solution should be found which ensures where necessary that food is provided to those concerned quickly and unbureaucratically. The Federal Police should in future also specifically notify the accompanying officers of the <i>Land</i> authorities of this problem in order to be able to better identify the persons concerned.</p>	<p>Moscow Airport. Although it is within the remit of the <i>Länder</i> to ensure food for the returnees until the transfer at the airport (the short period which the returnees spend at the Federal Police unit prior to departure was said not to justify separate food as a rule), the Federal Police would discuss this topic once more at the clearing agency meeting on air returns.</p>
<p>The Federal Agency would explicitly welcome a nationwide arrangement regarding the handing out of a lump sum to penniless returnees along the lines of existing decrees on the lump sum payment applicable in individual Federal <i>Länder</i>. The payment of a lump sum is a humanitarian gesture first and foremost, and could moreover also have a deescalating effect. The lump sum was said to enable completely penniless persons to return in dignity and without any additional risk to their own physical and mental integrity. This particularly applies if the returnees still had to cover considerable distances from the arrival airport to their actual destination.</p>	<p>The Federal Ministry of the Interior stated that the problems of the different arrangements regarding the “lump sum” were known and that various bodies had discussed it with the Federal <i>Länder</i> in the past. It was however within the responsibility of the <i>Länder</i> to create appropriate regulations for this. The Federal Police would however also submit this recommendation at the clearing agency meeting on air returns.</p>

3. Federal Police Stations at Hamburg Airport and Hamburg Main Station, as well as the Federal Anti-Crime Police Station in August 2010

The Federal Agency carried out inspection visits at the Federal Police Stations at Hamburg Airport and Hamburg Main Station, as well as at the Federal Anti-Crime Police Station in Hamburg on 24 and 25 August 2010. Here, it also inspected the returns area at Hamburg Airport and carried on talks with several individuals who were about to be returned.

Recommendations of the Federal Agency	Reaction of the Federal Ministry of the Interior
<p>The returns room of the Federal Police Station at Hamburg Airport should be equipped with a two-way intercom or alarm button. This would ensure that individuals to be re-</p>	<p>The Federal Ministry of the Interior stated that the installation of the two-way intercom or of an alarm button was currently being examined by the competent construction</p>

<p>turned who are in custody can contact the officers at any time.</p>	<p>office.</p>
<p>All detention cells of the Federal Police Stations at Hamburg Airport and Hamburg Main Station, as well as Hamburg Anti-Crime Police Station and Hamburg-Altona Federal Police Station, should be equipped with a fire protection alarm system in order to enhance the protection of the individuals in custody should a fire break out.</p>	<p>Fire protection alarm systems have been installed in all the detention cells at the Federal Police Stations visited.</p>
<p>The Federal Agency has already stressed in connection with the visit to the Federal Police Station at Berlin-Schönefeld Airport that it must be ensured that returnees are provided with food, particularly when they have a longer journey there. The Hamburg Airport Federal Police Station is hence recommended to specifically sensitise the officers of the <i>Land</i> authorities with regard to this problem in future in order to be able to better identify the individuals concerned.</p>	<p>Hamburg Federal Police asks the transferring forces of the <i>Länder</i> to ensure that returnees are already adequately fed before being returned. Moreover, it is also possible in individual cases for the Federal Police to first advance money, which is subsequently refunded by the immigration authorities. Despite all efforts, unsatisfactory individual cases did occur in which the Federal Police unfortunately had to manage to help with limited funds.</p>
<p>The Federal Agency recommends fitting all detention cells of the Federal Police Stations visited in Hamburg with lighting that is dimmable at night, as well as providing the Federal Police Station in Hamburg Main Station and in the Federal Police Station at Hamburg-Altona with suitable washable mattresses.</p>	<p>The Federal Ministry of the Interior stated that the suggestion to install dimmable lighting was still being examined. The detention cells visited at Hamburg Main Station and in Hamburg-Altona were always fitted with washable mattresses, but their replacement – necessitated by the occasional destruction by aggressive inmates – could take some time.</p>
<p>The Federal Agency particularly welcomes the fact that detention cells of Hamburg Airport Federal Police Station have daylight. However, it recommends to implement the construction changes needed for suicide prevention (replacement of the window bars) where possible such that daylight is not considerably reduced. The window bars in the detention cells of the Federal Anti-Crime Police Station in Hamburg should also be replaced when this is done.</p>	<p>The replacement of window bars in the detention cells of Hamburg Airport Federal Police Station and of the Federal Anti-Crime Police Station in Hamburg was currently being examined by the competent construction office.</p>
<p>Wide-angle spy-holes are also used in the toilet doors in the Federal Police facilities visited in Hamburg (for a legal evaluation cf. page 24).</p>	<p>The Federal Ministry of the Interior also considers the use of wide-angle spy-holes to be necessary to protect the individuals in custody.</p>

<p>The Federal Agency recommends to fit Hamburg-Altona Federal Police Station with a money with which to pay out the lump sum in order to enable the officers to procure food for individuals in custody quickly and unbureaucratically.</p>	<p>The Federal Ministry of the Interior did not specifically explore this point in its statement.</p>
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4. Kehl Federal Police Station in November 2010

On 30 November 2010, the Federal Agency visited Kehl Federal Police Station, the activities of which focus on both border police and railway police tasks. Approximately 600 to 1,000 removals per year are carried out via Kehl Federal Police Station, mostly from and to France. Although two removals were announced for the date of the visit, the returnees did not appear. The visit to Kehl Federal Police Station included an inspection of the questioning and search rooms, as well as the detention area.

Recommendations of the Federal Agency	Reaction of the Federal Ministry of the Interior
<p>As has already been explained, the Federal Agency is of the opinion that the use of wide-angel spy-holes in the toilet doors constitutes an encroachment on an individual's privacy (for a legal evaluation cf. page 24).</p>	<p>The Federal Ministry of the Interior states that it has already communicated its position regarding the use of wide-angel spy-holes in detention doors on another occasion (cf. C.I. 3).</p>
<p>The Federal Agency was presented by the deputy head of Offenburg Federal Police Station with a checklist for detention which is used in the facility. The Federal Agency considers this checklist to be a meaningful supplement and an aid in orientation the introduction of which should also be recommended in other units.</p>	<p>The content of the checklist is said to borrow from the detention record, so that two virtually identical records would have to be kept with regard to one and the same event. What is more, it is said to be critical if the non-binding checklist – which was evidently drawn up as a memory aid for new colleagues – was to supplement the binding detention code that had been introduced for the Federal Police.</p>
<p>The Federal Agency has noticed when going through the detention records that individual control times were not noted in full. The detention record should document as precisely as possible the times when checks are carried out in the detention areas. This serves not only to completely document detention events, but also constitutes additional security for the officers. The Federal Police gave an on-the-spot assurance that the various units would be pointed towards this need.</p>	<p>The Federal Ministry of the Interior did not specifically explore this point in its statement.</p>

<p>The Federal Agency recommends to fit all detention cells with suitable washable, inflammable mattresses. The Federal Police gave an on-the-spot assurance that appropriate mattresses would be procured.</p>	<p>The Federal Police said that the detention cells were designed only for brief stays. Mattresses were therefore only provided when actually needed. The units of the Federal Police had however all been supplied with appropriate mattresses after an examination had been carried out by the Federal Police Headquarters.</p>
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5. Federal Police Stations in Düsseldorf Airport and Düsseldorf in January 2011

The Federal Agency carried out inspection visits to the Federal Police Stations in Düsseldorf Airport and in Düsseldorf on 19 and 20 January 2011.

The inspection of Düsseldorf Airport was limited to the return area. Here, the Federal Agency held private talks with all persons to be returned and also attended a briefing session. Additionally, the Federal Agency inspected a medical examination room in Module F.

The inspection of Federal Düsseldorf (Main Station) Police Station included the entire detention area, as well as the questioning and search rooms. Furthermore, questions regarding the respective workplace were discussed with some staff members. The Federal Agency inspected detention documents and had itself handed out an overview of the complaint events in 2010.

Recommendations of the Federal Agency	Reaction of the Federal Ministry of the Interior
<p>Metal fixation devices were on the mats. The Federal Agency stresses that it did not find any such fixation devices on previous inspections of units of the Federal Police. The provision contained in 618.3 of the Regulations, Guidelines, Instructions, Collections of Lists and Reference Works (<i>Bestimmungen, Richtlinien, Anweisungen, Sammlungen von Katalogen und Nachschlagewerken – BRAS</i>) also does not contain any such requirement. Fixation should be restricted to the shortest possible time, respecting the strictest proportionality. Here, the fixated person must be monitored constantly and directly by a staff member. Furthermore, persons should not be fixated with police handcuffs since handcuffs constitute a considerable risk of injury, particularly with persons who are exited.</p>	<p>It was said that the Federal Police Headquarters had ordered the removal of all remaining fixation facilities in detention cells on 25 March 2011.</p>
<p>One of the detention cells in the Federal Police Station in Düsseldorf is fitted with an in-ground toilet which can be completely viewed by a wide-angle spy-hole (for a legal evaluation cf.</p>	<p>The Federal Ministry of the Interior is said to have already stated its position on the use of wide-angle spy-holes in detention doors on another occasion (cf. C.I.3).</p>

page 23).	
The Federal Agency found on its visit to Düsseldorf Federal Police Station that fire alarms were only fitted in the rooms leading to the detention cells. Fire alarms in the detention cells are necessary in the view of the Federal Agency in order to guarantee the safety of the individuals in custody in the case of a fire. In this respect, the Federal Agency recommends examining whether they can be retro-fitted. The plans for the new property should definitely provide for fire alarms to be fitted in the custody rooms, as provided for by 618.3 of the Regulations, Guidelines, Instructions, Collections of Lists and Reference Works.	Fire alarms had been installed in the detention cells in Düsseldorf Airport Federal Police Station. These were said to be in the ventilation system supplying the detention cells with fresh air.
The Federal Agency recommends additionally equipping both custody cells with additional night lighting (e.g. dimmable lighting or night lights).	The implementation of this proposal is currently being examined.

6. Federal Police Station in Dresden and in the Federal Police Station at Dresden Airport in May 2011

On 25 May 2011, the Federal Agency carried out a visit to the Federal Police Station in Dresden and to the Federal Police Station at Dresden Airport. The inspection of the two units covered the entire detention area as well as some questioning and search rooms. The Federal Police Station in Dresden has two detention cells, and the Federal Police Station at Dresden Airport has two detention cells each in posts 1 and 2, as well as two detention rooms which are used in removals. Furthermore, the return area was inspected in the Federal Police Station at Dresden Airport. The Federal Agency inspected detention documents in both units here, and also had the return documentation submitted to it. A total of 1,129 persons were accommodated in the detention cells of Dresden Federal Police Station in the period from 2009 to 2011. According to the documents presented, these were mostly people taken into detention because of breaches of the Residence Act (*Aufenthaltsgesetz*) or the Asylum Procedure Act (*Asylverfahrensgesetz*), as well as requests in the INPOL and SIS systems. Fewer individuals were taken into protective and preventive custody.

Recommendations of the Federal Agency	Reaction of the Federal Ministry of the Interior
The Federal Agency indicates the need for people to be promptly informed of their rights in police custody. Above all, one should stress here the right to inform relatives, to see a doctor, as well as to consult an attorney. The Federal Agency had the impression that the oral information provided was not sufficiently well documented, so that	The Federal Police is said to guarantee, as a matter of principle, that individuals are informed of their rights and duties in police custody in accordance with section 41 of the Federal Police Act (<i>BPolG</i>). Each person who is deprived of their liberty on the basis of police or criminal procedure powers is said to be provided with appropriate infor-

<p>it is virtually impossible to verify its content. The Federal Agency hence recommends recording these three principle rights in a short, easy-to-understand information sheet in a language which the persons taken into detention can understand. This information sheet can take as an orientation the established formats for measures in accordance with the Code of Criminal Procedure (<i>StPO</i>) which were forwarded to the Federal Agency. Detainees should confirm in writing that they have taken note of their rights and that the information sheet has been handed out to them.</p>	<p>mation on their rights, at least orally. This is said to be translated by an interpreter, where needed, for persons who do not speak German. Additionally, corresponding forms were said to be handed out.</p> <p>An indication of the possibility of legal representation was contained in pocket cards/information sheets. Extensive information sheets were available for taking into custody in the case processing system of the Federal Police.</p> <p>The possibility to inform one's choice of legal representative was ensured in each case. The emergency lawyers' number was known to all units.</p>
<p>The Federal Agency found that the detention cells in both units did not have a two-way intercom. In the cells of the Federal Police Station in Dresden, the pressing of the alarm button indeed only sets off an optical signal. In this regard, the officers asked stated that the control centre was continually occupied and that the optical signal could thus be noticed at any time. Nonetheless, it was should be ensured that persons in police custody are always able to immediately contact the guards. To this end, for instance, the Federal Agency considers a two-way intercom, or at least an additional acoustic alarm signal, to be necessary.</p>	<p>The additional acoustic alarm signal for the alarm button of the detention cells is said to have now been implemented in the Federal Police Station in Dresden.</p>
<p>All inspected cells were adequately heated and ventilated. They however do not have windows or natural ventilation. The Federal Agency would like to stress that access to daylight and natural ventilation is regarded as necessary. The Federal Agency presumes that where it is foreseen that persons will stay for a longer period, they should be transferred to another detention facility with the appropriate resources. At least with new buildings, access to daylight and natural ventilation should be considered in the construction planning.</p>	<p>New construction projects were said to incorporate a room arrangement containing the recommendations of the Federal Agency. The necessary implementation or (alternatively) a practicable alternative solution was implemented in individual cases where the building allowed.</p>
<p>Two of the rooms used for returns do not have mattresses. If these rooms are to be used for a longer period or overnight, the Federal Agency considers it to be necessary to provide mattresses here also.</p>	<p>The detention facilities of the Federal Police were used exclusively for short-term accommodation.</p>

<p>The Federal Agency recommends to equip the detention rooms of the Federal Police Station at Dresden Airport with night lighting (e.g. dimmable lighting or a night light).</p>	<p>The conversion of the lighting in the detention cells of the Federal Police Station at Dresden Airport is said to have now been commissioned from the airport operator and to be under examination by the latter.</p>
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7. Berlin Eastern Station Federal Police Station and Berlin-Lichtenberg Federal Police Station in June 2011

The Federal Agency carried out a visit to the Berlin Eastern Station Federal Police Station and to the Berlin-Lichtenberg Federal Police Station on 30 June 2011. The inspection at both units covered the entire detention area, as well as some questioning and search rooms. The Berlin Eastern Station Federal Police Station and the Berlin-Lichtenberg Federal Police Station each have two detention cells. The Federal Agency inspected the detention documents in both units.

Recommendations of the Federal Agency	Reaction of the Federal Ministry of the Interior
<p>The Federal Agency points to the need to immediately inform persons of their rights in police custody (cf. also C I. 6.)</p>	<p>The treatment of detained persons by the Federal Police is said to be regulated in section 41 of the Act on the Federal Police (<i>Gesetz über die Bundespolizei</i>). Moreover, the information was documented in individual cases by a record of the apprehension which also had to be signed by the person concerned. This record was said to include the information on appeals mentioned by the Federal Agency.</p>
<p>All rooms that were inspected were adequately heated and ventilated. However, they do not have daylight or natural ventilation. The Federal Agency would like to stress that daylight and natural ventilation are regarded as necessary. At least with new buildings, this should be considered in the construction planning (cf. C.I.6).</p>	<p>The recommendation regarding daylight and natural ventilation that was made for the detention cells of Berlin Eastern Station Federal Police Station is said to be noted for the case of a new construction project. Detention facilities of the Federal Police, unlike prisons, were said in general to be only designed for a short detention period. Construction measures for the present cells were therefore not considered to be necessary.</p>
<p>The detention cells at the Eastern Station do not have any fire alarms. The Federal Agency points out that it considers fire alarms to be necessary in the cells or at least in the anteroom.</p>	<p>The Federal Police Headquarters is said to have requested the competent Federal Office for Building and Regional Planning to fit the facility with fire protection alarm systems.</p>

II. Federal Armed Forces

Prison sentences, criminal and youth detention as well as disciplinary detention are carried out on soldiers in custody facilities of the Federal Armed Forces (section 1 of the Ordinance on the Enforcement of Prison Sentences, Military Disciplinary Confinement, Youth Detention and Disciplinary Detention by authorities of the Federal Armed Forces [*BwVollzO*]). The legal basis for disciplinary detention is constituted by section 26 of the Military Disciplinary Code (*Wehrdisziplinarordnung – WDO*). Disciplinary detention may only be imposed with the participation of a judge (section 40 of the Military Disciplinary Code). Further, supplementary regulations on imprisonment in the Federal Armed Forces are also found in the 14/10 Central Service Instructions.¹⁷

At the beginning of its activities, the Federal Agency was provided by the Federal Ministry of Defence with a list of detention facilities of the Federal Armed Forces. According to this list, which is dated May 2011, the Federal Armed Forces maintain a total of 136 detention facilities in Germany. The military police operate a further 30 facilities in which persons can be detained or soldiers who have been apprehended can be temporarily kept (list for the CPT of February 2010).

The Federal Agency aims to visit facilities from military districts I-IV within a visiting period. It visited the Federal Armed Forces barracks in Torgelow and Viereck, which belong to military district I, Burg Federal Armed Forces barracks (near Magdeburg), which belong to military district III, and Sigmaringen and Stetten a.k.M. Federal Armed Forces barracks, which belong to military district IV, in the period under review 1 May 2010 – 31 December 2011. It visited the Federal Armed Forces barracks in Speyer and Zweibrücken, which belong to military district II, in the previous period under review, 1 May 2009-30 April 2010.

The Federal Agency addresses recommendations regarding the Federal Armed Forces to the Federal Ministry of Defence. Both the competent head of the detention group and the Federal Armed Forces facility visited receive a duplicate of the letter.

1. Burg Federal Armed Forces barracks in July 2010

The Federal Agency carried out an inspection visit in the Clausewitz barracks in Burg on 20 July 2010. These barracks of military district III have a total of five detention cells and also accommodate a military police headquarters with two cells (one of which was a “specially secure space”), as well as a common room for soldiers who have been apprehended. A total of eight persons had been placed in detention in 2010 so far. At that point in time, the most recent accommodation had taken place on 7 July 2010. None of the cells were occupied at the time of the inspection. The Federal Agency did not note any points during the visit which it regarded as being in need of improvement.

2. Torgelow and Viereck Federal Armed Forces barracks in October 2010

The Federal Agency carried out an inspection visit in the Ferdinand von Schill barracks in Torgelow and the Kürassier barracks in Viereck on 19 October 2010. The barracks, which belong to military district I, have three and five detention cells, respectively. None of the cells

¹⁷ ZDv 14/10 Detention Regulation for the Federal Armed Forces (*Vollzugsvorschrift für die Bundeswehr*), January 1980 edition. The provision is currently being comprehensively revised by the Federal Ministry of Defence.

were occupied at the time of the inspection. The Federal Agency did not note any points during the visit which it regarded as being in need of improvement.

3. Sigmaringen and Stetten a.k.M. Federal Armed Forces barracks in September 2011

The Federal Agency carried out inspection visits in the Graf Stauffenberg barracks in Sigmaringen and the Alb barracks in Stetten a.k.M. (both military district IV) on 21 and 22 September 2011. The inspection of the Graf Stauffenberg barracks included the entire detention area (eight detention cells, five of which are currently being used for detention) and the two cells of the military police headquarters there. No separate common room for detained soldiers is available. Only the detention area was inspected in the Alb barracks (of the eight detention cells, one room is put to other purposes).

Recommendations of the Federal Agency	Reaction of the Federal Ministry of Defence
<p>The Federal Agency points to the need to promptly inform persons of their rights. The right to inform relatives, to consult a doctor and to legal representation are to be stressed here above all. In order to ensure that the information designated is actually provided in practice, the soldiers in question must be informed of their rights. The Federal Agency hence recommends recording the rights in a short, easy-to-understand information form. The formats used for measures in accordance with sections 127 and 127b of the Code of Criminal Procedure (<i>StPO</i>), which can also be downloaded from the website of the Federal Ministry of Justice, can be used as an orientation.</p> <p>The Federal Agency was informed on site that the revision of the "Information sheet on the major prison regulations" had not yet been completed.</p>	<p>With regard to the recommendation, a misunderstanding was said to exist as to the definition of an apprehension in accordance with section 21 of the Military Disciplinary Code in comparison to section 127 of the Code of Criminal Procedure. The call for information on rights to remain silent is said to be dispensable since – unlike apprehension by the police – a soldier temporarily apprehended by the military police was not questioned by the latter. Temporary apprehension in accordance with section 21 of the Military Disciplinary Code was said to serve solely to restore military order and not for prosecution. A right to remain silent was said not to exist vis-à-vis the military police in the context of temporary apprehension in accordance with section 21 of the Military Disciplinary Code because they did not carry out investigations.</p> <p>The proposed changes would be taken on board and examined in the context of the revision.</p>
<p>The governors of both locations informed the Federal Agency that no regular further training had taken place to train the staff deployed in the detention area for their duties there. Since the detention areas are not permanently occupied, it is understandable that no full-time posts can be created for it. As a consequence,</p>	<p>The current training practice is said to be adequate since</p> <ul style="list-style-type: none"> - disciplinary superiors were trained during their training on the topic of "Imprisonment in the Federal Armed Forces", - newly-appointed prison visitors were

<p>however, this leads to the staff deployed having little experience of dealing with detainees. In the view of the Federal Agency, special training in dealing with persons in the detention area would be meaningful and necessary.</p>	<p>familiarised with their duties by the heads of detention groups,</p> <ul style="list-style-type: none"> - the prison staff (prison visitors, governors, disciplinary superiors) are regularly trained by the heads of detention groups in the form of seminars and on an ad hoc basis.
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III. Customs

Customs officers have various risk-averting powers in accordance with section 10 of the Customs Administration Act (*Zollverwaltungsgesetz – ZollVG*). A physical search is permissible, for instance, where there is actual suspicion of people hiding objects on their person. Customs investigation officers are furthermore empowered in accordance with section 127 of the Code of Criminal Procedure to affect a temporary apprehension. They have equal status with the officers of the police service (cf. section 404 sentence 1 of the Fiscal Code [*Abgabenordnung – AO*], section 26 subs. 1 sentence 1 of the Customs Investigation Service Act [*Zollfahndungsdienstgesetz – ZFdG*]), and therefore they can also effect a temporary apprehension where a delay is likely to jeopardise the success of the investigation if the prerequisites of an arrest warrant or of a temporary placement order are met (cf. section 127 subs. 2 of the Code of Criminal Procedure).

The Federal Agency addresses recommendations regarding the customs investigation offices to the Federal Ministry of Finance. The customs investigation office visited also receives the visit report for its information.

1. Dresden customs investigation office in May 2011

The Federal Agency carried out an inspection visit in Dresden customs investigation office on 25 May 2011, where it inspected the three detention cells of the customs investigation office, which were not occupied at the time of the visit.

Recommendations of the Federal Agency	Reaction of the Federal Ministry of Finance
<p>The Federal Agency presumes that one noticeably small cell (4.41 m²) of the three detention cells is only used for accommodation of apprehended persons where there is an acute lack of space, and then only for a very short period of time (a few hours).</p>	<p>It was stated that the corresponding detention cell was only used in a small number of exceptional cases.</p>
<p>Unlike the usual situation, for instance in police units, the customs investigation office does not have a detention code or a corresponding detention record or any similar register documenting the individual detention-related events (date, time of accommodation, telephone calls, food issued to inmates, checks by staff, particular incidents such as</p>	<p>The Customs Criminal Investigation Office (<i>Zollkriminalamt</i>) is said to be currently drawing up a draft detention code. The view of the Federal Agency is shared that this will further increase both the legal certainty of the acting officers and the safety and well-being of the persons in detention. Hence, in anticipation of the detention</p>

<p>self-injuries, etc.). By being transparent, such a detention record increases not only the security of the individuals in custody, but (for instance in case of illness or injuries to the inmates) also contributes towards the legal certainty of the responsible officers.</p> <p>The fact that the specific design of detention is not set out in a separate set of rules leads at the same time to a situation in which some areas do not meet the standards which are called for by the CPT and which the Federal Agency also applies as a standard.</p>	<p>code, it has been ordered that a detention record is to be kept – initially for Dresden customs investigation office. The customs administration as a whole is to be obliged to keep detention records, even before the detention code is created.</p>
<p>The Federal Agency points out that, in accordance with the CPT standards, persons who are deprived of their liberty have three essential rights from the beginning of their apprehension about which they must be informed, both orally and in writing, in a manner which is understandable to them: The right to consult an attorney, to consult a doctor and to inform relatives.¹⁸</p> <p>The Federal Agency proposes to examine and, where appropriate, ensure that the information is provided in the form stipulated by law, and in particular also at the earliest point in time, that is at the time of apprehension.</p>	<p>There is said to be no legal uncertainty regarding the time and extent of the information given to a person who is detained in the customs administration. The regulations regarding the information obligations were announced via a decree, as well as in the individual service regulations of the customs administration (Service Regulations on Financial Control of Illegal Employment [<i>Dienstvorschrift Finanzkontrolle Schwarzarbeit – DV FKS</i>], Service Regulations for Mobile Control Groups of the Customs Administration [<i>Dienstvorschrift für Mobile Kontrollgruppen der Zollverwaltung – KontrollDV</i>], Service Regulations for Criminal and Administrative Fines Procedure [<i>Dienstvorschrift für das Straf- und Bußgeldverfahren – StraBuDV</i>]) and included in the workflow sheets for the investigation standard. The necessary information was included in forms containing translation aids in the national Intranet of the customs administration.</p> <p>The information from the customs investigation office was said to be provided as a matter of principle at the beginning of a questioning. Should there be problems in communication, it was said to be possible in exceptional cases for the information not to be provided until an interpreter had arrived, if no information sheet was availa-</p>

¹⁸ cf. CPT Standards, Standards No. 36 and 40 (for police custody, however, the CPT stated in its report to the Greek Government on the visit to Greece from 23 September to 5 October 2001, in which customs units were also visited, that the standards stipulated for police detention apply equally to other agencies, such as customs authorities, to the extent that they exercise law enforcement powers involving the possibility of depriving persons of their liberty (CPT/Inf (2002) 31, No. 10).

	ble in the respective language. In this respect, an unavoidable delay might occur in practice between apprehension and the information being provided.
The apprehension and care of persons taken into detention is effected by customs authority personnel who are trained for all types of deployment. Since, however, apprehensions do not take place every week, the appointment of specially-trained staff exclusively for the care of those apprehended would not be practical. Since the apprehension situation and dealing with detainees requires special knowledge and skills, the Federal Agency suggests paying greater attention to this situation within the framework of staff training – for instance by including an additional module on this topic.	The need to create an appropriate additional module is said to be in the process of being reviewed. Both the apprehension situation and dealing with inmates is said to already be a part of various further and ongoing training activities, some of which are obligatory. Eight hours of “apprehension” were taught within a nine-week basic training course. Additionally, 12 hours of “basics of successful communication” were taught on an interdisciplinary basis. There was also a separate training course going into more detail on “conflict and stress management”.

2. Berlin customs investigation office in June 2011

The Federal Agency carried out an inspection visit to Berlin customs investigation office on 30 June 2011. It however found on the occasion of its visit that the detention cells of Berlin customs investigation office had not been used for six years. The Federal Agency inspected the detention cells, which were currently being renovated, and found no reason for complaint. The renewed operation of the cells will not take place until the conclusion of the renovation work at the end of the year.

Recommendations of the Federal Agency	Reaction of the Federal Ministry of Finance
In order to be able to use its highly-limited resources more meaningfully, the Federal Agency requests the Federal Ministry of Finance to provide an up-to-date description of the capacities of the customs investigation and customs offices. This should absolutely also contain information on whether detention cells are currently being used or are to be closed.	The requested (updated) overview detailing the detention cells which are currently being largely used by the customs administration has been forwarded. A large number of the detention cells originally reported (mostly with the main customs offices) are said to no longer be in use because they are not needed or for building-related reasons.

D. Description of the essential results of the visits by the Commission of the *Länder*

The Commission of the *Länder* carried out a total of 18 inspection visits in nine different Federal *Länder* in the period under review. The Commission of the *Länder* contacted all the responsible Ministries of the Federal *Länder* in October and November 2010 in preparation for the visits and asked to receive information (including on the *Land*-specific legal basis, the number and contact data of places where people are deprived of their liberty, etc.). The Commission of the *Länder* has unfortunately not received an answer from several of the various Ministries up until the present day, even after several months. The Commission of the *Länder* now expects this to be dealt with promptly.

No description of the comprehensive basis in *Land* law will be provided below.

It is pointed out once more that both the visit reports and the statements of the supervisory authorities are not given in full, but as a summary of excerpts.

I. Prisons

There are 186 prisons with independent organisations in Germany.¹⁹ The Commission of the *Länder* inspected seven prisons within the period under review. It addressed its recommendations to the Ministry of Justice of the respective Federal *Land*.

1. Rosdorf prison in October 2010

The Commission of the *Länder* carried out an inspection visit in Rosdorf prison on 25 October 2010. It inspected amongst other things the admissions area, a penal detention wing, the detention area, the security wing, a specially-secured cell and the visiting area. During the visit, it carried out talks with the prison governor and with the staff members of various wings. There were also talks held with inmates and with the inmates' council. Rosdorf prison has a capacity to hold 318 inmates. It was occupied by 241 inmates at the time of the visit.

Recommendations of the Commission of the <i>Länder</i>	Reaction of the Lower Saxony Ministry of Justice
The Commission complains that an inmate described by the governor as particularly mentally abnormal has been in solitary confinement without psychiatric care and subject to video monitoring for months. It is urgently recommended that this inmate be transferred to a psychiatric wing.	The inmate in question is said to have undergone psychiatric examination at the beginning of 2010. Categorised as a highly-dangerous inmate, it was regarded as being necessary for him to be institutionalised in a psychiatric clinic, but this could not be achieved at the time for security reasons. A transfer had been earmarked for February 2011. It was not possible to organise an ear-

¹⁹ cf. Federal Statistical Office on the number of prisons, capacity and occupancy on 31 March 2011 at <http://www.destatis.de/jetspeed/portal/cms/Sites/destatis/Internet/DE/Content/Statistiken/Rechtspflege/Justizvollzug/Tabellen/Content75/Belegungskapazitaet,templatelnd=renderPrint.psml> [most recently retrieved on 22 December 2011]

	lier transfer for capacity reasons.
There was a lack of equipment in the disciplinary detention cells , where there were neither beds, tables nor anywhere to sit. What is more, it is recommended to remove the foils from the window panes, which considerably obstruct the entry of daylight.	All disciplinary detention cells are said to have now been equipped with the furniture customary in detention cells and the foils removed from the window panes.
The practice of the suicide prophylactic programme in the prison is exemplary (more details in section B.V)	The concept is said to be being practiced currently in four Lower Saxony prisons. It was currently being examined whether it could be extended to additional prisons.

2. Frankfurt III women's prison in January 2011

The Commission of the *Länder* carried out an inspection visit in Frankfurt III prison on 31 January 2011. The prison has a total of 350 places, and it was occupied with 337 female inmates on the day of the visit. In particular, the Commission of the *Länder* inspected several penal detention wings, the multipurpose building (including a sick bay, a shopping room, a library, a power sport room and a sports hall), a mother-and-child department, a visiting area, a clothing store, the headquarters, a specially-secured cell containing no dangerous objects, a video-monitored detention cell of a penal detention wing and the outside sport area. During the visit it held discussions with the prison governor and staff members of various wings. Furthermore, the Commission had several individual talks with inmates (including an inmate accommodated in a video-monitored detention cell).

Recommendations of the Commission of the <i>Länder</i>	Reaction of the Hesse Ministry of Justice, for Integration and Europe
<p>In the video monitoring of the specially-secured cell, the toilet area on the surveillance monitor should be portrayed by pixelisation such that the privacy of the monitored person also is maintained when using the washroom. This applies all the more given that video monitoring is carried out by both female and male staff.</p> <p>It is furthermore recommended to give suitable suicide-preventing clothing to inmates in the specially-secured cell. A non-rip paper blanket only restrictedly fulfils the purpose of clothing. The blanket is particularly impractic-</p>	<p>Pixelisation is said to adequately do justice to the maintenance of privacy.</p> <p>It is said not to be possible to prevent an intrusion into the privacy of the inmates accommodated in the specially-secured cell on the surveillance monitors. Blocking a larger area through pixelisation could lead to potential suicidal acts not being recognised.</p> <p>The large disposable blankets handed out in Frankfurt III prison appear to be less dangerous than paper underwear and are said indeed to offer more complete protection of privacy.</p> <p>With regard to the judgment of the ECHR of 7 July 2011 in the case of H. vs. Germany on the question of the clothing of persons in the specially-secured cell, the Hesse prisons had been instructed by decree of 26 October</p>

<p>cable when using the toilet in the floor.</p>	<p>2011 to also give paper underwear and a paper shirt to inmates accommodated in the specially-secured cell, in addition to the paper blanket.</p> <p>(On the topic of video monitoring cf. also page 19).</p>
<p>Provision of medicines and their issuance to the inmates as quickly as possible must be ensured (the inmates' council had told the Commission of the <i>Länder</i> amongst other things about delayed issuing of pain killers).</p>	<p>The issuing of medicines is said to take place three times per day, in urgent cases also outside the set times. The supply was hence said to be guaranteed as a matter of principle. It was said that the officers had been once more informed of the need to comply with the existing requirements. The inmates were said to have also been called upon to address complaints in this regard to the competent prison department quickly and in detail.</p>
<p>The social therapy measure has so far proven to be the generally most effective tool to prevent recidivism. In the conviction of the Commission of the <i>Länder</i>, the principle of equal treatment is breached by male inmates being offered this measure, but not female inmates.</p>	<p>Another requirement analysis was being carried out with regard to establishing a social therapeutic wing.</p>
<p>The training available for inmates should not only be orientated towards female-specific jobs. It is recommended to examine whether other training occupations, such as crafts, can also be offered.</p>	<p>The establishment of a crafts training area is favoured as a matter of principle. The Director of Frankfurt III prison is said to have been requested to examine whether a crafts training course can be offered in the women's prison.</p>
<p>The Commission doubts whether food generally prepared for male <i>and</i> female inmates does adequate justice to the specific food needs of women in the long term.</p>	<p>In order to optimise the food, head cooks of Hesse prisons have been attending a training course held by the German Food Association since the autumn of 2010. Back in 2009, the food at Frankfurt III prison had been subjected to a review by the Justus Liebig University in Gießen, and the information obtained from this was taken into account with particular regard to the different nutritional needs of women.</p>
<p>The statutory provisions on criminal detention, remand detention and youth prisons, as well as the house rules and corresponding information sheets, should be updated and made available to all inmates.</p>	<p>It was said that the information sheets for criminal and remand detainees had now been adjusted to the new Hesse prison statutes and had been translated into a total of 13 languages. All Hesse prisons were said</p>

	to now have access to the information sheets.
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3. Berlin youth prison in April 2011

The Commission of the *Länder* visited Berlin youth prison on 7 April 2011. The youth prison has 547 detention places and held a total of 450 persons on 6 April 2011 (351 criminal inmates, 99 remand detainees). The visit focussed on the criminal detention and remand detention wings, the admissions area, the specially-secured cells containing no dangerous objects, the disciplinary detention and separation area, the medical department, the social therapy department, the specialist drug department, the visiting area and the outside facilities. The Commission of the *Länder* had talks with the prison governor, the director of the social therapeutic department, several other staff members as well as the local representative of the prison union. Furthermore, several individual talks were held with inmates of various wings.

The prison made an extremely un-cared-for, in some cases completely dirty, neglected impression, as stated below. This is particularly problematic for a youth prison since young people in particular are to be encouraged to engage in order and cleanliness.

Recommendations of the Commission of the <i>Länder</i>	Reaction of the Senate Administration of Justice of the <i>Land</i> Berlin
<p>Metal handcuffs and footcuffs are used as fixation tools. These are unsuitable because of the high risk of injury. The Commission of the <i>Länder</i> recommends to use a system of belts. It is furthermore recommended to order direct supervision by an officer for fixation.</p>	<p>The Senate Administration only made a statement regarding the place for keeping the metal handcuffs and footcuffs. The fixation tools themselves were not mentioned.</p> <p>It was stated that efforts were being made to reduce the number of fixations.</p>
<p>The specially-secured cell was in an unhygienic, disgusting state at the time of the visit: The foam mattress is used without a covering. It had many indefinable stains and was covered with dead insects. The toilet and the drinking water fountain were completely filthy.</p> <p>The desolate condition of the specially-secured cell is to be regarded as all the more grievous given that the documents presented make it clear that it is used frequently and that people are kept there against their will.</p> <p>This form of dirt can be considered to be a violation of human dignity.</p> <p>Because of the frequent use that was ascertained, the prison governor should definitely</p>	<p>The Senate Administration stated that the hygienic shortcomings had now been remedied. The prison had been instructed by letter of 23 June 2011 to implement the necessary maintenance work within six weeks.</p>

examine how placement in the specially-secured cell can be avoided by taking proactive measures.	
The disciplinary detention cells are also extremely un-cared-for and dirty.	The hygiene and “safety” related conditions which were the subject of the complaint have now been remedied.
The Commission complained about the sparse equipment and the extreme dirtiness of the visiting rooms in the specialist drug area and of the therapy rooms in the social therapy department. The same applies to the rooms of the admissions area (where even the electrical installations were not properly secure).	The improvement of the level of equipment was said to be being continually pursued as permitted by the budget.
The available common showers do not have partitions or other precautions maintaining privacy. That this circumstance is also regarded by the inmates as a disturbance is shown by the fact that they shower with clothes on (i.e. in their underwear or swimming trunks). It is recommended to convert the common showers in such a way as to do adequate justice to the protection of inmates’ privacy (cf. also p. 22).	With regard to the installation of devices in the sanitary facilities to protect inmates’ privacy, the Senate Administration stated that protection against attacks among the inmates took on particular significance in this area. Construction changes restricting the view of these premises were said to run counter to this concern.
Many windows in the criminal detention wings are fitted with additional sight guards which prevent both daylight and fresh air from entering. The Commission of the <i>Länder</i> would like to point out that, in accordance with international standards, adequate daylight and natural ventilation must be guaranteed in each cell. ²⁰ The CPT has also already pointed out the negative impact of sight guards on lighting and the airing of the cells, including in youth prisons. ²¹	The (partial) removal of front mesh wires could not be complied with; these were said to not be “sight guards”, but rather intended to prevent objects (drugs, mobile telephones, etc.) being pulled into the cells by inmates using angling devices.
Members of the representation of the inmates pointed out that officers sometimes do not exercise sufficient confidentiality in dealing with indications of repression and mistreatment by co-inmates. For instance, the risk is said to exist that the re-	As every other closed prison in the <i>Land</i> Berlin, Berlin youth prison was said to also have a security concept which was updated in concurrence with the Senate Administration. The currently-applicable concept, dated 28 March 2011, provides for a coordinated

²⁰ No. 11 a of the UN Standard Minimum Rules for the Treatment of Prisoners; No. 18.2 a of the Council of Europe’s European Prison Rules.

²¹ cf. CPT report on the visit to Germany in 2005, CPT/Inf (2007) 18, Nos. 15 et seqq. (with regard to Weimar/Ichtershausen youth prison and Hamlyn youth facility).

<p>porting inmate would in turn be subject to repressions by the alleged offender or other inmates.</p>	<p>reaction procedure with regard to the nature and gravity of individual violent incidents between inmates. In particular, new arrivals are informed of the dangers and risks arising, how to protect themselves and to which staff members they might be able to turn. The youth prison was however nonetheless said not to be a law-free zone.</p>
<p>When talking with inmates, the Commission received an indication that out-of-date house rules were being handed out. The Commission of the <i>Länder</i> recommends examining whether all documents handed out to the inmates are up to date.</p>	<p>The Senate Administration did not make any observations on this point.</p>

4. Bernau am Chiemsee prison in May 2011

The Commission of the *Länder* visited Bernau am Chiemsee prison on 5 May 2011. It inspected the specially-secured cell containing no dangerous objects and the detention area, as well as the admissions area, the sick bay, the post room, the clothing store, the kitchen including the food distribution, a general criminal detention department with a sanitary area, both in the main building complex and in Building 9, the special care accommodation group, several production shops, external facilities for outdoor exercise and the visiting area. What is more, the Commission had talks with the prison governor, staff members of various wings, members of the prisoners' co-responsibility body and an inmate who was in disciplinary detention at the time of the visit. It also inspected the personnel files of the last ten inmates who had been accommodated in the specially-secured cell. The prison has a capacity of 840 places. 859 persons were detained at the time of the visit.

The documents requested by the Commission of the *Länder* were given to it in full on the visiting day.

<p>Recommendations of the Commission of the <i>Länder</i></p>	<p>Reaction of the Bavarian State Ministry of Justice and for Consumer Protection</p>
<p>A considerable number of the single cells at Bernau prison are occupied by two people. Single cells, like the cell that was inspected measuring 8.3 m², are too small for double occupancy. The Commission considers it to be necessary to reduce double occupancy of individual cells and to practice this in special exceptional cases at most (cf. the detailed description on this also in section B.V.).</p>	<p>A violation of human dignity is said not to apply in the case of the double occupancy of single cells of this size which have a partitioned toilet area. The Ministry reasons this position by referring to various court judgments.</p> <p>Independently of this, the Ministry is said to be making efforts to reduce the overoccupancy of the prison, as well as the multiple occupancy of the detention cells.</p>
<p>The specially-secured cell and the disciplinary detention cells are video monitored. The</p>	<p>The Ministry did not share the reservations against video monitoring of the specially-</p>

<p>toilet area is not pixelated on the surveillance monitor. The Commission suggests examining whether a certain pixelisation of the sanitary area can be carried out and the clothing of the inmates in the specially-secured cell can be supplemented by a shirt in addition to the paper underwear.</p>	<p>secured cell without exception, since in its view the physical integrity and the life of the inmates can only be ensured by complete, comprehensive observation.</p> <p>The Ministry stated that the inmates in the secured cell were provided with underwear and a blanket. The suggestion of the Commission of the <i>Länder</i> had been taken on board, and a shirt would also be handed out in future.</p>
<p>The number of psychologists is inadequate in view of the size of the prison. For instance, only two-and-a-half established posts were available for 859 inmates. The Commission urgently recommends to expand the psychological service.</p>	<p>There were plans to establish a social therapeutic department at Bernau Prison. This would significantly improve the therapy offered and the staffing schedule in the specialist services. Because of the tense budget situation, the necessary funds and additional established posts could not, however, yet be accommodated in the 2011/2012 budget. Corresponding applications are said however to have already been provided for the negotiations on the supplementary budget for 2012.</p>
<p>The Commission also met an inmate in the disciplinary detention area who had already demonstrated self-injuring conduct several times and was obviously in a deplorable mental state. The Commission urgently advises to subject the inmate to a psychological and/or psychiatric examination, and where appropriate to institutionalise him in a psychiatric unit. It requests to be advised of further developments.</p>	<p>The Ministry states in this regard that the man had already been placed in the specially-secured cell several times for short periods. His conduct was however said to be caused not by a psychotic incident, but by an inclination towards disrupting prison routing, since the incidents were connected with the inmate's demands not having been met. He had been in regular contact with the medical and psychological service during the time of the special security measures.</p> <p>With regard to his further development: The inmate showed self-injuring conduct on several occasions over the next few weeks, massive in some cases, so that first of all he once more had to be placed in a disciplinary detention cell and later fixated in the specially-secured cell. His conduct then gradually normalised, and the inmate was finally placed in a shared cell.</p>
<p>Building 9 only has 12 common showers for roughly 200 inmates. The common shower rooms are not equipped with partitions or any other precautions maintaining privacy.</p>	<p>Partitions between the showers were deliberately omitted, since this is the only way to offer optimum protection for the inmates against attacks on one another. At least ran-</p>

<p>The Commission of the <i>Länder</i> recommends to affix appropriate devices. The hygienic conditions in the sanitary area in Building 9 should also be improved (cf. also p. 22).</p>	<p>dom monitoring of the shower rooms was said to be necessary for this, which could only be effectively and considerably provided by a room which one could see into.</p> <p>As to the 12 available showers, so far no capacity problems had come to notice. The cleaning was said to be in line with the hygienic requirements and regulations. It was said to be correct that the shower room needed repairs. It was planned to completely renew it soon.</p>
<p>Inmates stated that some cells with multiple occupation did not have a separate sanitary area. Should this be the case, it should be remedied urgently.</p>	<p>The statement by the inmates is said not to stand up to a subsequent check. Only in extremely rare exceptional cases was this said to be conceivable for a short period.</p>
<p>Roughly one-half of the inmates in Bernau prison currently have no employment. The Commission of the <i>Länder</i> requests the prison governor to continue to endeavour to increase the employment offered.</p>	<p>Whilst the employment opportunities in the internal workshops had remained constant or increased in some cases, the number of jobs in the companies' shops had been falling for years for a variety of reasons. The Ministry was said to be aware of the problem and to be hence endeavouring to expand the employment opportunities for inmates both in the internal workshops and in companies' shops.</p>
<p>The Commission of the <i>Länder</i> considers the existing sport and leisure services to be inadequate, and urgently recommends to expand the range of sports services which are available, including those that do not depend on the weather.</p>	<p>It was stated that the sport and leisure on offer in Bernau Prison were indeed still limited. There were plans for the years to come to install a fitness room and a sports hall and additional sports places.</p>
<p>The Commission of the <i>Länder</i> recommends to also suitably take account of non-smoker protection in the admissions area.</p>	<p>A common room in the admissions area for up to three individuals is said to be made available for non-smokers. Should there be more than three non-smokers per week among the new-arrivals, further single cells would be available in wing Z0, in which detention cells were also located. A separate isolation, comparable to detention, was said not to be associated with such accommodation.</p>
<p>The Commission of the <i>Länder</i> recommends to review the strict handling of the granting of relaxations of the detention regime and leave, as well as a comparison with other</p>	<p>Because of the structure of the inmate population at Bernau Prison, relaxations of the detention regime and leave were said to be only possible to a restricted degree. The</p>

prisons, and to report on this.	main problem here was said to be the large share of detainees who came into contact with narcotics and who used relaxations of regime to consume these.
Correspondence with the National Agency may not be monitored. Art. 32 para. 2 of the Bavarian Prison Act (<i>BayStVollzG</i>) already contains a corresponding provision for communication with the CPT. A corresponding notice on the blackboard for the inmates is requested.	An on-the-spot assurance was given that such a notice would be put up. According to the Ministry, this already took place on the next day. Furthermore, it was ordered that a corresponding notice should be put up in all Bavarian prisons and that the officers should be once more separately pointed to the freedom from monitoring of correspondence with the Commission.

5. Dresden prison in July 2011

The Commission of the *Länder* carried out an inspection visit in Dresden prison on 28 July 2011. Dresden prison has a capacity of 805 detention places. It was occupied with a total of 761 inmates at the time of the visit (of whom 56 were female inmates, six of whom were undergoing social therapy). The Commission of the *Länder* particularly inspected several criminal detention wings, the admissions area, the transport department, the visiting area, the specially-secured cells and the disciplinary detention cells. It consulted with the prison governor, other officers and a member of the staff representative. It furthermore spoke during the inspection with inmates who were in solitary confinement, with inmates in the transport wing, as well as with members of the prisoners' co-responsibility body.

The Commission of the *Länder* additionally inspected various personnel files of inmates.

Recommendations of the Commission of the <i>Länder</i>	Reaction of the Saxon State Ministry of Justice and for Europe
<p>The Commission of the <i>Länder</i> is concerned about the circumstances under which solitary confinement is carried out on two inmates found there.</p> <p>One of the two inmates has already been in solitary confinement since May 2009. It cannot be foreseen in either case when solitary confinement could be terminated.</p> <p>Accommodation is carried out in cells which are additionally barred. The barred door is used for all communication with the inmates (e.g. also with the psychologists or the legal representative). Sight guards are affixed in front of the cell windows which considerably restrict the view outside and prevent light coming in.</p>	<p>The ordering of solitary confinement as a special security measure is said to be regularly reviewed, currently at three-monthly intervals. The inmates are continually offered psychological treatment, in particular in order to be able to make the necessary positive prognosis soon in order to relax the security measure that has been ordered.</p> <p>Solitary confinement was said to have now been terminated in one of the cases. In the other case, the inmate received a life sentence with subsequent preventive detention because of his recent failed escape attempt involving physical attacks and considerable injuries to officers. It was said to also be presumable that a particular danger still emanated from the inmate, so that it was still</p>

<p>Outdoor exercise is always taken individually and in handcuffs, in a roughly 30 m² large, separate barbed-wire-fenced inner yard. The yard looks dreary and does not offer any opportunity to sit down or for protection against inclement weather.</p> <p>One of the inmates is enabled to work in the neighbouring cell. No other activities are provided.</p> <p>Being held in this way is extremely strenuous for the inmates. Hence, all efforts should be taken to restrict solitary confinement to the shortest possible time. As long as they live under these extreme detention conditions, the inmates are to be given psychiatric and/or psychological care at short, regular intervals. More measures should be taken to alleviate the extreme mental strain.</p> <p>The stated interval of a review of placement in solitary confinement taking place every three months is inadequate in the view of the Commission. A review is recommended at least once per month as to whether solitary confinement is still urgently needed or not.</p>	<p>necessary to keep him in solitary confinement. The prison was requested to discuss the further treatment of the inmate in a council (psychologist in attendance at Dresden prison, head of the social therapeutic department of Waldheim prison and a staff member of the criminological service).</p> <p>Inmates in solitary confinement are said to be granted four hours of visits per month and more on application, where appropriate. Additionally, the inmates could use the prison library. Furthermore, inmates in solitary confinement are said to have the possibility on request to regularly meet with the psychological service. Without an application, the psychological service was said to offer inmates the opportunity to talk at least once per month. Psychiatric care was said to be provided as needed and recommended by the psychological or medical service.</p> <p>The “sight guards” were intended to prevent other inmates hanging down dangerous objects for them to take.</p> <p>The exercise yard is to be made more attractive by planting, applying colours and installing a seat, as well as protection against the weather. The possibility to expand the space from 30 m² to approximately 60 m² is currently being examined. The implementation was said to be planned in a suitable timescale, depending on the budget funds available.</p>
<p>The Commission has reservations as to the size and the layout of the detention cell occupied by two inmates. Just as the single cells, these are 11.4 m² in size, and 2.23 m wide. The hose-like shape and the placing of the furniture makes the living space highly restricted.</p> <p>Also, after the statement of the Ministry, the Commission of the <i>Länder</i> is maintaining that the detention cells are only restrictedly suited for occupation by two inmates. This</p>	<p>The set-up of double cells with a fully-partitioned sanitary area, for temporary use, should meet the requirements of dignified accommodation.</p> <p>The anticipated completion of the detention building in Waldheim prison in December 2011 and the corresponding transfers from Dresden prison was expected to lead to a drop in occupancy at Dresden prison.</p>

emerges from the previous description of the very unfavourable design of the rooms, even if the surface area of the rooms as such does not violate constitutional minimum standards.	
There are no partitions or other facilities between the individual showers of the common shower rooms protecting privacy. The Commission recommends fitting the shower rooms with partitions (cf. also p. 22).	The Ministry is said to be going to have the prison rooms of the prisons subsequently fitted with partitions and to take the installation of partitions into consideration in the planning of new building projects.
Requests for talks with the psychological and social pedagogical services are frequently not complied with for weeks, according to the inmates.	Ten staff members in the social service and five psychologists take care of approximately 800 inmates. Talks with the specialist services could take place on request as a rule once per month.
Only 285 of the current number of 705 male inmates were in work on 28 July 2011. The Commission considers measures to improve the jobs offered to be indispensable, and requests to be informed of the measures that are planned.	It is said to be intended to create additional jobs. The establishment of an internal or company workshop is currently being examined.

6. Prison for women in Chemnitz in July 2011

The Commission of the *Länder* carried out an inspection visit in Chemnitz prison on 29 July 2011. Because of construction measures, the occupancy of cells was increased since a wing temporarily cannot be occupied because of construction work. This means that accommodation conditions in Chemnitz prison are currently very constricted.

The Reichenhain area, which was inspected by the Commission, had 194 detention places at the time of the visit, 170 of which were occupied.

The Commission inspected the following sub-areas in particular: a criminal detention department with a sanitary area, an examination department and a department for detention awaiting deportation, a mother-and-child department, a disciplinary detention cell, a specially-secured cell with no dangerous objects, a clothing store, the visiting area, the sports rooms, exterior facilities for outdoor exercise and sport, as well as leisure areas. It additionally inspected inmates' files. Talks were carried out with the prison governor, additional staff members and the chair of the staff council. Additionally, discussions were held with several inmates and the prisoners' co-responsibility body.

The requested documents were already handed over to the Commission of the *Länder* in full on the visiting day.

Recommendations of the Commission of the <i>Länder</i>	Reaction of the Saxon State Ministry of Justice and for Europe
<p>In particular, the temperature of 28°C measured in the specially-secured cell is much too high, in connection with the handing out of a very heavy shirt made of dense material as anti-suicide clothing. The Commission recommends procuring lighter anti-suicide clothing. It advises reducing the temperature to approximately 24°C, which is generally customary in the cell containing no dangerous objects, and adjusting the clothing to be handed out to this temperature accordingly.</p>	<p>In accordance with the Construction Guideline of the State Ministry of Justice and for Europe for Saxon Prison Buildings, the constant room temperature in the specially-secured cell should be approximately 24°C, and it should be possible to regulate it up to 28°C. With regard to the clothing available and the greater sensitivity of women to the cold, Chemnitz prison took the higher value as its orientation. The prison had reduced the pre-set room temperature to 24°C.</p> <p>The models of anti-suicide clothing offered on the market aiming to increase portability and comfort, whilst at the same time meeting extensive security needs, are currently being examined.</p>
<p>In the common shower rooms there are no partitions or other devices providing privacy between the individual showers. It is recommended to fit the shower rooms with partitions (cf. also p. 22).</p>	<p>The Ministry would have the prison shower rooms subsequently fitted with partitions and take the installation of partitions into account when planning new constructions.</p>
<p>In order to enable mothers to have the appropriate expert support in childcare and counselling on parenting issues whilst in detention, the Commission of the <i>Länder</i> recommends also providing the inmates and the officers with psychological development support.</p>	<p>In order to promote a positive development, pedagogic expertise was said to be called for, above all. This was to be provided by a social educationalist.</p>

7. Werl prison in August 2011

The Commission of the *Länder* carried out an inspection visit in Werl prison on 17 August 2011. Werl prison has a capacity of 863 places. It was occupied by 812 inmates at the time of the visit. The Commission inspected the following areas in particular: a penal detention department with sanitary facilities, an access department, a department for persons held in preventive detention, settlement and disciplinary detention cells, specially-secured cell containing no dangerous objects, workshops, the visiting area and a solitary outdoor exercise yard. The Commission talked to the prison governor and with other officers. It also spoke to inmates of various departments, including with persons held in preventive detention and with the prisoners' co-responsibility body. The Commission furthermore inspected the files of those inmates who had been placed in the specially-secured cell and in disciplinary detention in 2011.

Recommendations of the Commission of the <i>Länder</i>	Reaction of the Ministry of Justice of the <i>Land North Rhine-Westphalia</i>
<p>The Commission of the <i>Länder</i> encountered an inmate in solitary confinement on the occasion of its visit. According to the prison governor, the inmate had been transferred to Werl after an incident in Aachen prison, and was to remain there for four weeks. He had been there for a week at the time of the visit. Because of his aggressive conduct towards officers, the inmate had been placed in a so-called settlement cell. This is secured with an additional barred door through which all communication takes place. There is a sight guard outside the window. Outdoor exercise only takes place singly and with handcuffs.</p> <p>According to the governor, the inmate's conduct did not currently permit any relaxation of these incisive measures. The Commission recommends that the inmate be placed under in-patient observation in a prison psychiatric hospital.</p>	<p>There would have to be a medical indication in order for there to be a new psychiatric examination or a placement in the psychiatric department of the prison hospital in Fröndenbergl. The governor of Werl prison had accordingly commissioned the prison doctor and the external psychiatrist working for the prison.</p>
<p>A small number of cells – including those cells in which solitary confinement is enforced – are provided with a sight guard which almost completely prevents a person from looking out of the window. This also considerably restricts the entrance of daylight and access to fresh air.</p> <p>A remedy should be found for this.</p>	<p>The sight guards fitted to the outer wall of the third upper floor not only serve to protect the residents of the staff flats from an invasion of their privacy by the inmates, but the sight guards also prevent contact with persons outside the prison. Nonetheless, the governor is said to be currently examining the installation of fine-meshed bars in place of the sight guards.</p>
<p>The duration of inmates' stay in the access department differs widely and fluctuates between six weeks and six months.</p> <p>The Commission of the <i>Länder</i> suggests regulating with clear, binding instructions the occupancy and duration of stay in the access department.</p>	<p>The occupancy and duration of stay in the access department is said to be in line with the following parameters as a matter of principle:</p> <ul style="list-style-type: none"> - capacity of the prison - cell capacity in the admissions area - cell capacity in the overall prison - suitability. <p>In the context of the access procedure, it is said that either the "shortened procedure" (as a rule with inmates serving a sentence of less than one year) is implemented or a prison plan is drawn up. Subsequently, a transfer is made to another cell as soon as possible. A stay of six months is said to be a rare exception. That notwithstanding, a review had been commissioned along the</p>

<p>The Commission recommends to increase the specialist staff in the department for persons held in preventive detention. The “Minimum Requirements of Organisation and Equipment of Social Therapeutic Facilities and Departments in Prison”²² could be taken as a guideline here.</p>	<p>lines of the recommendations.</p> <p>In a direct connection with the necessary re-orientation of preventive detention, there were plans to provide a social therapy department in the context of the conceptual further development in preventive detention of Werl prison with, initially, nine places. As the staffing budget allows, it is hoped that the specialist staffing of this department will achieve the staffing quota contained in the minimum requirements of the Working Party on Social Therapeutic Prisons.</p> <p>Also, in order to already improve the staffing in the field of preventive detention, five additional established posts had only just been allocated in Werl prison, three for the Psychological Service and two for the Social Service.</p>
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²² Arbeitskreis Sozialtherapeutische Anstalten im Justizvollzug (2007): *Sozialtherapeutische Anstalten und Abteilungen im Justizvollzug. Mindestanforderungen an Organisation und Ausstattung. Indikationen zur Verlegung.*

II. Psychiatric facilities

According to information from the Federal Statistical Office and the Federal Ministry of Justice, there are approximately 326 psychiatric clinics and facilities for the placement of offenders with mental disorders in psychiatric institutions nationwide²³ which fall within the remit of the Commission of the *Länder*. A centre for Forensic Psychiatry and a clinic for young drug addicted criminal offenders were visited in the period under review. The Commission of the *Länder* addressed its recommendations to the respectively competent Ministry of Health, Equalities, Care and Ageing, as well as to the State Ministry of Labour and Social Affairs, Families and Women.

1. Lippstadt Centre for Forensic Psychiatry in August 2011

The Commission of the *Länder* carried out an inspection visit at Lippstadt Centre for Forensic Psychiatry of Westfalen-Lippe Regional Council (hereafter LWL Centre for Forensic Psychiatry) on 18 August 2011. The Commission of the *Länder* was accompanied by a forensic-psychiatric expert.

LWL Centre is one of the largest forensic-psychiatric clinics in Germany, with 301 treatment places. 270 places were occupied on the visiting day, and with the temporarily absent patients it would have been 312.

The Commission of the *Länder* focussed its inspection on the following sub-areas: the reception wing, the “intensive care room”, the department for psychotherapy and sociotherapy, the mixed-gender ward of the department of clinical psychiatry, the release preparation ward, the therapy rooms, the visiting room, the sanitary facilities and the cultural centre. It carried out talks with the medical director and with staff members of various wards. Furthermore, it spoke with patients, as well as with members of the auxiliary patient’s council.

Recommendations of the Commission of the <i>Länder</i>	Reaction of the Ministry of Health, Equalities, Care and Ageing of the <i>Land North Rhine-Westphalia</i>
The Commission complains of the double occupancy of individual rooms with a floor area of 12.6 m ² . Because of the shape of the narrow rooms and of the way the furniture is placed, the living area is considerably restricted and does not offer space for a wardrobe. Cupboards and other objects (boxes, clothes horses, etc.) are stored in the corridors. Too many people are accommodated here in a very small area with the articles of daily use which they need.	The occupancy situation is said to have become less tense at the end of September as a result of the opening of another wing. It should be examined for what reasons additional treatment places were not taken into operation earlier. Basic agreement with the Commission was expressed that single rooms should not be occupied by more than one person. That notwithstanding, this may be necessary should it be the only way to cope with new arrivals. This was something

²³ cf. Federal Statistical Office (2011), Fachserie 12, Reihe 6.1.1, *Gesundheit. Grunddaten der Krankenhäuser*, Wiesbaden, p. 15, as well as *Verzeichnis aller Justizvollzugsanstalten in den Ländern der Bundesrepublik Deutschland und der Einrichtungen des Maßregelvollzugs* at [http://www.bmj.de/SharedDocs/Downloads/DE/pdfs/Ver-](http://www.bmj.de/SharedDocs/Downloads/DE/pdfs/Verzeichnis_aller_Justizvollzugsanstalten_in_den_Laendern_der_Bundesrepublik_Deutschland.pdf?__blob=publicationFile, version: 1 October 2010 [most recently retrieved on 22 December 2011])

<p>This treatment furthermore violates the fire protection regulations – where corridors are to be kept free.</p>	<p>which the <i>Land</i> Government could not influence. Therapeutic and security reasons were also said to necessitate double occupancy in individual cases.</p> <p>The funding institution had reported as per 24 October 2011 that the administration had placed the cupboards in other functional rooms, such as day rooms.</p>
<p>The Commission spoke with a patient in the reception ward who stated that he had been placed there for ten days and that he had been locked in his room apart from breakfast and twice-daily outdoor exercise. The patient’s statement was confirmed by the staff of the reception wing. The staff furthermore indicated that no conduct had been observed on the part of the patient that caused a risk to third parties and necessitated a daily lockup.</p> <p>The average duration of stay of the patients in the reception wing is two to three months. According to information from the head of the clinic, because of the shortage of single rooms in the treatment wings, a rapid transfer to such rooms is not possible.</p> <p>The reception wing has no common rooms. The patients are largely locked in their rooms during the day. This wastes valuable time which could be used for treatment.</p> <p>On 24 August 2011, the Commission was made aware of a patient who had been held in the reception wing for more than two-and-a-half years. It requests a statement as to whether the information provided by the patient is correct.</p>	<p>According to a report from the funding institution of 24 October 2011, this finding is a misunderstanding. The Commission spoke with a patient in Building 16 who had only been held in the clinic for ten days. He reported that he had been “locked up for ten days”. This statement however referred to his temporary accommodation in accordance with section 126a of the Code of Criminal Procedure, and not to his being locked up in a room or wing.</p> <p>The circumstances established by the Commission were largely confirmed by the Ministry.</p> <p>In the view of the supervisory authority, it is true that the rooms of the reception station are not ideally suited to the therapy that should be provided in such temporary accommodation. It also shares the Commission’s criticism of the inadequate long-term care staffing of the ward, and will take action to force the funding institution to apply the appropriate means.</p> <p>The Ministry stated that the patient had indeed been in the reception department for a prolonged period, namely roughly two years. This was largely because of the patient’s personality structure.</p>
<p>According to the head of the clinic, there is a shortage of staff posts in the therapeutic and long-term care area. The ratio between therapists and patients is said to be roughly 1:14. This shortfall leads to a reduced range of therapies on offer, and hence – in addition to the reservations already mentioned above – also to patients possibly being held there for an unnecessarily prolonged period.</p>	<p>The information provided by the head of the clinic is said not to be comprehensible for the <i>Land</i> Government. From the “as is” occupancy reported by the funding institution as per 1 July 2011, a ratio of 1:12 emerged for the medical and psychological service and one of 1:11 including the pedagogical service (with 300 in-patients). The <i>Land</i> was aware that the staffing of the placement of</p>

<p>The shortfall of therapeutic experts leads to a frequency of therapy which is much too low.</p>	<p>offenders with mental disorders in psychiatric institutions in North Rhine-Westphalia was not yet satisfactory.</p> <p>The <i>Land</i> Government had observed that the funding institution was unable to provide information on therapy sessions in response to a specific enquiry. It considered this also not to be satisfactory in the clinic's own interest and in that of the institution, and would discuss possible counter measures with the institution. An evaluation of the therapeutic events without a reliable database certainly did not appear to be justifiable.</p> <p>The <i>Land</i> Government is said to have begun to increase the daily rates as permitted by the budget. This would also be continued in 2012. The staffing budget of the individual clinics was however said to be as a matter of principle within the responsibility of the institutions. The <i>Land</i> Government would supervise this in the context of its specialist supervision.</p>
<p>Members of the Patients' Council stated that they are subject to very frequent changes of therapist. Some patients were assigned to six different therapists within two years. Changes of therapist can only be justified in exceptional cases, and certainly not for organisational reasons, since they can endanger the success of the therapy and cost time.</p>	<p>The view of the Commission that changes of therapist should constitute the exception was shared as a matter of principle. The funding institution had however plausibly proven that the reports quoted of six different therapists being assigned within two years were an exception. Given the considerable restructuring resulting from the placing into operation of six new clinics with a total of 510 places, these were not simply "organisational" measures.</p>
<p>It is recommended to increase the inadequate provision of therapy and discussion rooms and to also equip the rooms with the necessary technical devices (e.g. video camera). One large, properly-equipped therapy room is needed for roughly 15 patients.</p>	<p>The shortage of therapy rooms was said to primarily concern the rooms allocated to the individual wings. As a matter of principle, similar spatial restrictions were said to apply to many older clinics. The spatial situation in the clinic would considerably improve as a result of a planned new building with a total of 69 single rooms. Corresponding funding was said to be available; implementation had been delayed for some time because of monument conservation objections. The <i>Land</i> was furthermore said to be preparing to establish an additional total of 650 new places all over the <i>Land</i>.</p>

Talks between attorneys and patients regarded as being dangerous to others

sometimes take place under extremely problematic conditions.

One patient reported that he had had to talk with his attorney through the food slit in the door, so that they had both had to kneel down. Since the patient had been kept in a separation room, he had additionally been undressed, apart from his underwear. The attorney involved had described this as an “undignified consultation situation”. The attorney had not considered himself to be endangered by his client and had considered such conditions for the consultation to be unnecessary.

These facts are confirmed by the judgment of Bielefeld Regional Court of 9 October 2008, in which the written statement of the attorney is reproduced. In the view of the Commission of the *Länder*, the conditions for the hearing were undignified for the patient in question.

It is hard to imagine how a meaningful consultation can take place under the circumstances described. Also, such conditions for the discussion do not do justice to the right to confidentiality.

The Commission of the *Länder* also recommends that therapeutic discussions should not take place under such conditions.

There is no decisive distinction by individual diagnosis groups for female patients within the facility, and accordingly there is also no **specific range of therapies** (statement of the Patients’ Council).

The Commission would like to point out that therapeutic activities should naturally also be

According to the report of the funding institution, the individual case described can only relate to a hearing by a judge.

According to the finding of the Commission of the Länder, the discussion took place with an attorney, and not with a judge. This is immaterial for the evaluation of the facts.

The facts are said to be as follows:

- The patient is said to have been undressed, apart from his underwear, because he was sweating heavily and had rejected a so-called “fixed shirt”. In view of the patient’s acute delusory symptoms, the clinic was said to have endeavoured to not additionally increase the patient’s fear of being given over to alien powers.
- The judge had expressed a wish to conduct the hearing in a separate room. The patient had however been exceedingly tense at the time of the hearing, plus judicial officials were said to belong to the special “target group” of possible escalations of violence. Furthermore, the patient was said to be physically far superior to the judge and would not have been easy to secure had he attacked. The judge had not stated that he did not consider himself to be at risk; he had, rather, accepted the situation.

As a matter of principle, dealing with patients who pose a risk to third parties is said to always take place in accordance with the individual assessment made of the patient. However, the room was always entered by at least two officers. Therapeutic discussions, visits, doctors’ contacts, etc., also took place with corresponding security being provided by the officers.

Because of the very small number of women being held in detention with a view to reformation, it is said to be fundamentally much more difficult than with men to provide customised therapy with sufficiently large groups of patients. The vast majority of the women were already being held in two specific loca-

orientated in a disturbance-specific manner for women.

tions, which obviously clashed with the aim of placing female inmates near their homes. It had however happily been possible to form a specialised ward for female patients with borderline symptoms at Lippstadt clinic. A realistic improvement of the spatial accommodation conditions was said not to be possible until plans for the abovementioned new replacement building had been carried out (currently forecast for mid-2014).

Immediately after its visit, the Commission of the *Länder* received a number of additional indications from patients at LWL Lippstadt Centre for Forensic Psychiatry. It therefore supplemented its visit report to include an expanded enquiry and asked for information to be provided on the following topics:

- suicides and self-injuries from 2005 to the end of September 2011 and concrete information on the circumstances surrounding the incidents;
- a list of the number of patients who had been placed in an “intensive care room” since 2005, as well as precise information on the duration of accommodation (start and end) and the reason for the accommodation. The term “intensive care room” may be misleading. According to our observation in Lippstadt, the room roughly corresponds to what in prisons is the specially-secured cell containing no dangerous objects.

Since the reply to the enquiry of the Commission of the *Länder* had not yet been received after the time of the Annual Report going to print, it cannot be reproduced until the Annual Report of 2012.

The Commission of the *Länder* once more submitted separate observations on 4 January 2012 regarding individual points of the reaction of the North Rhine-Westphalian Ministry of Health, Equalities, Care and Ageing. The Ministry’s reply will be included in the Annual Report of 2012, since it is after time of going to print of this Report.

2. Parsberg II district hospital in November 2011

On 24 November 2011, the Commission of the *Länder* visited Parsberg II district hospital, a specialist clinic with 56 treatment places for young, drug-addicted criminal offenders. A forensic-psychiatric expert accompanied the Commission of the *Länder*. 51 places were occupied on the day of the visit.

The Commission inspected the following sub-areas in particular: the accommodation area, the reception department, the release wing, the workshop, the isolation cell, the group therapy room and the visiting area. It consulted with patients of various wings and with the patients’ representatives, staff members of the long-term care service, the chair of the staff council and the head of Wing C.

Since the response of the supervisory authority to the visit report of the Commission of the *Länder* was not yet available within the short period of time of the Annual Report going to print, only the recommendations of the Commission of the *Länder* listed below are repro-

duced. The response of the Bavarian State Ministry for Labour and Social Affairs, Families and Women will be included in the 2012 Annual Report.

Recommendations of the Commission of the *Länder*

1. The Commission of the *Länder* complains of the inadequate resources available to the **specialist psychotherapeutic-psychological service** of Parsberg district hospital. The personnel documents show four full-time posts for psychologists and educationalists. However, only one of these positions is occupied, namely with two part-time psychologists: A half-time post is occupied with a licensed psychologist who acts as a psychological psychotherapist and who, however, according to the medical director, exclusively carries out test diagnoses. The second half-time post is occupied by a psychologist (who is not licensed) who is said to be employed only in out-patient follow-up care, other than when she deputises. Accordingly, there is no psychologist with clinical training in Parsberg district hospital continually providing psychotherapy to the patients. Test diagnostic tasks do not require any additional clinical training; out-patient follow-up care is carried out by social educationalists in many comparable facilities. Three psychologist/educationalist posts also apparent from the personnel documents are occupied by two educationalists and one theologian. It was not possible to clarify in the talk with the medical director to what degree the medical staff members have psychotherapeutic training.

It should however be particularly stressed that the long-term care service staff in the socio-therapeutic area have a high level of commitment. However, this group of individuals should receive specialist guidance.

2. Because of a shortage of staff, there are some considerable delays in **acute medical care** by external physicians. According to the patients, this was also the case in cases of acute pain, such as toothache. With acute pain attacks, treatment should take place on the next working day at the latest.

There also were complaints of delayed medical care in other cases. One patient reported to the Commission of the *Länder* for instance that he had been waiting for two months for an eye-test to check his poor vision.

3. The group therapy rooms available are completely inadequate: According to the information provided, only one single **group therapy room** is available. The latter is evidently has inadequate resources (furniture, technical equipment). What is more, the Commission of the *Länder* learned that it had rained into the room and that this room could therefore only be used to a restricted degree.

The Commission of the *Länder* recommends the installation and appropriate equipment of further group therapy rooms. One group room per wing for roughly 15 patients would be desirable.

4. The **therapeutic services offered** are inadequate, particularly in the **reception phase**. According to the clinic management, the patients spend an average of 13 weeks in the reception wing. During this time, they work once per week in the clinic's own workshop for four

hours. They attend activity therapy for approximately half the day on the other weekdays. This is the entirety of the treatment offered during this phase. The Commission considers there to be a need to review this concept since the initial motivation of patients should be particularly and intensively taken advantage of.

Moreover, the communications from the medical director and the documents submitted gave the impression that the therapeutic plan of Parsberg district hospital should be brought in line with the latest state of the research. Major research results for effective therapies have been presented in the last 20 years in this field, in particular for the clientele being discussed here.

5. Each of the three treatment wings has unchanging therapeutic staff, whilst patients change wings, and are thus assigned to a new therapist three times during the comparatively short duration of their stay.

With regard to the constancy of treatment and the concomitant success of the therapy, **changes of therapist** are problematic and are only justifiable in exceptional cases. Changes of therapist can endanger the success of the therapy and cost valuable time.

6. According to the prison plan, Parsberg district hospital is a mixed-sex facility. However, according to the medical director, there are only a very small number of **female patients** accommodated there at any time. Two women were in the clinic on 24 November 2011. The advantages of mixed-sex therapy disappear quickly, and are even reversed, if the quantitative ratio is so massively unequal, as in this facility. Such a ratio of female patients to male ones (roughly 2:50) is problematic in several respects. The question as to the continuation of mixed-sex work in Parsberg should be re-considered once more.

II. Facilities for detention pending deportation

Detention pending deportation is partly enforced in Germany in separate facilities, and partly in wings within prisons. A facility for detention pending deportation was inspected in the period under review. The Commission addressed its recommendations to the competent Interior Administration of the Federal *Land* visited.

III. Berlin-Köpenick facility for detention pending deportation in April 2011

The Commission of the *Länder* carried out a visit in Berlin-Köpenick facility for detention pending deportation on 8 April 2011. The inspection focussed on the accommodation wings for male and female detainees awaiting deportation, the reception area, the separation area, as well as the visiting area. During its rounds, the members of the Commission held discussions with the head of the detention centre, the psychiatrist, a physician under contract, as well as the social worker. Furthermore, it spoke with several detainees awaiting deportation. The facility has an occupancy capacity of 214 detention places, 39 of which were occupied at the time of the inspection.

The Senate Administration did not reply until 14 June 2011 to the request submitted on 15 April 2011 to provide information on the staffing situation. Because of this delay in forwarding the requested documents, it was not possible to complete the inspection report of the Commission of the *Länder* until 17 June 2011. The statement of the Senate Administration on this examination report was finally received on 10 August 2011. Its content was unconvincing in many ways; additionally, it gave the impression that the tasks of the National Agency are not taken seriously.

For instance, the request by the Commission of the *Länder* to equip the joint showers with partitions was rejected by referring to the “normal standard of German swimming baths”.

The Commission of the *Länder* was therefore forced to contradict individual items of the statement in a renewed letter. Furthermore, it announced in its letter that it would continue the discussion on individual items in its Annual Report and where appropriate in public since, once more, the letter of the National Agency had remained unanswered for weeks.

The *Berliner Zeitung* reported on the information provided by the Commission of the *Länder* in an article on 5 October 2011. Thereupon, a fax from the Berlin Senator for the Interior was received on the same day by the secretariat of the National Agency for the Prevention of Torture containing a statement on the Commission’s second letter.

Recommendations of the Commission of the <i>Länder</i>	Reaction of the Senate Administration for the Interior and Sport (Berlin)
Despite an appropriate recommendation of the CPT from 1997, there is still no routine medical and psychological examination on arrival . ²⁴ Particularly when it comes to detainees	There is said to be no obligatory reception examination for the inmates of detention pending deportation facilities in Berlin apart from the TBC X-ray examination

²⁴ cf. CPT, 1999, Report to the German Government on the visit to Frankfurt am Main Airport carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 25 to 27 May 1998, Strasbourg, p. 15.

awaiting deportation, the probability of mental and/or physical injury is particularly high. With each detainee awaiting deportation, the ability to undergo detention and the question of any treatment required should be examined in a reception examination. The offer of a psychological reception session should not impair the detainee's freedom of will.

The Commission furthermore complains that **no systematic examination takes place after failed deportation**, as was also called for by the CPT in the 2005 report on Germany.²⁵ Such an examination is indispensable since failed deportation entails a high risk of injury.

Equal importance attaches itself to a **routine departure examination**, which however does not take place in Berlin-Köpenick facility for detention pending deportation. This is intended to prevent people who require urgent medical care from being deported to a country in which the necessary medical treatment cannot be provided.

In 2005, some *Länder* already declared their willingness in future to have a medical examination carried out after a failed deportation (incl. Lower Saxony, Mecklenburg-Western Pomerania, Saxony-Anhalt, Thuringia). The current lack of a legal basis referred to by the Senate Administration, furthermore, does not prevent at least offering detainees awaiting deportation a reception and departure examination.

The detention code lists amongst other things the **"permanent lighting of the detention room"** as a special security measure. The use of permanent lighting as a security measure is incompatible with Art. 2 of the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, as well as with Art. 3 of the European Convention on

provided for by law since the legislature does not wish to create such a legal basis.

Each detainee is said, however, to be able to voluntarily submit their health impairments to the police medical service. In its second statement, the Senate Administration stated that new arrivals were presented to a social worker on the first working day after their reception, who was able to clarify corresponding questions as to their medical care. The psychologist was said to go through the floors twice weekly, and also speak with all newly-arrived inmates. Where necessary, medical care, including psychiatric care, was provided for. The medical service in the detention awaiting deportation facility would be presented in future with each new arrival on reception or after a failed deportation in order to ask them as to their state of health and to offer a consultation with a doctor, should one be required.

The activation of the permanent lighting in the detention room is said to particularly serve the safety of the inmates in order to minimise the danger of self-injury, suicide or violent acts against others in specific individual cases of relevant conduct on the part of the detainee awaiting deportation. It is said to be a soft emergency or night

²⁵ cf. CPT, 2007, Report to the German Government on the visit to Germany carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 20 November to 2 December 2005, Strasbourg, p. 30.

<p>Human Rights and Art. 7 of the International Covenant on Civil and Political Rights.²⁶ The corresponding passage of the detention code should hence be removed and such practices put an end to.</p>	<p>light.²⁷ In order to avoid such misunderstandings due to the wording, the current wording of No. 2.4 of the detention code, “permanent lighting of the detention room”, has been replaced by “observation at night”.</p>
<p>The Commission of the <i>Länder</i> expresses its concern over the fact that a detainee awaiting deportation who was at risk of suicide was accommodated in a separation cell. Social isolation leads to increased fear, and hence to an increased risk of suicide.</p>	<p>The Senate Administration states that, in individual cases, accommodation in a quiet area can help stabilise the inmate. What is more, the necessary protection of the inmate and any constant observation that might be necessary could only be guaranteed in individual detention.</p>
<p>The Commission of the <i>Länder</i> would like to see a targeted concept of violence and suicide prophylaxis.</p>	<p>It is stated that the violence and suicide prophylaxis strategies of the division of the Berlin Police responsible for detainees satisfy the quality standard.</p>
<p>The Commission complains that no psychological specialist is working in situ. According to the prison governor, the specialist’s office is at the immigration office. Only a specialist psychologist who is <i>constantly</i> in situ is able to assess the well-being of the detainees awaiting deportation and follow their development.</p>	<p>In addition to the part-time psychologist, the inmates are said to have at their disposal two permanent social workers.</p>
<p>The information provided to the inmates on their rights to have contact with, for instance, legal counsel and a physician is inadequate. The information documents must naturally be available in a language which the detainees awaiting deportation can understand.</p> <p>When it comes to access to legal counsel, language barriers may not be used as a reason for denying this right. It must be examined to what degree the inmates are aware of legal advice and whether these are adequately</p>	<p>There are said to be no objections to the proposed addition to the information sheets. The Senate Administration plans to appropriately revise the information sheets.</p> <p>The detention pending deportation facility is said to have at its disposal the list of interpreters of the Berlin Police, covering all relevant languages.</p>

²⁶ cf. in this respect also the study submitted to the Human Rights Council by UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment Manfred Nowak of 5 February 2010, UN Doc. A/HRC/13/39/Add.5, No. 55: “*The establishment of psychological torture methods is a particular challenge. Mock executions, sleep deprivation (...) are equally destructive as physical torture methods. In most cases, victims of mental abuse are left dependant on counselling and other psychological or psychiatric support for long periods of time. Moreover, their suffering is very often aggravated by the lack of acknowledgement, due to the lack of scars, which leads to their accounts very often being brushed away as mere allegations.*”

²⁷ In its order of 23 June 2005, Celle Higher Regional Court stated on the design of detention (22 W 32/05 NVWZ-RR 2006, 254) that circumstances such as permanent lighting merely constituted inconveniences and discomfort which the detained persons had to accept; there had been no grievous breaches of constitutionally-protected fundamental values in this respect.

<p>made available to them despite any language barriers. Detainees awaiting deportation should be pointed to the possibility of consulting an interpreter.</p>	
<p>The Commission of the <i>Länder</i> complains that, according to the prison governor, no documentation of the security measures is kept (here: binding, solitary detention).</p> <p>No documentation was submitted to the Commission, despite enquiries. The Commission of the <i>Länder</i> has no reason to doubt the truth of the governor's statement.</p>	<p>The recommendation to keep records in a separate register was transmitted to the police. The documentation and a review of the security measures is said to have been provably possible using the documents submitted to the Commission.</p>
<p>The Commission complains that there are still no partitions installed in the shared showers (cf. also CPT criticism from 1997). This shows a lack of cultural sensitivity. Particularly among people from different cultural backgrounds, as can be typically found in facilities for detention awaiting deportation, the different individual senses of shame should be taken into consideration (cf. also p. 22).</p> <p>The Commission notes with regard to the first statement by the Senate Administration that the use of swimming baths, unlike facilities for detention awaiting deportation, is voluntary; what is more, users of public baths do not usually use the showers for their daily physical hygiene.</p>	<p>The showers are said to be in line with the normal standard of German swimming baths, as well as company and other similar facilities. A separate partition of the individual showers was said to not be feasible because of the particularities of the building (lack of space).</p>
<p>The Commission of the <i>Länder</i> asks to what degree the large number of staff, totalling 192 staff members, influences the daily rate costs which inmates have to pay as a result of their accommodation.</p>	<p>The accommodation rate of € 65.26 is said to be comprised of prison staff costs (€ 39.13), social care (€ 10.38), use of detention cell including food (€ 15.55) and costs for maintaining television sets (€ 0.25).</p>
<p>The Commission complains of the sparse sports and leisure activities offered. In view of the large amount of staffing (192 staff members as against an average occupancy of 63 detainees awaiting deportation in 2010), an expansion of the activities available should not cause any organisational problems. The high level of staffing should also permit an expansion of the outside stay. The Commission also noticed that the leisure rooms are inadequately equipped.</p>	<p>The detainees are said to be offered drawing on Mondays, play-fun sport on Tuesdays, a Muslim religious service on Thursday and a Christian mass on Friday. Additionally, for Jewish believers there was a Rabbi available on Sundays. Inmates were furthermore able to celebrate church holidays together (with no separation of the sexes). A weekly visit to a cinema performance was offered. The inmates had a library at their permanent disposal with</p>

Religious offerings are part of the freedom of religion that is guaranteed by the Basic Law (*Grundgesetz – GG*), and are *not* activities within the meaning of the Detention Code. They are naturally to be granted independently of other activities offered and *not to be counted towards them* as initially took place in the statement by the Senate Administration.

reading material in a variety of languages; foreign daily newspapers could also be purchased where necessary.

A free hour was 90 minutes, and was said in particular to be carried out several times per day where necessary in the summer months. The free-time yards were used for ball games.

The management continually tried to offer temporary activities from independent institutions (such as art projects). The inmates took up offers of work (such as painting jobs) highly reluctantly.

IV. Police units of the *Länder*

According to the information that is available to the Commission of the *Länder*, there are roughly 1.430 detention facilities of the *Land* Police nationwide. The Commission of the *Länder* visited eight police units of the *Länder* in the period under review. It addressed its visit reports containing the recommendations to the Ministry of the Interior of the respective Federal *Land*.

1. Mainz 1 and Mainz 2 police stations in December 2010

The Commission of the *Länder* carried out inspection visits in Mainz 1 and Mainz 2 police stations on 7 December 2010. The inspection encompassed the entire detention area of both facilities, as well as several questioning and search rooms. Furthermore, the Commission of the *Länder* examined the detention documentation of both stations. Mainz 1 police station has two detention cells, and Mainz 2 police station has eleven detention cells in which a total of 25 individuals can be accommodated.

Recommendations of the Commission of the <i>Länder</i>	Reaction of the Ministry of the Interior and for Sport (Rhineland-Palatinate)
<p>Video monitoring facilities are available in several detention cells at Mainz 2 police station. The Commission of the <i>Länder</i> stresses that the video monitoring is an encroachment on the right to informational self-determination as a matter of principle. It recommends in this context to explicitly point the individuals in custody to the fact of video monitoring (for instance by affixing an appropriate pictogram). The collection of data should furthermore be shown by an optical or acoustic signal. The reason and the duration of video monitoring should be noted in the detention record. To protect privacy, the individual monitored should be enabled on request to visit a toilet outside the monitored area, as provided in the draft Act of the <i>Land</i> Government amending the Police and Regulatory Authorities Act (<i>Landtag</i> printed paper [<i>Drucksache</i>] 15/4879). Finally, the Commission of the <i>Länder</i> once more stresses that video monitoring cannot, and should not, replace personal contact with the individuals in custody.</p>	<p>A variety of technical means were available in the detention facilities of the Rhineland-Palatinate Police to collect data (e.g. video monitoring). The use of such means is said to be based in the Police and Regulatory Authorities Act (<i>Polizei- und Ordnungsbehördengesetz</i>) of Rhineland-Palatinate and the provisions contained in the Detention Code for the Police (No. 3.5).</p> <p>The insertion of section 16 b by order of the Rhineland-Palatinate <i>Landtag</i> to amend the Police and Regulatory Authorities Act had comprehensively amended the collection of data by use of technical means in police detention facilities. This entailed a revision and a new version of the Detention Code of the Rhineland-Palatinate Police. It could be assumed that the provisions which it contained very largely complied with the recommendations of the Commission of the <i>Länder</i>.</p>
<p>The Commission of the <i>Länder</i> complains that not all detention cells in Mainz 1 and Mainz 2 police stations are equipped with fire alarms.</p>	<p>Searching the inmates before taking them into custody is said to ensure, as a matter of principle, that no lighters or other means of ignition are taken into the detention cells. Nonetheless, networked and vandal-</p>

	<p>ism-proof smoke detectors would be routinely installed in new buildings in future and fitted successively in old buildings when they were renovated.</p>
<p>Individual gaps in the documentation were discovered when looking through the detention records. The detention record should document as closely as possible the times when the detention area is checked, as well as the names of all the officers carrying out the checks. The Commission of the <i>Länder</i> furthermore recommends that the detention record be regularly submitted to the head of the unit or to a person commissioned by him/her for information and initialling. These measures serve not only to comprehensively document detention, but also to protect the officers.</p>	<p>The police authorities had been once more pointed to the requirement of proper documentation of the activities in detention areas in the Police Custody Code of the <i>Land</i> Rhineland-Palatinate</p> <p>The Detention Code was currently being revised. In future, it would also contain an explicit obligation for the head of the unit to also maintain regular controls.</p>
<p>The detention cells of Mainz 2 police station do not have any daylight. Even with a brief stay in detention, access to natural light is considered to be necessary as a matter of principle. At least with new buildings, daylight should be taken into consideration when planning the construction. As soon as a longer stay is foreseeable, the individual should be taken to another appropriately-equipped detention facility.</p>	<p>In light of the fact that, as a rule, persons are said to only spend a very short period in police custody, daylight would be welcome, but is not vital. Where construction permitted, and it could be economically justified, they would attempt to design detention cells with daylight in new buildings.</p>
<p>There is no medical examination stretcher available in Mainz 2 police station. The Commission of the <i>Länder</i> recommends buying such a stretcher for medical examinations and treatment.</p>	<p>Examination stretchers are said to be already available in the vast majority of units, but were frequently not located close to the place of detention. Every effort is being made to fully equip the units.</p>
<p>No mattresses are available in Mainz 1 police station, and not in all rooms in Mainz 2 police station. The Commission of the <i>Länder</i> recommends to provide a sufficient number of washable, highly inflammable mattresses and blankets for all detention rooms.</p>	<p>The availability of mattresses and blankets is said to guarantee a certain degree of comfort. Experience however also shows that these objects might constitute a safety hazard (e.g. attempts at strangulation or ignition, blocking the toilet drain). Against this background, in each individual case and prior to providing the items, a risk assessment was carried out in line with the conduct of the person who has been taken into detention. The risk scenarios were taken into account along with any indications through intensified checking and us-</p>

	ing appropriate technical monitoring.
In connection with the different information formats , the Commission of the <i>Länder</i> recommends to examine whether the IT program used satisfies the officers' needs and the availability of all information formats is ensured. The Commission had the impression that difficulties occurred in some cases in using the program to issue the various information sheets. Moreover, it should be examined whether its use can be optimised through appropriate training courses.	Dealing with the system is said to be a part of police officers' basic and further training from the outset. Furthermore, it is said that there is a comprehensive range of further training activities on offer. In hindsight, the impression made by the Commission of problems arising in dealing with information formats was not comprehensible. The police intranet was said to offer a search function with which help is directly listed. For instance, the appropriate forms were directly listed under the search terms "Translations" or "Information".
The detention cells of both police stations do not have any night lighting . The Commission of the <i>Länder</i> recommends to equip all detention rooms with additional night lighting (e.g. dimmable lighting or a night light).	The installation of night lighting had so far not been taken into consideration as standard. Dimmable lighting is planned in future in new buildings and – where economically feasible – when existing buildings are renovated.
The Commission of the <i>Länder</i> positively notes that, in response to a recommendation of the Ministry of the Interior and for Sport, officers wear name badges when on duty. This method is explicitly welcomed, but should be prescribed for detention areas as obligatory.	It was ordered by circular of the Ministry of 1 July 2009 that those wearing uniforms also had to wear a name badge as a matter of principle. Only situations where officers were at personal risk were exempted. No need was considered to exist for an additional arrangement emphasising individual task areas.

2. Saxony-Anhalt North police directorate and Jerichower Land police station in January 2011

The Commission of the *Länder* carried out inspection visits in Saxony-Anhalt North police directorate and Jerichower Land police station (in Burg) on 24 January 2011. The central police detention unit in Saxony-Anhalt North police directorate has 54 detention cells with a total capacity of 99 places. Jerichower Land police station has three detention cells. According to information from Saxony-Anhalt North police directorate, a total of 948 measures of deprivation of liberty were carried out in the central police detention in 2010. The number of measures of deprivation of liberty in Jerichower Land police station totalled 154 in the same period. In addition to the entire detention area, the inspection of both facilities also included several questioning and search rooms. The Commission of the *Länder* inspected the electronic and written detention documentation. Additionally, the Commission of the *Länder* carried out an individual discussion with the chairman of the staff council, who is at the same

time the deputy federal chairman and *Land* chairman of the German Police Trade Union; the Commission of the *Länder* also held a private talk with a male individual in custody in Saxony-Anhalt North police directorate.

<p>Recommendations of the Commission of the <i>Länder</i></p>	<p>Reaction of the Ministry of the Interior (Saxony-Anhalt)</p>
<p>When fixation is necessary in the sobering-up cell in Saxony-Anhalt North police directorate, they are carried out with police handcuffs. This method of fixation with police handcuffs is not acceptable since handcuffs constitute a considerable risk of injury, particularly with persons who are excited. The Commission of the <i>Länder</i> considers it to be necessary to prescribe the use of more appropriate, chaining devices which are less likely to cause injury (such as bandage systems). The fixated person is to be constantly and directly monitored by an officer.</p> <p>In general terms, fixation should be restricted to the shortest possible time, using strictest proportionality. The handling of fixation is at least to be bindingly stipulated in a service instruction.</p>	<p>The question as to which cuffing system is to be used in future in place of police handcuffs is said to be being currently examined.</p> <p>In accordance with No. 12.7 of the Police Detention Code (<i>Polizeigewahrsamsordnung</i>), it is said that the person taken into detention is to be kept under constant supervision by two officers. Moreover, when cuffing, detention officers were to make sure that no health damage occurred (e.g. blocking arteries), and, in accordance with No. 12.2 of the Police Detention Code, were to take account of decisions taken by the physician for the prevention of damage to health.</p> <p>The use of direct force – particularly cuffing – was to be documented in the detention record.</p> <p>As to the possible duration of the cuffing of individuals, it should be taken into account that in accordance with section 38 subs. 1 of the Act on Public Security and Order of the <i>Land</i> Saxony-Anhalt (<i>Gesetz über die öffentliche Sicherheit und Ordnung des Landes Saxony-Anhalt – SOG LSA</i>) the police must have a judicial ruling promptly handed down on the permissibility of continuation for individuals who are detained in accordance with the Act on Public Security and Order of the <i>Land</i> Saxony-Anhalt.</p>
<p>The Police Custody Code (circular decree of the Ministry of the Interior of 27 March 1995) does not explicitly mention the obligation to inform individuals of their rights in detention. The Commission proposes examining whether or not an obligation to provide information should be inserted in the Police Act, but at least in the Police Custody Code.</p> <p>In addition to a notice, the right to contact legal</p>	<p>The Police Custody Code is said to be also currently being revised with regard to the need for information. According to the current state of the draft provided, it was to be included in provisions No. 2.2 and No. 9 of the information sheet entitled “Information for a person taken into detention” (form 08.075). Accordingly, the content of the information sheet was to be</p>

<p>counsel must also be explicitly included in the general information sheet (“Information for a person taken into detention in accordance with item 2.2. of the Detention Code of the <i>Land</i> Saxony-Anhalt”). This equally applies to the right to consult a physician. The information sheet should furthermore stipulate to whom individuals in custody can turn should they have complaints regarding their treatment. Also, the information sheet should be translated into the customary, most frequently needed languages.</p> <p>The information form for persons taken into detention is not very intelligible with regard to its visual and linguistic design. The information only serves its purpose if it is worded in simple, comprehensible language and is easy to read. The essential rights of the individual in custody are to be clearly stressed. The Commission suggests revising the information sheets accordingly.</p>	<p>communicated to the person to be detained in a language which is understandable to him/her, or an interpreter should be employed to communicate the information verbally. A corresponding amendment to the Act on Public Security and Order of the <i>Land</i> Saxony-Anhalt is said to appear to be dispensable in view of the intention to amend the Police Custody Code.</p> <p>With regard to their visual and linguistic design, the information forms for persons taken into detention would be revised in line with the Commission’s suggestions and better designed, making them easier to read. The revised form would be provided to the National Agency when the time came.</p> <p>However, the Commission of the <i>Länder</i> had not yet received the announced form at the time of going to print.</p>
<p>The Commission of the <i>Länder</i> complains that the detention cells of Saxony-Anhalt North police directorate are not equipped with fire alarms. The Commission of the <i>Länder</i> notes positively that fire alarms have already been subsequently installed in the detention cells at Jerichower Land police station.</p>	<p>The subsequent installation of fire alarms in the detention cells of the North police directorate was said to have already been ordered. A corresponding building order had been issued on 13 April 2011. Its implementation would be carried out in that year.</p>
<p>There are neither mattresses nor blankets in the detention cells of Saxony-Anhalt North police directorate, and no blankets are available in Jerichower Land police station. The Commission of the <i>Länder</i> recommends providing an adequate number of washable, highly inflammable mattresses and blankets for all detention cells.</p>	<p>It was said that the equipment of the detention cells with mattresses and blankets was examined to implement a <i>Land</i>-wide standard of equipment with suitable materials.</p>
<p>The detention cells do not have any night lighting. The Commission of the <i>Länder</i> recommends at least equipping a certain number of the cells with additional dimmable lighting or a night light.</p>	<p>Existing possibilities for retrofitting were being examined, in agreement with the Ministry of Finance, including the expense, and would be implemented as funds permitted.</p>
<p>The Commission of the <i>Länder</i> notes positively that the officers voluntarily wear name badges when on duty. This method is explicitly welcomed, but should be bindingly ordered</p>	<p>By decree of 4 August 2009 it was regulated that, in the interest of the further expansion of citizen-orientated police work, the voluntary wearing of name badges</p>

<p>for the detention area.</p>	<p>was desirable; provisions for individual organisational units (for the detention area, for example) had been deliberately avoided. Acceptance of wearing name badges was said to be very high among the police. No need was currently seen to change the existing arrangement against this background. Nonetheless, a renewed examination of this notice would be carried out in the context of the evaluation entitled "Introduction of the blue uniform".</p>
<p>The Commission of the <i>Länder</i> recommends examining the <i>Land</i>-wide deployment of the electronic detention record, in which the medical checks are also documented. In the view of the Commission of the <i>Länder</i>, the electronic detention record makes it easier to document detention completely and precisely. There are also plans for regular monitoring by superiors. The endeavour could be optimised by appropriate training, particularly for smaller units as well.</p>	<p>The supervisory authority did not make a separate statement regarding this point.</p>

3. Police stations 11, 14 and 16 in Hamburg in March 2011

The Commission of the *Länder* carried out inspection visits in police stations 11, 14 and 16 in Hamburg on 31 March 2011. The inspection of the facilities included the entire detention area, several search rooms, as well as the "secure room" which exists in all commissariats and is used for fixation and medical examinations, amongst other things. The Commission of the *Länder* also partly inspected the electronic and written detention documentation here and held discussions with the officers in situ. The Commission of the *Länder* also had private talks with two male individuals in custody in police station 11.

According to the information provided by the head of the unit, police station 11 is responsible for the St. Georg district, which is extremely problematic when it comes to drug dealing and illegal prostitution, and has 14 detention cells offering space for a total of 25 individuals. Police station 14 has 8 detention cells with a total capacity of 17 places. The area covered by police station 16 is also considered to be problematic since it is responsible both for a part of the St. Pauli district and also partly for the Sternschanzen district. Police station 16 has ten detention cells with a total capacity of 13 places.

<p>Recommendations of the Commission of the <i>Länder</i></p>	<p>Reaction of the Authority for the Interior and Sport (Hamburg)</p>
<p>The plastic handcuffs which police station 14 has available for fixation should be replaced by bandage systems minimising the risk of injury.</p>	<p>It is said that the fixation devices used in Hamburg can be purchased via Intrapol as an individual purchase for each police station.</p>

	<p>After examination, police station 14 had refrained from purchasing a bandage system because of its territorial structure.</p>
<p>In the case of fixation in police station 11, it is necessary that direct supervision by an officer be situated in front of the secure room because of the way it is built. This is the only way to guarantee constant, direct monitoring.</p>	<p>The building situation at police station 11 described by the Commission is said to correspond to the facts. The building and spatial circumstances in the security room were said not to permit the use of the above tools.</p> <p>In the case of fixation, constant monitoring of the person was said to be carried out by placing an officer on direct supervision in accordance with the regulations. The Hamburg Police followed the recommendation and would examine introducing a uniform arrangement with regard to the procedure for fixation.</p>
<p>Some of the cells in station 11 were also occupied by several persons overnight. The Commission of the <i>Länder</i> takes the view that individual accommodation is at least preferable unless special circumstances apply.</p>	<p>The view that individual accommodation is preferable is said to correspond to the regulations and to be shared by the Hamburg Police.</p>
<p>With a size of approximately 3.5 m², the cells of stations 14 and 16 comply at best with the minimum standards, and are hence only adequate for detention of a few hours. As soon as a longer stay is foreseeable, the persons concerned should be taken to another detention facility with the appropriate equipment.</p>	<p>The Commission found here that the detention cells of the police stations visited complied with the (minimum) standard. The measures of deprivation of liberty were said to only take place for a short time.</p>
<p>The Commission of the <i>Länder</i> recommends purchasing an adequate number of washable, highly inflammable mattresses for the detention cells.</p>	<p>The police detention cells were said to only serve to keep individuals for a short time. Thus, in particular when it comes to temporary apprehension in criminal proceedings and detention under the police law, under the law as it stands suspects are to be brought before the judicial standby service at Hamburg Local Court at the latest on the day after the apprehension, or released. Individuals held by Hamburg <i>Land</i> Criminal Police Office were provided with blankets where necessary. However, according to the information of the <i>Land</i>, the cells were said not to be equipped with mattresses for reasons of personal safety and hygiene. Persons who remained in detention for longer were transferred to regular detention facilities of the justice authority (from the</p>

	statement of the Federal Government on the CPT's recommendations on the occasion of its visit from 20 November to 2 December 2005).
The detention cells of police stations 11 and 14 do not have daylight or natural ventilation . Daylight should be taken into account in future, at least with new buildings. The "Guidelines on the Construction of Detention Cells in Service Buildings of the Police" do not yet contain any regulations regarding the installation of windows or natural ventilation. However, such regulations should be taken into consideration should a new version of the Guidelines be brought out.	The Commission finds here that the detention cells of the police stations visited meet the (minimum) standard.
The detention area of the three police stations should be equipped with fire alarms .	It was said that section 45 subs. 6 of the Hamburg Construction Code (<i>Hamburgische Bauverordnung</i>) only regulated the fitting of smoke detectors in dwellings. No specific rules for cells and detention areas were known. Also, comprehensive equipment of the detention area did not appear to be necessary since police officers have obligations to monitor persons in detention according to the regulations and on the basis of their status as guarantors. What is more, as a result of the technology partially available in video equipment, further protection was guaranteed. The recommendation would nonetheless be revised.
Some of the cells in police station 16 were very dirty . Stains could be observed on the walls which made the impression of being blood or faeces. The cell walls should also be cleaned after each use where necessary.	The Police Service Regulation regulates the cleaning of cells as follows: Soiled official facilities and items are to be cleaned by the official cleaning staff (room cleaner of the unit, car cleaner in the car pool) if the facility or item does not require cleaning before this person is due to do so and if waiting is acceptable, an alternative facility is available or an exchange of the item is possible, acceptable and justifiable in terms of time. The units had been informed once more that the cells are to be cleaned more efficiently as far as is possible and as far as can be implemented in the context of everyday running.
When looking through the detention documen-	In the run-up to the CPT's visit to Germany

<p>tation in police station 16, the Commission of the <i>Länder</i> noticed that the detention record contains only general information on the individuals in custody. Special incidents are not noted in it, but according to the officials were explained in the reports on the individual incidents. The request of the Commission of the <i>Länder</i> to inspect the station's reports was not complied with. The Commission of the <i>Länder</i> was notified that the documents in question were part of the investigation file that was now with the public prosecution office. In this respect, a request for inspection of the files would have to be lodged with the public prosecution office.</p> <p>In accordance with Article 20 para. b of the Optional Protocol, the Commission of the <i>Länder</i> is to be given access to all information referring to the treatment of those persons as well as their conditions of detention. This includes all parts of files documenting the reason for and the implementation of detention, even if they are simultaneously part of the investigation file. The keeping of the files in the police stations evidently also serves to verify the treatment of the detained persons for the benefit of the police. If this is so, the files are also subject to inspection by the Commission.</p>	<p>in 2010, the <i>Land</i> authorities, including the Hamburg Police, had issued instructions regarding the inspection of apprehension documents by the CPT to the police stations which contained restrictions referring to the competence of the public prosecution office for the proceedings and the protection of patient data. The CPT is said to have criticised these as too strict and practically unsuitable for effective inspections. Since the Interior Department is said to be responsible neither in terms of judicial restrictions nor of those under data protection law or their abolition, reference was made to the competent authorities in this regard. It was suggested here that the justice departments come to a clear, final arrangement in order to avoid corresponding delays, criticism and enquiries in future, and to enable staff to work effectively.</p>
<p>Checking on individuals in custody by opening the cell door should always be carried out by two officers, and should be documented in the detention record by name and signature.</p>	<p>The provisions for personal security recommend entering detention cells as a matter of principle with no firearm and only in pairs. The PDV 350 (HH) official police regulation however foregoes these corresponding instructions, so that such latitude is said to be available (cf. also information below).</p>
<p>The officers were also armed in the detention area. This is in line with the PDV 350 official police regulation. The Commission however finds the arming of the detention area to be problematic, and it asks for a statement as to why this aspect is regulated in this manner.</p>	<p>PDV 350 (HH) is said to prescribe in general terms the carrying of official weapons, but deviations are permitted with an appropriate regulatory situation for reasons of individual tactics, welfare or other official reasons.</p> <p>On the topic of personal security in "taking into custody", PDV 350 (HH) is said to forego instructions and limit itself to the control of detained persons "at least half-hourly by</p>

	an experienced officer”. This constellation of regulations is said to grant a corresponding latitude to an experienced checking officer and to his/her superiors, depending on the individual case – and any opposition that is to be anticipated – regarding the nature of the check to be carried out.
At least some of the cells should be fitted with dimmable night lighting .	It is said to be being examined how extensively night lighting is being installed along with construction changes which in any case are taking place.
The police stations should have at the ready basic hygiene articles such as a toothbrush and toothpaste in addition to hand towels and soap.	The detention facilities are said not to be intended for a long stay, and as a rule were also not used as such. Hence, the possibility to use water and hand soap by the persons concerned was said to be sufficient.
The PDV 350 official police regulation applicable in Hamburg is very difficult to read in general, and hence proves to be impractical in its usage. This was also confirmed to the Commission of the <i>Länder</i> by various officers. Regulations for the detention area can also be worded in a concise, easy-to-read manner, as is shown by examples in other Federal <i>Länder</i> . Easy-to-read regulations are easier to comply with.	The regulations office of Hamburg Police was always eager to draft concise, easily-comprehensible language in the interest of a comprehensible regulation. Hamburg Police Service Regulation 350 (<i>PDV 350 – HH</i>) was generally revised and re-structured in 2006 in a project with the participation of all organisational areas, and posted on the Hamburg Police intranet. Brief pictorial aids for use and research were said to be found both on the welcome page and in the Annex of Hamburg Police Service Regulation 350.

The Commission of the *Länder* requested to view a selection of complaints against police officers on the occasion of the visit to police station 11. The Commission was thereupon referred to the competent public prosecution office since these complaints were, as a rule, also criminal charges.

On 7 July 2011, the Commission requested to inspect files from Hamburg public prosecution office from the most recent 20 pending investigations against officers of police station 11 chronologically up to 31 March 2011. The files reached the secretariat on 8 and 13 September 2011, respectively. The National Agency made the following statement on two cases on 11 October 2011 as an addition to its report:

<p align="center">Recommendations of the Commission of the Länder</p>	<p align="center">Reaction of the Authority for the Interior and Sport (Hamburg)</p>
<p>Following a physical search in the detention area of police station 11, the reporting party was ordered to undress and to walk up and down several times in front of three police officers in the so-called “waddling gait”. The measure was said to serve to trace packets of narcotics located on the body or in orifices of the body. No drugs were found. A drug test was also negative. The detainee referred to the procedure as particularly undignified.</p> <p>The senses of shame and the dignity of the person concerned were said to have been considerably impaired by the actions of the police officers. It is irrelevant here that the person concerned carried out the action in question without contradiction. The person was subject to considerable mental pressure in this situation, and hence complied with the officers’ instructions.</p> <p>The Commission of the <i>Länder</i> requests a statement as to whether the police officers’ action was necessary, and if so why.</p> <p>The incident gives rise to a finding that police actions must always have in mind the dignity of the person concerned. Should a physical search be necessary, the action of trying to locate items located in orifices of the body is always to be carried out by a physician.</p>	<p>The criminal proceedings against the police officers underlying the facts were said to have been discontinued by Hamburg public prosecution office in accordance with section 170 subs. 2 of the Code of Criminal Procedure (<i>StPO</i>). In accordance with section 15 of the Act to Protect Public Security and Order (<i>Gesetz zum Schutze der öffentlichen Sicherheit und Ordnung</i>), the police were said to be permitted to search for certain items on human bodies, in their natural orifices and in their clothing. Also, it is said that the police were permitted to frisk clothed bodies, search naked bodies, as well as to look into the natural orifices and cavities of the body where the use of medical aids is unnecessary.</p> <p>The official assessment of the facts did not indicate that any official misconduct was to be investigated.</p> <p>Daily experience at police station 11 was said to have shown that, for instance, drugs are also hidden in all possible orifices of the body, such as between the buttocks. In individual cases, those concerned were asked to kneel down naked since this position would release any object that might be hidden there. [...] Over and above this, the “waddling gait” had not been ordered at police station 11.</p>
<p>During a temporary apprehension, the person who filed this charge received a blow to the face from a police officer, since she resisted the police measure, according to the information from the officer. The acting officer here relied on the application of the so-called Atemi technique said to cause a brief shock reaction, and hence prevent the person’s resistance. The notes of the public prosecution office</p>	<p>In order to facilitate the detention of a person resisting arrest, it could be expedient to use a certain stimulus to distract them from the ensuing police action (e.g. visual, acoustic and/or physical stimuli). Examples of a physical stimulus are said to be: a light blow with the back of the hand or a swipe with the hand over the face, or a slight kick against the shin. However, this</p>

<p>(sheet 34 of the file) state that the Atemi technique is a recognised technique and part of police training.</p> <p>The Commission of the <i>Länder</i> requests to be informed in detail as to which recommendations exist and are to be used for direct force through so-called shock techniques and to what degree these techniques are part of police training.</p>	<p>was contingent on there being an escalation not permitting a less incisive means to appear promising. This was dealt with in training.</p> <p>The term <i>Atemi technique</i> was not one found in the curricula of the Hamburg Police. Nonetheless, the term was said to be used during police self-defence training as a collective term for the above techniques in order to force a person resisting the implementation of a police measure to make a specific movement or to prevent a reaction, and to thereby gain control over him/her.</p>
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With regard to the statement of the authority for the interior and sport, the Commission of the *Länder* is currently still in discussion with the supervisory authority.

4. Hanover-Schützenplatz police station in April 2011

The Commission of the *Länder* carried out an inspection visit in Hanover-Schützenplatz police station on 1 April 2011. It is located in the building of a historic police prison, which was completed in 1903 and has a total of 78 detention cells, of which according to the information from the head of the unit only 25 individual cells, one collection cell, two long-term detention cells and two “rage cells” were being used at the time of the visit. The other detention cells are said to only be used for special occasions (large events). A total of 50 apprehensions were carried out in 2009, 55 in 2010 and so far seven in 2011. The inspection of the facility covered the entire detention area, as well as a room which is used for fixation. Furthermore, the Commission of the *Länder* inspected the written detention documentation and held discussions with various staff members, including an individual talk with a staff member in the detention area. Furthermore, the Commission of the *Länder* had a private conversation with a male person who was in detention during the visit.

Recommendations of the Commission of the <i>Länder</i>	Reaction of the Lower Saxony Ministry for the Interior and Sport
<p>The Velcro tapes used for fixation are unsuited to this purpose since they entail a high risk of injury. It is recommended to purchase suitable materials for fixation, such as bandage systems.</p>	<p>The problems with the Velcro handcuffs currently used are said to be known. The central police directorate had been asked to examine the approval of other means of fixation within the meaning of the Police Custody Code. To this end, until 31 December 2011 a trial took place in which an “acute fixation system” was trialled.</p>
<p>The establishment of ability to undergo detention is a prerequisite for apprehension. Neither the provision of the emergency medical</p>	<p>A medical examination or treatment has so far been provided by the emergency services in the case of illness or an emergency,</p>

<p>care of an individual in custody nor the necessary establishment of ability to undergo detention may be delayed unnecessarily. The obligation for the individual in custody to pay the cost of a medical examination, as regulated in Lower Saxony, is hence not acceptable. The <i>Land</i> should initially pay the costs incurred for this. The police units should be enabled where necessary to commission emergency medical care and the examination of the detainee's ability to undergo detention on behalf of the <i>Land</i>, and hence to guarantee prompt medical examination or treatment.</p> <p>Some Police Custody Codes of other Federal <i>Länder</i> contain explicit provisions in this regard (e.g. Baden-Württemberg, Bavaria, Hesse, Rhineland-Palatinate, Schleswig-Holstein).</p>	<p>and otherwise within general medical care by established physicians. The cases in which there was doubt as to ability to undergo detention were said to be covered by the provisions of the Police Custody Code. In accordance with the provisions of the Police Custody Code, a physician was consulted if those concerned were obviously ill or injured, they themselves stated that they were ill or injured or if they showed considerable abnormalities. The consultation of a physician was however not conditional on certainty being established as to an illness or injury.</p> <p>Otherwise, the medical services provided were paid for directly by the person concerned themselves and their health insurance fund; the <i>Land</i> was said not to incur an obligation to pay these costs.</p> <p>Nonetheless, individual physicians when treating persons placed in police custody required that the costs be paid for by the police. This had led to delays in some cases; however, no cases were known in which suitable medical care had been called into question by the previous arrangement. So that there could be no delays in problem cases, the police directorates would meet medical costs in future if the physician was unable to collect from the person concerned or the health insurance funds.</p>
<p>Hanover-Schützenplatz police station is not suitable in the view of the Commission of the <i>Länder</i> for holding persons in long-term detention as it has no possibility for daily outdoor exercise. Persons who are held in police custody for 24 hours or longer must be given the opportunity to exercise in the fresh air for at least one hour each day. Measures are needed to enable persons to do so. Alternatively, the administrative assistance of the prison should be considered for long-term detention.</p>	<p>Hanover police directorate is said to have reported that the complex did not have secure outdoor areas for outdoor exercise.</p> <p>The police directorate had examined constructional measures, but had not yet found a solution. It was hence striving to implement long-term detention in a prison for the foreseeable future. Until the necessary agreements had been reached, those concerned were taken out for fresh air and accompanied in the police complex unless particular risks emerged from their personality.</p>
<p>The Commission of the <i>Länder</i> encountered an individual in custody who stated that he had not been informed of his rights and also that he had not received an information sheet</p>	<p>The case found by the Commission was said to relate to a person detained on the basis of an arrest warrant who was only briefly held in the detention facility and was to be placed</p>

<p>comprehensively describing his rights.</p> <p>Regardless of whether persons are taken into custody under police law or criminal procedure law, they must be promptly informed of their rights. Also, this should always take place in practice using the existing information sheet.</p>	<p>before the Local Court with jurisdiction for the promulgation of the arrest warrant. The person had been informed of the reason for the apprehension.</p> <p>As a matter of principle, detained persons are informed in accordance with the legal provisions, and also receive the information sheet. The Ministry of the Interior would once more inform the police authorities that information and the presentation of the information sheet must take place promptly in all cases.</p>
<p>The detention area should be equipped with fire protection devices such as fire alarms.</p>	<p>Fire protection in detention cells at Hanover-Schützenplatz police station was currently being examined by the State Construction Administration. The need for action was to be identified and evaluated. The examination would still take some time because of its scope.</p>
<p>Cells with a size of approximately 4 m² and a distance between the walls of 1.5 m² are only suitable for detention of a few hours. If they are held for longer, the persons concerned are to be transferred to other detention facilities with corresponding equipment.</p>	<p>Accommodation in very small cells is said to be reasonable since as a rule it only takes place for a short period, and in most cases over night, so that the priority was to provide somewhere to sleep.</p>
<p>Occupied cells should be regularly ventilated.</p>	<p>It is said not to be possible for the detained persons to open the windows themselves because of the way they were built; the windows could only be opened by officers. In view of the short stays in police custody, this however appeared to be acceptable. The regular ventilation of the cells would be ensured in future.</p>

V. Facilities of youth welfare and nursing homes

To the facilities already listed are added another 16 facilities for closed accommodation of children and juveniles on the basis of a judicial ruling²⁸, as well as roughly 11,000 nursing homes.²⁹ With regard to these, the Commission of the *Länder* has still not yet received any detailed information from all Federal *Länder* on the number of facilities. Among the nursing homes, however, only those which have closed wings which the patients may not leave are relevant to the Commission of the *Länder*. A precise number has hence not yet been finally ascertained. None of these facilities had yet been visited in the period under review.

²⁸ cf. Federal Statistical Office, 2008, *Statistiken der Kinder- und Jugendhilfe. Einrichtungen und tätige Personen. Revidierte Ergebnisse*, Wiesbaden, p. 7

²⁹ cf. Federal Statistical Office at [http://www.destatis.de/jetspeed/portal/cms/Sites/destatis/Internet/DE/Content/Statistiken/Sozialleistungen/Pflege/Tabellen/Content75/Pflegeeinrichtungen__Deutschland,templateId=renderPrint.psm1](http://www.destatis.de/jetspeed/portal/cms/Sites/destatis/Internet/DE/Content/Statistiken/Sozialleistungen/Pflege/Tabellen/Content75/Pflegeeinrichtungen__Deutschland,templateId=renderPrint.psm1, version: 2007), version: 2007 [most recently retrieved on 22 December 2011]

E. Further activities of the National Agency in the period under review

1. Specialist associations and public relations work

Particularly in the initial period, there was an expectation that the National Agency would make its activities known in the political arena and communicate with the various contacts.³⁰ The National Agency has not always been able to meet these expectations, in part due to its scarce staffing resources. Hence, particular attention was paid in the context of its activities to publicising its considerably expanded spectrum of tasks, after the addition of the Commission of the *Länder*, to a broad specialist public and to exploring possibilities for cooperation.

To this end, the National Agency established and expanded contacts with various interlocutors in the Ministries, authorities and other public institutions, as well as with Members of the Bundestag, and with organisations and institutions that are active in human rights policy. For instance, the president of the Commission of the *Länder* attended a session of the prison committee of the *Länder* immediately after the start of operations, where he introduced the work of the Commission. The National Agency gained particular attention through a visit by Federal Minister of Justice Leutheusser-Schnarrenberger in March 2011. Furthermore, the Chairman of the Commission of the *Länder* expanded contacts with various committees of the Bundestag in the first half of 2011. Meetings took place with the chairpersons of the German Bundestag's Committee on Human Rights, Committee on Legal Affairs and Committee on Internal Affairs. Since the Commission itself does not have a member with specialist medical or psychiatric knowledge, associations with experts in this field are particularly important. Hence, in September 2011, the Commission entered into written contact with visiting psychiatric commissions in the individual Federal *Länder*. Here especially, future networking and an exchange of experience is the focus. A meeting took place in Berlin with the human rights commissioner and current President of the German Medical Association Dr. med. Montgomery in May 2011 in order to heighten its profile among physicians. Subsequent to this meeting, the Commission of the *Länder* presented its work in an article that appeared in the *Deutsches Ärzteblatt*.³¹ A meeting has now taken place between the human rights commissioner of the Medical Associations and the National Agency to explore closer cooperation in the field of medicine.

Furthermore, the National Agency increased its contact with the German Institute for Human Rights and with various human rights organisations in the period under review. To this end, the Chairman of the Commission of the *Länder* met amongst others two members of the *Forum Menschenrechte* in Berlin. A joint event took place in November 2011 with the German Institute for Human Rights on the topic of "Prevention of torture and mistreatment in Germany", which particularly served an exchange with non-governmental organisations. At the end of the event there were concrete agreements for future cooperation.

The Director of the Federal Agency met amongst others the Parliamentary Commissioner for the Armed Forces, the President of the Federal Criminal Police Office and the President of the Federal Police Headquarters. What is more, first contact was established with the Federal Ministry of Finance in September 2010. Facilities of the customs authorities fall within the remit of the Ministry, which are also to be inspected by the Federal Agency.

³⁰ Because of their scope, the activities of the National Agency are only to be portrayed in excerpts here. A table list of all visits made can be found in the Annex (cf. III.).

³¹ Geiger, Hansjörg/Hof, Christina (2012): *Ein unabhängiger Blick in Deutschlands Gefängnisse*. Deutsches Ärzteblatt, Year 109, Vol. 4, pp. 146-148.

The work of the National Agency was also presented to the specialist public at large numbers of lectures. The Federal Agency and the Commission of the *Länder* explained their work in October 2010 for the first time at a conference of the Human Rights Centre at the University of Potsdam on the topic of “A comparison of torture prevention mechanisms”. The two lectures were then published by the Human Rights Centre in the series entitled “Studies on Fundamental and Human Rights” (*Studien zu Grund- und Menschenrechten*)³². Furthermore, a contribution by the Director of the Federal Agency appeared in the volume published by Christoph Gusy in the summer of 2011 entitled “Human rights monitoring – opportunities and boundaries of out-of-court human rights protection” (*Grundrechtsmonitoring – Chancen und Grenzen außergerichtlichen Menschenrechtsschutzes*).³³ Additionally, the Commission of the *Länder* presented the foci of its work on the occasion of the 37th working and further training conference of the Federal Association of Prison Governors, held in Straubing on 7 June 2011. Additional lectures were held at the Federal University of Public Administration and Judicial Administration and at the annual conference of psychiatrists in Bavarian prisons.

2. International cooperation

The National Agency also expanded its contacts with international partners in the period under review. The first official contact with the UN Subcommittee on the prevention of torture in Geneva took place in November 2010. A meeting also took place with the President of the Swiss National Commission for the Prevention of Torture on the sidelines of the presentation before the members of the Subcommittee. Furthermore, the National Agency introduced its work to the Association for the Prevention of Torture and reported on its initial results. The information obtained by the National Agency was received with great interest and was included, amongst other topics, in a position paper of the APT on the status of national preventive mechanisms in the federal system.

A delegation of the CPT implemented its periodic state visit to Germany in November and December 2010. The National Agency attended the official opening of the visit and the final talks in the Federal Ministry of Justice, and participated in talks with the delegation.

Staff members of several states established contact with the National Agency in order to obtain information on the implementation of the Optional Protocol in Germany. For instance, the Director of the Federal Agency held talks with delegates of the Australian Embassy in Berlin in October 2010 and explained the legal basis, as well as the functioning of the National Agency. The background to the talks were efforts by the Australian Government to transpose the requirements of the OP-CAT in national law. In May 2011, the secretariat in Wiesbaden received a delegation of the Azerbaijani ombudsman, who wished to learn about, amongst other things, the work of the National Agency during a study visit organised by the Gesellschaft für Internationale Zusammenarbeit. This was also followed by a presentation by the Director of the Federal Agency before the delegation in Berlin.

³² Geiger, Hansjörg (2011): Presentation of the Commission of the Länder for the Prevention of Torture. In: Zimmermann, Andreas (ed.): *Folterprävention im völkerrechtlichen Mehrebenensystem. Studien zu Grund- und Menschenrechten* Vol. 16, Universitätsverlag Potsdam, pp. 121-126.

Lange-Lehngut, Klaus (2011): *Aufgaben und Arbeitsweise der Bundesstelle zur Verhütung von Folter im nationalen Präventionsmechanismus Deutschlands*. In: Zimmermann, Andreas (ed.): *Folterprävention im völkerrechtlichen Mehrebenensystem. Studien zu Grund- und Menschenrechten* Vol. 16, Universitätsverlag Potsdam, pp. 113-120.

³³ Lange-Lehngut, Klaus (2011): *Das präventive Besuchsverfahren der Bundesstelle zur Verhütung von Folter*. In: Gusy, Christoph (ed.): *Grundrechtsmonitoring. Chancen und Grenzen außergerichtlichen Menschenrechtsschutzes*. Baden-Baden: Nomos, pp. 64-76.

However, the National Agency also had to reject several requests for support because of a lack of personnel resources.

In the period under review, the National Agency also continued the participation which it had commenced in 2009 in the project to improve networking between the national preventive mechanisms (NPM project), as well as between the CPT and the SPT, launched by the Council of Europe and the European Commission. In December 2010 and in 2011, respectively, it attended the annual meetings with all the directors of the national preventive mechanisms and with the contact persons in Strasbourg and Ljubljana organised by the Council of Europe.

Staff members of the secretariat, furthermore, took part in the content of several workshops funded by the Council of Europe within the "NPM project" on topics such as police custody, methods of inspection visits, security and human dignity in places where people are deprived of their liberty. Many states have taken the opportunity to obtain information at the workshops on current developments in Germany and on the initial experience of the National Agency. This made it very clear how much international interest there is in the work of the German preventive mechanism. The workshops moreover led to several bilateral contacts with other European OP-CAT states.

Finally, the National Agency attended the presentation of the Fifth State Report of the Federal Republic of Germany concerning measures to implement the Convention of 10 December 1984 against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, in Geneva on 4 November 2011. The Director of the Federal Agency and the Chairman of the Commission of the Länder reported to the Committee on the work of the National Agency and were available to answer further questions.

3. Overview of enquiries by individuals

The National Agency received a large number of written, telephone and electronic enquiries and various pieces of information from individuals in the period under review. The enquiries related exclusively to facilities within the remit of the Commission of the *Länder*, roughly half of them concerning prisons and psychiatry. Particularly when it came to psychiatric institutions, a visit to a facility was soon followed by suggestions from individuals. The secretariat always wrote to these individuals to let them know that their concern had been acknowledged and that they would receive a written response at a later time. The persons were informed in individual cases that they could have their report passed on to either the competent Ministries of Justice, or to the secretariat of the CPT. In other cases, advisory agencies or contacts could be named who are able to help with regard to the concerns. Furthermore, individual applications following a visit formed the basis for a renewed enquiry to the facility in question.

The National Agency is neither legally empowered, nor is it able, to remedy individuals' complaints or to give them legal advice. It however proved to be challenging to convince the persons concerned of this in many cases, even though it is explicitly pointed out to each person who turns to the National Agency. This notwithstanding, information on concrete incidents is of great practical relevance for the work of the National Agency. It is available as background information in inspection visits, and can help focus on specific problem areas. Furthermore, concrete information and indications may influence the selection of the facilities to be visited and the priorities consequently set.

Annex

I. History and legal basis

10.12.1948	Resolution of the UN General Assembly (Universal Declaration of Human Rights): incl. prohibition of torture and other cruel, inhuman or degrading treatment or punishment
10.12.1984	UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UN Anti-Torture Convention)
26.11.1987	European Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
18.12.2002	Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 (OP-CAT)
20.09.2006	Signing of the Optional Protocol
26.08.2008	Implementation in domestic law through the approval act of the Bundestag
20.11.2008	Federal Agency created by the Administrative Order of the Federal Ministry of Justice
04.12.2008	Ratification of the Optional Protocol and nomination of Klaus Lange-Lehngut, <i>Ltd. Reg. Dir.</i> , ret., as the honorary Director of the Federal Agency
01.05.2009	Federal Agency takes up its work at the headquarters of the Centre for Criminology in Wiesbaden
25.06.2009	Signing of the State Treaty to establish the Commission of the <i>Länder</i> for the Prevention of Torture by State Treaty of all Federal <i>Länder</i>
23./24.06.2010	Nomination of the members the Commission of the <i>Länder</i> at the 81st conference of Ministers of Justice
01.09.2010	State Treaty to establish the Commission of the <i>Länder</i> for the Prevention of Torture as well as the administrative agreement between the Federation and the Federal <i>Länder</i> on the National Agency for the Prevention of Torture come into force
24.09.2010	Official inauguration of the Commission of the <i>Länder</i> by the Hessian Minister of Justice Jörg-Uwe Hahn in Wiesbaden

II. Chronological overview of visits in the period from 1 May 2010 to 31 December 2011

Date	Facility visited
19.05.2010	Munich Airport Federal Police Station
20.05.2010	Munich Main Station and Eastern Station Federal Police Stations
19.07.2010	Berlin-Schönefeld Airport Federal Police Station
20.07.2010	Burg Federal Armed Forces barracks
24.08.2010	Hamburg Airport Federal Police Station and Hamburg Anti-Crime Federal Police Station
25.08.2010	Hamburg-Altona, Hamburg-Harburg and Hamburg Main Station Federal Police Stations
19.10.2010	Torgelow and Viereck Federal Armed Forces barracks
25.10.2010	Rosdorf prison
30.11.2010	Kehl Federal Police Station
06.12.2010	Mass return of Vietnamese citizens
07.12.2010	Mainz I and II police stations
19.01.2011	Düsseldorf Airport Federal Police Station
20.01.2011	Düsseldorf Federal Police Station
24.01.2011	Saxony-Anhalt North police directorate and Jerichower Land police station
31.01.2011	Frankfurt III prison
31.03.2011	Police stations 11, 14, 16 in Hamburg
01.04.2011	Hanover-Schützenplatz police station
07.04.2011	Berlin youth prison
08.04.2011	Berlin-Köpenick facility for persons awaiting deportation
05.05.2011	Bernau am Chiemsee prison
25.05.2011	Dresden customs investigation office
25.05.2011	Dresden Federal Police Station and Dresden Airport Federal Police Station
30.06.2011	Berlin customs investigation office
30.06.2011	Berlin Eastern Station Federal Police Station and Berlin-Lichtenberg Federal Police Station
28.07.2011	Dresden prison
29.07.2011	Chemnitz prison
17.08.2011	Werl prison
18.08.2011	LWL Centre for Forensic Psychiatry Lippstadt
21.09.2011	Graf-Stauffenberg-barracks in Sigmaringen
22.09.2011	Alb barracks in Stetten a.k.M.
24.11.2011	Parsberg II district hospital

III. Overview of the national and international activities of the Federal Agency and the Commission of the Länder in the period under review

Date	Place	Participant(s)	Occasion
17.05.2010	Frankfurt	Federal Agency	Meeting with Mr Wurm, President of Frankfurt/Main Airport Federal police directorate
18.05.2010	Koblenz	Federal Agency	Information visit to the military police headquarters of the Augusta barracks
25.05.2010	Berlin	Federal Agency	Meeting with Mr Jörg Ziercke, President of the Federal Criminal Police Office
09./10.06.2010	Tirana	Federal Agency	Attendance at the workshop entitled "The role of the NPMs in preventing ill-treatment in police settings: key rights for those deprived of their liberty by the police"
06.07.2010	Berlin	Federal Agency	Meeting with Helmut Königshaus, Parliamentary Commissioner for the Armed Forces
01.09.2010	Berlin	Federal Agency	Meeting with Mr Stähr, Director of Directorate-General III (Customs; excise duties; spirits monopoly) at the Federal Ministry of Finance
24.09.2010	Wiesbaden	Commission of the Länder	Introductory event of the Commission of the Länder in the Hesse Ministry of Justice, for Integration and Europe
27./28.09.2010	Leipzig	Commission of the Länder	Attendance at the meeting of the Prison Commission of the Länder
06./07.10.2010	Potsdam	National Agency	Conference of the Human Rights Centre of the University of Potsdam on "A comparison of torture prevention mechanisms"
13./14.10.2010	Erivan	National Agency	Attendance at the workshop entitled "Methodology: Preparation and planning strategies for an NPM Visit"
27.10.2010	Berlin	Federal Agency	Meeting with Mr Wilkens, Secretary of the Australian Government's Attorney-General's De-

Date	Place	Participant(s)	Occasion
			partment, at the Australian Embassy
18.11.2010	Geneva	Federal Agency	Meeting with Mark Thomson, Secretary General of the Association for the Prevention of Torture
24.11.2010	Berlin	National Agency	Meeting with the CPT delegation launching the CPT's visit to Germany
01./02.12.2010	Strasbourg	National Agency	Attendance at "The Second Meeting of the Heads and Contact Persons of the National Preventive Mechanisms for the Prevention of Torture (NPMs) in Europe"
07.12.2010	Berlin	National Agency	Meeting with the delegation of the CPT concluding its visit to Germany
25.01.2011	Brussels	National Agency	Attendance at a European Commission roundtable on the treatment of persons in remand detention/criminal detention in the EU
04.02.2011	Erlangen	Commission of the Länder	Meeting with Dr. Wörthmüller, head physician of forensic psychiatry in Erlangen
01.03.2011	Wiesbaden	National Agency	Meeting with Federal Minister of Justice Frau Leutheusser-Schnarrenberger
14./15.03.2011	Paris	National Agency	Attendance at the workshop entitled "Security and dignity in places where people are deprived of their liberty"
25.03.2011	Berlin	Commission of the Länder	Meeting with Tom Koenigs MP, Chairman of the Committee on Human Rights of the German Bundestag
12.04.2011	Berlin	National Agency	Reception of the German Institute for Human Rights
02.05.2011	Wiesbaden	National Agency	Reception of the delegation of the Azerbaijani ombudsman
02.05.2011	Berlin	Federal Agency	Lecture to the delegation of the Azerbaijani ombudsman

Date	Place	Participant(s)	Occasion
04.05.2011	Berlin	Commission of the Länder	Meeting with the Human Rights Commissioner of the German Medical Association Dr. Montgomery
04.05.2011	Berlin	Commission of the Länder	Discussion with Ms Bittenbinder, Chairwoman of the German Association of Psychosocial Centres for Refugees and Victims of Torture (BAfF)
05.05.2011	Berlin	Commission of the Länder	Discussion with Negar Hosan-Aghaie, Director of the International Affairs and Human Rights Department of the German Bar Association (DAV) and Dr. Petra Follmar-Otto, Director of the Human Rights Policy Domestic/Europe Department, German Institute for Human Rights
10.05.2011	Frankfurt	National Agency	Meeting with Prof. Dr. med. Christian Pross, Member of the SPT
19.05.2011	Cologne	Commission of the Länder	Meeting with Prof. Dr. Walter, Prison Commissioner of the Land North Rhine-Westphalia
23.05.2011	Berlin	Commission of the Länder Federal Agency	Meeting with Siegfried Kauder, Chairman of the Committee on Legal Affairs of the German Bundestag
25.05.2011	Berlin	Commission of the Länder	Meeting with Markus Löning, Federal Government Commissioner for Human Rights Policy and Humanitarian Aid
25.05.2011	Frankfurt	Commission of the Länder	Attendance at the symposium entitled "Healing with force? Mental disease and the freedom of personal will"
26.05.2011	Berlin	Commission of the Länder	Meeting with Wolfgang Bosbach MP, Chairman of the Committee on Internal Affairs of the German Bundestag
31.05.2011	Starnberg	Commission of the Länder	Lecture at the Federal University of Public Administration and Judicial Administration

Date	Place	Participant(s)	Occasion
06./07.06.2011	Straubing	Commission of the Länder	Lecture to the 37th work and further training conference of the Federal Association of Prison Governors
09.06.2011	Berlin	Commission of the Länder	Meeting with Prof. Dr. Beate Rudolph, Director of the German Institute for Human Rights and Dr. Petra Follmar-Otto
14.06.2011	Berlin	Commission of the Länder	Meeting with Wolfgang Kaleck, Secretary-General of the European Center for Constitutional and Human Rights (ECCHR)
27.06.2011	Berlin	Commission of the Länder	Meeting with Dr. Wenk-Anselm (Berlin Center for Torture Victims) and Dr. Wirtgen (Refugio Munich)
27.06.2011	Berlin	Commission of the Länder	Lecture at the SPD's discussion group on human rights
06.07.2011	Wiesbaden	Commission of the Länder	Meeting with State Secretary Dr. Rudolf Kriszeleit, Hesse Ministry of Justice, for Integration and Europe
13.07.2011	London	Federal Agency	Attendance at the workshop entitled "Monitoring Deportations"
24.10.2011	Potsdam	Federal Agency	Meeting with Mr Seegers, President of the Federal Police Headquarters
04.11.2011	Geneva	National Agency	Presentation of the Fifth State Report on the Anti-Torture Convention on 4 and 8 November 2011
09.11.2011	Berlin	Commission of the Länder	Attendance at the expert talks entitled "Responsibility to Protect" at the invitation of Tom Koenigs MP, Chairman of the Committee on Human Rights and Humanitarian Aid
15.11.2011	Berlin	Commission of the Länder	Meeting with Mr Habbe and Mr Hillebrand, Jesuit Refugee Service

Date	Place	Participant(s)	Occasion
17.11.2011	Berlin	National Agency	Attendance at the event organised by the German Institute for Human Rights on the topic of "Prevention of torture and mistreatment in Germany"
06./07.12.2011	Ljubljana	National Agency	Participation at the "Third Meeting of the Heads and Contact Persons of the National Preventive Mechanisms for the Prevention of Torture (NPMs) in Europe"
06.12.2011	Straubing	Commission of the Länder	Lecture at the annual conference of Bavarian prison psychologists
15.12.2011	Berlin	National Agency	Lecture at the annual conference of the working party on human rights of the German Medical Association

IV. General Assembly Resolution 57/199 on the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 18 December 2002

The General Assembly,

Recalling article 5 of the Universal Declaration of Human Rights³⁴, article 7 of the International Covenant on Civil and Political Rights³⁵, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment³⁶ and its resolution 39/46 of 10 December 1984, by which it adopted and opened for signature, ratification and accession the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and all its subsequent relevant resolutions,

Reaffirming that freedom from torture is a right that must be protected under all circumstances,

Considering that the World Conference on Human Rights, held at Vienna from 14 to 25 June 1993, firmly declared that efforts to eradicate torture should first and foremost be concentrated on prevention and called for the early adoption of an optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, intended to establish a preventive system of regular visits to places of detention,

Welcoming the adoption of the draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by the Commission on Human Rights in its resolution 2002/33 of 22 April 2002³⁷ and by the Economic and Social Council in its resolution 2002/27 of 24 July 2002, in which the Council recommended to the General Assembly the adoption of the draft optional protocol,

1. *Adopts* the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment contained in the annex to the present resolution, and requests the Secretary-General to open it for signature, ratification and accession at United Nations Headquarters in New York from 1 January 2003;
2. *Calls upon* all States that have signed, ratified or acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to sign and ratify or accede to the Optional Protocol.

*77th plenary meeting
18 December 2002*

³⁴ Resolution 217 A (III).

³⁵ cf. Resolution 2200 A (XXI), Annex

³⁶ Resolution 3452 (XXX), Annex

³⁷ cf. *Official Records of the Economic and Social Council, 2002, Supplement No. 3 (E/2002/23), Ch. II, Part A.*

Annex

Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Preamble

The States Parties to the present Protocol,

Reaffirming that torture and other cruel, inhuman or degrading treatment or punishment are prohibited and constitute serious violations of human rights,

Convinced that further measures are necessary to achieve the purposes of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Convention) and to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment,

Recalling that articles 2 and 16 of the Convention oblige each State Party to take effective measures to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction,

Recognizing that States have the primary responsibility for implementing those articles, that strengthening the protection of people deprived of their liberty and the full respect for their human rights is a common responsibility shared by all and that international implementing bodies complement and strengthen national measures,

Recalling that the effective prevention of torture and other cruel, inhuman or degrading treatment or punishment requires education and a combination of various legislative, administrative, judicial and other measures,

Recalling also that the World Conference on Human Rights firmly declared that efforts to eradicate torture should first and foremost be concentrated on prevention and called for the adoption of an optional protocol to the Convention, intended to establish a preventive system of regular visits to places of detention,

Convinced that the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment can be strengthened by non-judicial means of a preventive nature, based on regular visits to places of detention,

Have agreed as follows:

Part I General principles

Article 1

The objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

Article 2

1. A Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (hereinafter referred to as the Subcommittee on Prevention) shall be established and shall carry out the functions laid down in the present Protocol.
2. The Subcommittee on Prevention shall carry out its work within the framework of the Charter of the United Nations and shall be guided by the purposes and principles thereof, as well as the norms of the United Nations concerning the treatment of people deprived of their liberty.
3. Equally, the Subcommittee on Prevention shall be guided by the principles of confidentiality, impartiality, non-selectivity, universality and objectivity.
4. The Subcommittee on Prevention and the States Parties shall cooperate in the implementation of the present Protocol.

Article 3

Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism).

Article 4

1. Each State Party shall allow visits, in accordance with the present Protocol, by the mechanisms referred to in articles 2 and 3 to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (hereinafter referred to as places of detention). These visits shall be undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment.
2. For the purposes of the present Protocol, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.

Part II Subcommittee on Prevention

Article 5

1. The Subcommittee on Prevention shall consist of ten members. After the fiftieth ratification of or accession to the present Protocol, the number of the members of the Subcommittee on Prevention shall increase to twenty-five.
2. The members of the Subcommittee on Prevention shall be chosen from among persons of high moral character, having proven professional experience in the field of the admin-

istration of justice, in particular criminal law, prison or police administration, or in the various fields relevant to the treatment of persons deprived of their liberty.

3. In the composition of the Subcommittee on Prevention due consideration shall be given to equitable geographic distribution and to the representation of different forms of civilization and legal systems of the States Parties.
4. In this composition consideration shall also be given to balanced gender representation on the basis of the principles of equality and non-discrimination.
5. No two members of the Subcommittee on Prevention may be nationals of the same State.
6. The members of the Subcommittee on Prevention shall serve in their individual capacity, shall be independent and impartial and shall be available to serve the Subcommittee on Prevention efficiently.

Article 6

1. Each State Party may nominate, in accordance with paragraph 2 of the present article, up to two candidates possessing the qualifications and meeting the requirements set out in article 5, and in doing so shall provide detailed information on the qualifications of the nominees.
2.
 - a) The nominees shall have the nationality of a State Party to the present Protocol;
 - b) At least one of the two candidates shall have the nationality of the nominating State Party;
 - c) No more than two nationals of a State Party shall be nominated;
 - d) Before a State Party nominates a national of another State Party, it shall seek and obtain the consent of that State Party.
3. At least five months before the date of the meeting of the States Parties during which the elections will be held, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall submit a list, in alphabetical order, of all persons thus nominated, indicating the States Parties that have nominated them.

Article 7

1. The members of the Subcommittee on Prevention shall be elected in the following manner:
 - a) Primary consideration shall be given to the fulfilment of the requirements and criteria of article 5 of the present Protocol.
 - b) The initial election shall be held no later than six months after the entry into force of

the present Protocol.

c) The States Parties shall elect the members of the Subcommittee on Prevention by secret ballot.

d) Elections of the members of the Subcommittee on Prevention shall be held at biennial meetings of the States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Subcommittee on Prevention shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States Parties present and voting.

2. If during the election process two nationals of a State Party have become eligible to serve as members of the Subcommittee on Prevention, the candidate receiving the higher number of votes shall serve as the member of the Subcommittee on Prevention. Where nationals have received the same number of votes, the following procedure applies:

a) Where only one has been nominated by the State Party of which he or she is a national, that national shall serve as the member of the Subcommittee on Prevention.

b) Where both candidates have been nominated by the State Party of which they are nationals, a separate vote by secret ballot shall be held to determine which national shall become the member.

c) Where neither candidate has been nominated by the State Party of which he or she is a national, a separate vote by secret ballot shall be held to determine which candidate shall be the member.

Article 8

If a member of the Subcommittee on Prevention dies or resigns, or for any cause can no longer perform his or her duties, the State Party that nominated the member shall nominate another eligible person possessing the qualifications and meeting the requirements set out in article 5, taking into account the need for a proper balance among the various fields of competence, to serve until the next meeting of the States Parties, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

Article 9

The members of the Subcommittee on Prevention shall be elected for a term of four years. They shall be eligible for re-election once if renominated. The term of half the members elected at the first election shall expire at the end of two years; immediately after the first election the names of those members shall be chosen by lot by the Chairman of the meeting referred to in article 7, paragraph 1 (d).

Article 10

1. The Subcommittee on Prevention shall elect its officers for a term of two years. They may be re-elected.
2. The Subcommittee on Prevention shall establish its own rules of procedure. These rules shall provide, inter alia, that:
 - a) Half the members plus one shall constitute a quorum.
 - b) Decisions of the Subcommittee on Prevention shall be made by a majority vote of the members present.
 - c) The Subcommittee on Prevention shall meet in camera.
3. The Secretary-General of the United Nations shall convene the initial meeting of the Subcommittee on Prevention. After its initial meeting, the Subcommittee on Prevention shall meet at such times as shall be provided by its rules of procedure. The Subcommittee on Prevention and the Committee against Torture shall hold their sessions simultaneously at least once a year.

Part III Mandate of the Subcommittee on Prevention

Article 11

The Subcommittee on Prevention shall

- a) Visit the places referred to in article 4 and make recommendations to States Parties concerning the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;
- b) In regard to the national preventive mechanisms
 - i) Advise and assist States Parties, when necessary, in their establishment;
 - ii) Maintain direct, and if necessary confidential, contact with the national preventive mechanisms and offer them training and technical assistance with a view to strengthening their capacities;
 - iii) Advise and assist them in the evaluation of the needs and the means necessary to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;
 - iv) Make recommendations and observations to the States Parties with a view to strengthening the capacity and the mandate of the national preventive mechanisms for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;
- c) Cooperate, for the prevention of torture in general, with the relevant United Nations

organs and mechanisms as well as with the international, regional and national institutions or organizations working towards the strengthening of the protection of all persons against torture and other cruel, inhuman or degrading treatment or punishment.

Article 12

In order to enable the Subcommittee on Prevention to comply with its mandate as laid down in article 11, the States Parties undertake,

- a) To receive the Subcommittee on Prevention in their territory and grant it access to the places of detention as defined in article 4 of the present Protocol;
- b) To provide all relevant information the Subcommittee on Prevention may request to evaluate the needs and measures that should be adopted to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;
- c) To encourage and facilitate contacts between the Subcommittee on Prevention and the national preventive mechanisms;
- d) To examine the recommendations of the Subcommittee on Prevention and enter into dialogue with it on possible implementation measures.

Article 13

1. The Subcommittee on Prevention shall establish, at first by lot, a programme of regular visits to the States Parties in order to fulfil its mandate as established in article 11.
2. After consultations, the Subcommittee on Prevention shall notify the States Parties of its programme in order that they may, without delay, make the necessary practical arrangements for the visits to be conducted.
3. The visits shall be conducted by at least two members of the Subcommittee on Prevention. These members may be accompanied, if needed, by experts of demonstrated professional experience and knowledge in the fields covered by the present Protocol who shall be selected from a roster of experts prepared on the basis of proposals made by the States Parties, the Office of the United Nations High Commissioner for Human Rights and the United Nations Centre for International Crime Prevention. In preparing the roster, the States Parties concerned shall propose no more than five national experts. The State Party concerned may oppose the inclusion of a specific expert in the visit, whereupon the Subcommittee on Prevention shall propose another expert.
4. If the Subcommittee on Prevention considers it appropriate, it may propose a short follow-up visit after a regular visit.

Article 14

1. In order to enable the Subcommittee on Prevention to fulfil its mandate, the States Parties to the present Protocol undertake to grant it:

a) Unrestricted access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;

b) Unrestricted access to all information referring to the treatment of those persons as well as their conditions of detention;

c) Subject to paragraph 2 below, unrestricted access to all places of detention and their installations and facilities;

d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the Subcommittee on Prevention believes may supply relevant information;

e) The liberty to choose the places it wants to visit and the persons it wants to interview.

2. Objection to a visit to a particular place of detention may be made only on urgent and compelling grounds of national defence, public safety, natural disaster or serious disorder in the place to be visited that temporarily prevent the carrying out of such a visit. The existence of a declared state of emergency as such shall not be invoked by a State Party as a reason to object to a visit.

Article 15

No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the Subcommittee on Prevention or to its delegates any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

Article 16

1. The Subcommittee on Prevention shall communicate its recommendations and observations confidentially to the State Party and, if relevant, to the national preventive mechanism.
2. The Subcommittee on Prevention shall publish its report, together with any comments of the State Party concerned, whenever requested to do so by that State Party. If the State Party makes part of the report public, the Subcommittee on Prevention may publish the report in whole or in part. However, no personal data shall be published without the express consent of the person concerned.
3. The Subcommittee on Prevention shall present a public annual report on its activities to the Committee against Torture.
4. If the State Party refuses to cooperate with the Subcommittee on Prevention according to articles 12 and 14, or to take steps to improve the situation in the light of the recommendations of the Subcommittee on Prevention, the Committee against Torture may, at the request of the Subcommittee on Prevention, decide, by a majority of its members, after

the State Party has had an opportunity to make its views known, to make a public statement on the matter or to publish the report of the Subcommittee on Prevention.

Part IV National preventive mechanisms

Article 17

Each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level. Mechanisms established by decentralized units may be designated as national preventive mechanisms for the purposes of the present Protocol if they are in conformity with its provisions.

Article 18

1. The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.
2. The States Parties shall take the necessary measures to ensure that the experts of the national preventive mechanism have the required capabilities and professional knowledge. They shall strive for a gender balance and the adequate representation of ethnic and minority groups in the country.
3. The States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms.
4. When establishing national preventive mechanisms, States Parties shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights.

Article 19

The national preventive mechanisms shall be granted at a minimum the power,

- a) To regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;
- b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;
- c) To submit proposals and observations concerning existing or draft legislation.

Article 20

In order to enable the national preventive mechanisms to fulfil their mandate, the States Par-

ties to the present Protocol undertake to grant them,

- a) Access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;
- b) Access to all information referring to the treatment of those persons as well as their conditions of detention;
- c) Access to all places of detention and their installations and facilities;
- d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information;
- e) The liberty to choose the places they want to visit and the persons they want to interview;
- f) The right to have contacts with the Subcommittee on Prevention, to send it information and to meet with it.

Article 21

1. No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the national preventive mechanism any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.
2. Confidential information collected by the national preventive mechanism shall be privileged. No personal data shall be published without the express consent of the person concerned.

Article 22

The competent authorities of the State Party concerned shall examine the recommendations of the national preventive mechanism and enter into a dialogue with it on possible implementation measures.

Article 23

The States Parties to the present Protocol undertake to publish and disseminate the annual reports of the national preventive mechanisms.

Part V

Declaration

Article 24

1. Upon ratification, States Parties may make a declaration postponing the implementation of their obligations under either part III or part IV of the present Protocol.
2. This postponement shall be valid for a maximum of three years. After due representations made by the State Party and after consultation with the Subcommittee on Prevention, the Committee against Torture may extend that period for an additional two years.

Part VI Financial provisions

Article 25

1. The expenditure incurred by the Subcommittee on Prevention in the implementation of the present Protocol shall be borne by the United Nations.
2. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Subcommittee on Prevention under the present Protocol.

Article 26

1. A Special Fund shall be set up in accordance with the relevant procedures of the General Assembly, to be administered in accordance with the financial regulations and rules of the United Nations, to help finance the implementation of the recommendations made by the Subcommittee on Prevention after a visit to a State Party, as well as education programmes of the national preventive mechanisms.
2. The Special Fund may be financed through voluntary contributions made by Governments, intergovernmental and non-governmental organizations and other private or public entities.

Part VII Final provisions

Article 27

1. The present Protocol is open for signature by any State that has signed the Convention.
2. The present Protocol is subject to ratification by any State that has ratified or acceded to the Convention. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Protocol shall be open to accession by any State that has ratified or acceded

to the Convention.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States that have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 28

1. The present Protocol shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying the present Protocol or acceding to it after the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession, the present Protocol shall enter into force on the thirtieth day after the date of deposit of its own instrument of ratification or accession.

Article 29

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 30

No reservations shall be made to the present Protocol.

Article 31

The provisions of the present Protocol shall not affect the obligations of States Parties under any regional convention instituting a system of visits to places of detention. The Subcommittee on Prevention and the bodies established under such regional conventions are encouraged to consult and cooperate with a view to avoiding duplication and promoting effectively the objectives of the present Protocol.

Article 32

The provisions of the present Protocol shall not affect the obligations of States Parties to the four Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 8 June 1977, nor the opportunity available to any State Party to authorize the International Committee of the Red Cross to visit places of detention in situations not covered by international humanitarian law.

Article 33

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations, who shall thereafter inform the

other States Parties to the present Protocol and the Convention. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act or situation that may occur prior to the date on which the denunciation becomes effective, or to the actions that the Subcommittee on Prevention has decided or may decide to take with respect to the State Party concerned, nor shall denunciation prejudice in any way the continued consideration of any matter already under consideration by the Subcommittee on Prevention prior to the date on which the denunciation becomes effective.
3. Following the date on which the denunciation of the State Party becomes effective, the Subcommittee on Prevention shall not commence consideration of any new matter regarding that State.

Article 34

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting at the conference shall be submitted by the Secretary-General of the United Nations to all States Parties for acceptance.
2. An amendment adopted in accordance with paragraph 1 of the present article shall come into force when it has been accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.
3. When amendments come into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment that they have accepted.

Article 35

Members of the Subcommittee on Prevention and of the national preventive mechanisms shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions. Members of the Subcommittee on Prevention shall be accorded the privileges and immunities specified in section 22 of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946, subject to the provisions of section 23 of that Convention.

Article 36

When visiting a State Party, the members of the Subcommittee on Prevention shall, without prejudice to the provisions and purposes of the present Protocol and such privileges and

immunities as they may enjoy:

a) Respect the laws and regulations of the visited State;

b) Refrain from any action or activity incompatible with the impartial and international nature of their duties.

Article 37

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States.

Act on the Optional Protocol of 18 December 2002 on the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 26 August 2008³⁸

The Bundestag has adopted the following Act with the consent of the Bundesrat:

Article 1

The Optional Protocol of 18 December 2002 on the Convention of 10 December 1984 against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Federal Law Gazette [BGBl.] 1990 Part II p. 246), which was signed by the Federal Republic of Germany in New York on 20 September 2006, is herewith approved. The Protocol is published below with an official German translation.

Article 2

The tasks of the national preventive mechanism in accordance with Article 3 of the Protocol shall be performed within the field of competence of the *Länder* by a Commission to be established by the latter, and within the field of competence of the Federation by a Federal Agency to be established by the Federal Ministry of Justice.

Article 3

(1) The present Act shall come into force on the day after its promulgation.

(2) The date on which the Optional Protocol comes into force for the Federal Republic of Germany in accordance with its Article 28 shall be announced in the Federal Law Gazette.

The above Act is herewith issued. It shall be promulgated in the Federal Law Gazette.

Berlin, 26 August 2008

The Federal President
H o r s t K ö h l e r
The Federal Chancellor
D r . A n g e l a M e r k e l
The Federal Minister of Justice
B r i g i t t e Z y p r i e s
The Federal Foreign Minister
S t e i n m e i e r

³⁸ Non-official translation.

V. Administrative Order of the Federal Ministry of Justice of 20 November 2008

1. A Federal Agency for the Prevention of Torture (Federal Agency) shall be established which is to be designated to the United Nations as the National Preventive Mechanism within the meaning of Article 3 of the Optional Protocol of 18 December 2002 on the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 (Optional Protocol).
2. The Federal Agency shall have the task of visiting places under federal jurisdiction where people are deprived of their liberty within the meaning of Article 4 of the Optional Protocol in order to prevent torture, draw attention to problems and where appropriate make recommendations for improvements.
3. The Federal Agency shall have the rights and powers designated in Articles 19 and 20 of the Optional Protocol.

The Federal Agency may make recommendations to the competent authorities to improve the conditions for persons who have been deprived of their liberty. The authorities shall be obliged to examine these recommendations carefully and to make a statement to the Federal Agency within a suitable period.

Together with the Commission of the *Länder* on the prevention of torture, the Federal Agency shall draw up an Annual Report which shall be forwarded to the Federal Government, the *Land* Governments, the German Federal Parliament and the *Länder* Parliaments.

4. The Director of the Federal Agency shall act on an honorary basis. He/she shall be independent and not subject to any instructions. Compensation for expenditure and costs shall be granted in accordance with the provisions contained in the Federal Travel Expenses Act.
5. The Director of the Federal Agency shall be nominated by the Federal Ministry of Justice in agreement with the Federal Ministry of the Interior and the Federal Ministry of Defence for a period of office of four years. Re-nomination shall be possible.

The Director may renounce his/her office at any time. Prior to expiry of the period of office, dismissal against the will of the Director may only be effected subject to the provisos of section 24 of the of the German Judiciary Act by the Federal Ministry of Justice in agreement with the Federal Ministry of the Interior and the Federal Ministry of Defence. In this case, the Federal Ministry of Justice shall nominate a successor for the remaining period of office in agreement with the Federal Ministry of the Interior and the Federal Ministry of Defence.

6. The Federal Agency shall have at its disposal a secretariat which shall perform the ongoing business of the Federal Agency and shall be established with the latter in accordance with the Statutes of the Centre for Criminology.

The staff of the Secretariat shall only be appointed or dismissed with the consent of the Director of the Federal Agency. It shall be in factual terms only subject to the instructions of the Director of the Federal Agency.

The seat of the Federal Agency shall be Wiesbaden.

7. The Federal Agency shall work together with the Commission of the *Länder* for the Prevention of Torture. It may make use of staffing and material together with the Commission. The details shall be governed by an administrative agreement.
8. The Federal Agency shall be funded from the budget of the Federal Ministry of Justice.

Berlin, 20 November 2008

VI. State Treaty on the establishment of a national mechanism of all *Länder* in accordance with Article 3 of the Optional Protocol of 18 December 2002 to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment³⁹

The *Land* Baden-Württemberg, represented by the Prime Minister, in turn represented by the Minister of Justice,

the Free State of Bavaria, represented by the Prime Minister, in turn represented by the Minister of State for Justice and for Consumer Protection,

the *Land* Berlin, represented by the Governing Mayor, in turn represented by the Senator for Justice,

the *Land* Brandenburg, represented by the Prime Minister, in turn represented by the Minister of Justice,

the Free and Hanseatic City of Bremen, represented by the President of the Senate, in turn represented by the Senator for Justice and Constitution,

the Free and Hanseatic City of Hamburg, represented by the Senate, in turn represented by the Chairperson of the Ministry of Justice,

the *Land* Hesse, represented by the Prime Minister, in turn represented by the Minister of Justice, for Integration and European Affairs,

the *Land* Mecklenburg-Western Pomerania, represented by the Prime Minister, in turn represented by the Minister of Justice,

the *Land* Lower Saxony, represented by the Prime Minister, in turn represented by the Minister of Justice,

the *Land* North Rhine-Westphalia, represented by the Prime Minister, in turn represented by the Minister of Justice,

the *Land* Rhineland Palatinate, represented by the Prime Minister, in turn represented by the Minister of Justice,

the Saarland, represented by the Prime Minister, in turn represented by the Minister for Justice, Labour Affairs, Health and Social Affairs,

the Free State of Saxony, represented by the Prime Minister, in turn represented by the Minister of State of Justice,

the *Land* Saxony-Anhalt, represented by the Prime Minister, in turn represented by the Minister of Justice,

the *Land* Schleswig-Holstein, represented by the Prime Minister, in turn represented by the Minister for Justice, Labour Affairs and Europe, and

the Free State of Thuringia, represented by the Prime Minister, in turn represented by the Minister of Justice,

herewith conclude the following State Treaty:

³⁹ Non-official translation.

Preamble

The Federal Republic of Germany signed the Optional Protocol of 18 December 2002 to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as "Optional Protocol") on 20 September 2006.

The Optional Protocol provides for the establishment of national mechanisms for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as "for the prevention of torture"). These mechanisms are to examine the treatment of persons who have been deprived of their liberty. Since competence for measures entailing deprivation of liberty in the Federal Republic of Germany is very largely a matter for the *Länder*, such mechanisms are to be established by the *Länder* and provided with the appropriate powers. It appears expedient in place of individual commissioners of the *Länder* to create with this Treaty a joint national mechanism within the meaning of Article 3 of the Optional Protocol (Commission) which is able to act uniformly vis-à-vis the Federation, the *Länder* and the United Nations.

Additionally, the Federation establishes a Federal Agency for the Prevention of Torture as a further national mechanism which shall perform the corresponding tasks for individuals who have been deprived of their liberty under federal jurisdiction. The Commission shall work closely together with this agency, in particular in reporting.

The Commission is to use the infrastructure of the Centre for Criminology (Kriminologische Zentralstelle e.V.) as extensively as possible. The necessary secretariat is to be established with the Centre for Criminology.

Article 1 Establishment of the Commission for the Prevention of Torture

The *Länder* concluding the present Treaty shall establish a joint Commission for the Prevention of Torture which shall be designated to the United Nations as the national mechanism for the prevention of torture within the meaning of Article 3 of the Optional Protocol.

Article 2 Tasks and powers

(1) The Commission shall have the task of visiting places of detention within the meaning of Article 4 of the Optional Protocol under the jurisdiction of the *Länder* in order to prevent torture, drawing attention to problems and where appropriate making recommendations for improvements.

(2) The members of the Commission, individually or together, shall have the powers named in Article 19 of the Optional Protocol. The *Länder* shall grant to them the rights and powers named in Article 20 of the Optional Protocol.

(3) The Commission may make recommendations to the competent authorities in order to improve the conditions for persons who have been deprived of their liberty. The authorities shall be obliged to carefully examine these recommendations and to make a statement to the Commission within a suitable period.

(4) The Commission shall draft an Annual Report together with the Federal Agency for the Prevention of Torture, which shall be forwarded to the Federal Government, the *Land* Governments, the German Federal Parliament and the *Länder* Parliaments.

Article 3 Confidentiality

The members of the Commission shall be obliged to maintain the confidentiality of information becoming known to them within the framework of their tasks, also beyond the duration of their period of office.

Article 4 Members

(1) The Commission shall consist of four members who act on an honorary basis. The members shall be independent and not subject to any instructions. The number of the Commission members may be changed by a unanimous resolution of the Conference of Ministers of Justice.

(2) The members of the Commission shall be nominated by the Conference of Ministers of Justice for a four-year period of office. In derogation therefrom, on nomination of the first four members of the Commission, two members shall be nominated for four years and two members for two years. A renewed nomination shall be possible. They may lay down their office at any time. A member of the Commission may only be dismissed against his/her will prior to expiry of his/her period of office subject to the provisos of sections 21 and 24 of the German Judiciary Act by a unanimous resolution of the Conference of Ministers of Justice. In such cases, the Conference of Ministers of Justice shall nominate a successor for the remaining period of office.

(3) The Commission shall submit its reports and recommendations uniformly. The chair of the Commission shall be held by a member of the Commission who shall each be nominated for two years by the Conference of Ministers of Justice. A renewed nomination shall be possible.

(4) The members of the Commission shall be persons with acknowledged expertise in the field of the prison service or of the placement of offenders with mental disorders in psychiatric institutions, the police, psychiatry, criminology or in comparable fields. It should be ensured in the composition of the Commission that members are represented who are versed in various specialist fields. A balanced representation of the genders shall be ensured. The members of the Commission should not be older than 70 on their nomination.

(5) The members of the Commission shall receive compensation for expenditure and costs in accordance with the provisions contained in the Federal Travel Expenses Act.

Article 5 Secretariat

(1) The Commission shall have a secretariat at its disposal which shall perform the ongoing business of the Commission and which is to be established with the latter in accordance with the Statutes of the Centre for Criminology.

(2) The staff of the secretariat shall only be appointed or dismissed with the consent of the Commission. It shall only be subject to the instructions of the Commission from a factual point of view.

Article 6 Headquarters

The Commission shall be headquartered in Wiesbaden.

Article 7 Modus operandi and rules of procedure

The Commission shall issue rules of procedure. It shall be free in determining its strategies and modi operandi.

Article 8 Cooperation

The Commission shall cooperate with the Federal Agency for the Prevention of Torture. It may use staff and equipment together with the Federal Agency. The details shall be regulated by an administrative agreement.

Article 9 Funding

(1) The sharing of the costs for the Commission shall be effected in accordance with the Königstein Key.

(2) The funding shall be effected in the shape of subsidies being provided to the Centre for Criminology⁴⁰. The pro rata amounts shall become due in the course of each respective accounting year in two instalments on 31 May and 30 November in accordance with the valuations of the budget plan. The staffing and material expenditure shall be advanced by the Hessian Ministry of Justice, for Integration and European Affairs.

Article 10 Term, termination

(1) The present Treaty shall be concluded for an indefinite period; it may be terminated by each *Land* by written declaration to the other *Länder* with a termination period of one year as per the end of a calendar year.

(2) The effectiveness of the Treaty between the other *Länder* shall not be affected by the resignation of a *Land* therefrom.

(3) If a *Land* effectively terminates as per the end of a calendar year, the cost distribution between the remaining *Länder* shall be calculated in accordance with the correspondingly-adjusted Königstein Key.

Article 11 Entry into force

The present Treaty shall require ratification. It shall enter into force on the first of the month following the month in which the last ratification certificate of the *Länder* concluding the present Treaty is received by the Hessian Ministry of Justice, for Integration and European Affairs. The Hessian State Chancellery shall inform the other *Länder* involved of the time when the last ratification certificate was deposited.

Dresden, 25 June 2009

⁴⁰ The *Länder* agree that the subsidies for the Commission are not counted in the calculation of cuts in the budget valuations based on the resolution of the Conference of Heads of Government of the *Länder* of 30 March 2006.

VII. Administrative agreement on the National Agency for the Prevention of Torture in accordance with the Optional Protocol of 18 December 2002 to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment⁴¹

The Federal Republic of Germany, represented by the Federal Ministry of Justice, and the *Land*,

and

the *Land* Baden-Württemberg, represented by the Prime Minister, the latter in turn represented by the Minister of Justice,

the Free State of Bavaria, represented by the Prime Minister, in turn represented by the Minister of State for Justice and for Consumer Protection,

the *Land* Berlin, represented by the Governing Mayor, in turn represented by the Senator for Justice,

the *Land* Brandenburg, represented by the Prime Minister, in turn represented by the Minister of Justice,

the Free and Hanseatic City of Bremen, represented by the Senator for Justice and Constitution,

the Free and Hanseatic City of Hamburg, represented by the Senate, in turn represented by the Chairperson of the Ministry of Justice,

the *Land* Hesse, represented by the Prime Minister, in turn represented by the Minister of Justice, for Integration and European Affairs,

the *Land* Mecklenburg-Western Pomerania, represented by the Prime Minister, the latter in turn represented by the Minister of Justice,

the *Land* Lower Saxony, represented by the Prime Minister, in turn represented by the Minister of Justice,

the *Land* North Rhine-Westphalia, represented by the Prime Minister, the latter in turn represented by the Minister of Justice,

the *Land* Rhineland Palatinate, represented by the Prime Minister, in turn represented by the Minister the Justice,

the Saarland, represented by the Prime Minister, in turn represented by the Minister of Justice,

⁴¹ Non-official translation.

the Free State of Saxony, represented by the Prime Minister, in turn represented by the Minister of State for Justice and for Europe,

the *Land* Saxony-Anhalt, represented by the Prime Minister, in turn represented by the Minister of Justice,

the *Land* Schleswig-Holstein, represented by the Prime Minister, in turn represented by the Minister for Justice, Equality and Integration and

the Free State of Thuringia, represented by the Prime Minister, the latter in turn represented by the Minister of Justice,

conclude the following Administrative Agreement:

Preamble

The Federal Republic of Germany signed the Optional Protocol of 18 December 2002 to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as "Optional Protocol") on 20 September 2006. The German Federal Parliament approved the Optional Protocol by Act of 26 August 2008 (Federal Law Gazette II p. 854). The Federal Republic of Germany deposited the ratification certificate on the Optional Protocol at the United Nations in New York on 4 December 2008. The Optional Protocol came into force for the Federal Republic of Germany on 3 January 2009 (Federal Law Gazette II p. 536).

The Optional Protocol provides for the creation of national preventive mechanisms for the prevention of torture. Their tasks are carried out under the jurisdiction of the *Länder* by the Joint Commission for the Prevention of Torture in accordance with the State Treaty on the establishment of a national mechanism of all *Länder* in accordance with Article 3 of the Optional Protocol of 18 December 2002 to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as "Commission of the *Länder*"), and are carried out under federal jurisdiction by the Federal Agency for the Prevention of Torture (hereinafter referred to as "Federal Agency").

The Federal Agency and the Commission of the *Länder* shall together form the National Agency for the Prevention of Torture. They shall work together in accordance with the present Administrative Agreement.

Section 1 Subject-matter

The subject-matter of the present administrative agreement is the cooperation between the Federal Agency and the Commission of the *Länder* within the framework of the National Agency for the Prevention of Torture.

Section 2 Cooperation

(1) The Federal Agency and the Commission of the *Länder* shall work together as the National Agency for the Prevention of Torture, and shall also express same in their external appearance. They shall always orientate their activities to optimally achieve the objectives of

the Optional Protocol.

(2) The Federal Agency and the Commission of the *Länder* shall coordinate in the planning and implementation of their projects, in particular with the aim in mind of making efficient use of their resources.

(3) The Federal Agency and the Commission of the *Länder* may avail themselves of the services of interpreters and experts as their respective funds permit.

Section 3 Headquarters

The seat of the National Agency for the Prevention of Torture shall be Wiesbaden.

Section 4 Secretariat

(1) The National Agency for the Prevention of Torture shall avail itself of the infrastructure of the Centre for Criminology (Kriminologische Zentralstelle e.V.). To this end, the Centre for Criminology shall provide a secretariat which shall carry out the everyday business of the National Agency for the Prevention of Torture and support the latter with staff and equipment.

(2) The staff of the secretariat of the National Agency for the Prevention of Torture shall only be appointed or dismissed with the consent of the Federal Agency and of the Commission of the *Länder*. It shall in specialist terms only be subject to the instructions of the Federal Agency and of the Commission of the *Länder*.

Section 5 Funding

(1) The funding requirement of the National Agency for the Prevention of Torture may be a maximum of Euro 300,000.00 per year. A maximum amount of Euro 100,000.00 of this sum shall be accounted for by the Federal Agency, which shall be met from the budget of the Federation, and a maximum amount of Euro 200,000.00 by the Commission of the *Länder*, which shall be met from the budgets of the *Länder*. The distribution of the shares accounted for by the respective *Länder* shall be effected in accordance with the Königstein Key. One-third of the joint costs shall be met by the Federation and two-thirds by the *Länder*.

(2) The staff and material expenditure shall be met by the Hessian Ministry of Justice, for Integration and European Affairs. The proportions of the Federation and the *Länder* shall become due in the course of each accounting year in two instalments on 31 May and 30 November in accordance with the methods followed in the budget plan of the Centre for Criminology. Over- and under-payments by the Federation regarding the Federal Agency or by the *Länder* with regard to the Commission of the *Länder* towards the funding needed in accordance with the annual account shall be balanced in the second sub-amount of the following accounting year.

(3) The disbursement by the Hessian Ministry of Justice, for Integration and European Affairs to the Centre for Criminology shall be effected in the shape of a monthly advance payment which shall cover the fixed costs of both the Commission of the *Länder* and of the Federal Agency. Further staff and equipment shall be disbursed on an ad hoc basis as funds permit.

(4) The respectively valid version of Sections 14 and 15 of the Statutes of the Centre for Criminology shall apply mutatis mutandis to drawing up the budget plan and the annual account.

(5) The satisfaction of the obligations from the present Agreement shall be subject to the proviso of the provision of budget funding in the budget plan of the party respectively affected.

Section 6 Annual Report

The National Agency for the Prevention of Torture shall draw up a joint Annual Report which shall be forwarded to the Federal Government, the *Land* Governments, the German Federal Parliament and the *Länder* Parliaments.

Section 7 Term

(1) The present Administrative Agreement is herewith concluded for an indefinite period. It may be terminated by any party by written declaration towards the other parties with a one year's notice period to the end of a calendar year.

(2) The departure of one party shall not affect the effectiveness of the agreement between the other parties.

(3) Should a *Land* effectively terminate to the end of a calendar year, the cost distribution between the remaining *Länder* shall be calculated in accordance with the correspondingly adjusted Königstein Key.

Section 8 Transitional provision

In derogation from section 5, the Hessian Ministry of Justice, for Integration and European Affairs shall only advance the portion accounted for by the *Länder* for the Commission of the *Länder* for the year 2010. The breakdown of the share respectively accounted for by the *Länder* shall also be effected in this respect in accordance with the Königstein Key.

The share for 2010 accounted for by the Federal Agency shall be attributed directly by the Federation to the Centre for Criminology.

Section 9 Entry into force

The present Administrative Agreement shall enter into force on the first day of the month after next after having been signed by all parties concluding the present Agreement.

VIII. **Resolution of the 81st Conference of Ministers of Justice of 23 and 24 June 2010 in Hamburg on the nomination of the members of the Commission of the *Länder* against Torture to be established⁴²**

TOP I.12

Nomination of the members of the Commission of the *Länder* against Torture to be established

Rapporteur: Hesse

1. In accordance with Article 4 of the State Treaty on the establishment of a national mechanism of all *Länder* in accordance with Article 3 of the Optional Protocol of 18 December 2002 to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Ministers of Justice herewith nominates the following persons as members of the Commission of the *Länder* against Torture:
 - a) State Secretary ret. Prof. Dr. Hansjörg Geiger (Chairman)
 - b) Presiding Judge at Stuttgart Higher Regional Court Albrecht Rieß
 - c) Prof. Dr. Dieter Rössner, University Professor at the University of Marburg
 - d) ret. Elsava Schöner (*Leitende Regierungsdirektorin*)
2. In accordance with Article 4 para. 2 of the State Treaty, the members re No. 1 a) and c) are herewith initially nominated for four years, and the members re No. 1 b) and d) initially for two years.
3. State Secretary ret. Prof. Dr. Hansjörg Geiger is herewith nominated as Chairman.
4. The nomination shall become effective on entry into force of the State Treaty.

⁴² Non-official translation.

IX. Rules of procedure of the Commission of the *Länder* for the Prevention of Torture

Preamble

The prohibition of torture and mistreatment is among the most important human rights guarantees. The United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UN Anti-Torture Convention) obliges the States Party to prevent any act of torture and to make torture offences punishable. Article 16 para. 1 of the UN Anti-Torture Convention lends concrete form to this obligation by stipulating that they should also “prevent [...] other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1”.

The Optional Protocol to the UN Anti-Torture Convention, moreover, contains a method for the prevention of torture and mistreatment. To this end, Article 3 of the Optional Protocol stipulates that national preventive mechanisms are to be established. The national preventive mechanism in Germany is composed of the Federal Agency and the Commission of the *Länder*. The Commission of the *Länder* is hence mandated to use a preventive system of visits to prevent not only torture in the narrow sense of the word, but any kind of mistreatment. This obligation to prevent torture and mistreatment is broad and is not static, but its specific concept can develop further. For the inspection of places where people are deprived of their liberty, this means that the Commission of the *Länder* not only draws attention to obvious problems, but also sheds light on circumstances which may favour torture and mistreatment. Further, in accordance with Art. 2 para. 3 of the State Treaty, the Commission of the *Länder's* job is to improve conditions for persons who have been deprived of their liberty and to make recommendations to the competent authorities.

The Commission of the *Länder* primarily uses as its basis the valid German law and the concomitant case-law when making its visits. Furthermore, where appropriate the Commission of the *Länder* relies on international agreements which are relevant to its mandate, and also includes international case-law as well as recommendations of the corresponding committees of the United Nations and of the Council of Europe in its assessment.

The Commission of the *Länder* for the Prevention of Torture (hereinafter: Commission of the *Länder*) adopted the following rules of procedure, which were most recently amended on 7 July 2011, at its session held on 24 September 2010, in accordance with Article 7 of the State Treaty on the establishment of a national mechanism of all *Länder* in accordance with Article 3 of the Optional Protocol of 18 December 2002 to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

I. Organisation, structure and mandate of the Commission of the *Länder*

Section 1 Tasks of the Commission of the *Länder*

The Commission of the *Länder* shall form together with the Federal Agency for the Prevention of Torture (hereinafter: Federal Agency) the National Agency for the Prevention of Torture. The Commission of the *Länder* shall have the following tasks:

- to regularly visit places where people are deprived of their liberty within the remit of the Federal *Länder*,
- to make recommendations to the competent authorities and facilities in order to improve the treatment and conditions of the persons placed there in accordance with the national and international requirements,
- to make proposals and observations on existing legal provisions or on those in the drafting stage.

Section 2 Competence of the Commission of the *Länder*

The Commission of the *Länder* shall be competent for all “places where people are deprived of their liberty” within the remit of the *Länder*. These shall include prisons, closed wings in psychiatric hospitals, detention awaiting deportation facilities, detention centres for asylum-seekers, police stations of the *Länder*, facilities of youth welfare, closed homes for children and juveniles, as well as senior citizens’ homes and long-term care homes.

Section 3 Membership and chair

(1) The Commission of the *Länder* shall consist of four members working on an honorary basis. One member of the Commission of the *Länder* shall be appointed as the chairperson of the Commission of the *Länder*.

(2) The four members of the Commission and the chairperson shall be nominated by the conference of the Ministers of Justice for a period of office of four years. In derogation from this, in nominating the first four members of the Commission, two members shall be nominated for four years and two members for two years.

(3) The chairperson shall represent the Commission of the *Länder* externally, as well as vis-à-vis the Federal Agency and the Centre for Criminology (*KrimZ*).

Section 4 Tasks of the full-time secretariat (secretariat)

(1) The secretariat shall support the Commission of the *Länder* and the National Agency in the performance of its statutory tasks.

(2) The tasks of the secretariat shall include the following activities: Preparation for and coordination of the visits, as well as of other activities, support on inspection visits, preparation for national and international correspondence, content preparation and follow-up of sessions and visits, other general secretariat tasks.

(3) The Commission of the *Länder* and the National Agency shall coordinate in the planning and implementation of their projects, in particular with the intention of using the resources of the secretariat sensibly. To this end, at the beginning of each period of activity, they shall determine which research associate should mainly report to the Commission of the *Länder* and the National Agency.

Section 5 Sessions of the Commission of the *Länder*

(1) The sessions of all members the of Commission of the *Länder* shall take place as a rule at least twice per year. Additional sessions may be convened by the Chairperson depending on needs, or in response to the mandate of a member. All members of the Commission of the *Länder* shall be entitled to attend the sessions. The attendance of members of the Federal Agency shall be at the invitation of the Chairperson.

(2) The agenda shall be drawn up by the Chairperson on the basis of the topics proposed by the individual members of the Commission of the *Länder*, and shall be forwarded to the members in advance, with any relevant further documents. It shall be adopted with a simple majority at the beginning by the members in attendance.

(3) A minute-taker shall be determined at the beginning of each session who shall record the resolutions taken during the session in writing. The minutes shall be presented to all members of the Commission of the *Länder* soon after the conclusion of the session for their approval.

(4) Each member of the Commission of the *Länder* may table motions for a vote on which the Commission of the *Länder* can decide with a simple majority of the members in attendance. Motions as well as the outcome of the ballot shall be included in the minutes.

(5) A simple majority of the members in attendance shall be sufficient for all and any resolutions relating to the work of the Commission of the *Länder*. Amendments to the rules of procedure can only be adopted with a qualified majority, that is with the majority of the prescribed number of members. Resolutions which do not require any prior deliberation may also be brought about by written or electronic means.

II. Regulations regarding the implementation of inspection visits

Section 6 Procedure for selecting places to be visited

(1) At the beginning of each period of activity, the Commission of the *Länder* shall draw up a provisional list of places which it would like to visit during this period.

(2) It shall then make a selection using the lists transmitted by the Ministries according to the size and location of the facility, potential problem areas, reports in newspapers or on individual cases. It can also take the reports of other monitoring mechanisms as an orientation here (e.g. psychiatry commissions, ombudsman facilities, CPT/SPT). The Commission of the *Länder* shall furthermore take a suitable geographical area into account when selecting the place to be visited.

(3) The Commission of the *Länder* may set a topical focus for each period of activity, and shall hence restrict the selection of the places to be visited to a specific category (e.g. prisons, youth detention, psychiatric facilities, police units, etc.).

Section 7 Preparation for the inspection visits

The secretariat shall compile the following information in order to prepare a visit:

- (1) legal provisions valid in the respective Federal *Land*;
- (2) detailed information on the facility to be visited, such as its size, competence and problem areas;
- (3) information which the Commission of the *Länder* received from non-governmental organisations and other facilities or persons working in an area relevant for the Commission of the *Länder*;
- (4) a visit plan stating the provisional course of the visit and the selection of the interlocutors;
- (5) a list of information compiled by the management of the facility that is to be visited, as requested by the Commission of the *Länder*.

Where needed, further information shall be consulted and the Commission shall adjust its preparation for the visits and the course of the visits accordingly.

Section 8 Implementation of the inspection visits

- (1) Visits may take place both announced and unannounced.
- (2) The visits shall as a rule be implemented by at least two members of the Commission of the *Länder*, who shall be supported by at least one full-time staff member of the secretariat. The Commission of the *Länder* may decide on the consultation of experts or interpreters for individual visits (e.g. psychologists, physicians).
- (3) In addition to the inspection of the facility, confidential talks with staff and with individuals in custody shall also be carried out during the visit, where the latter are in agreement. Moreover, the Commission of the *Länder* may inspect all relevant documents containing information on the visited facility or on the persons located there.

Section 9 Visit reports

- (1) After each inspection visit, the members the Commission of the *Länder* involved in it shall draw up a written report of the outcome of the visit within four weeks.
- (2) The writing of the draft report shall be a matter for the secretariat. The members of the Commission of the *Länder* shall pass their observations on to the secretariat, as well as any other knowledge and information.

(3) To draw up the draft report, the secretariat may, as appropriate, also obtain subsequent information from the facility visited.

(4) The draft report shall be forwarded to the participating members of the Commission of the *Länder* for their consent.

(5) The Chairperson of the Commission of the *Länder* shall then forward the visit report to the competent Ministry with a request for observations. The facility visited shall also receive a duplicate of the report.

Section 10 Annual Report

(1) The Commission shall publish an Annual Report of its activities drawn up together with the Federal Agency for the Prevention of Torture. This Report shall be forwarded to the German Bundestag and the *Land* Parliaments, the *Land* Governments and the Federal Government. The Annual Report shall contain both the outcome of the visits and the reactions of the Ministries regarding the implementation of the recommendations.

(2) The Commission of the *Länder* and the Federal Agency shall draft their segments of the Report, each on its own responsibility. The coordination of the contributions, as well as all and any activities in connection with the publication, shall be incumbent on an editorial team determined at the beginning of each period under review.

III. Confidentiality

Section 11 Respect for confidentiality and data protection

(1) The members of the Commission of the *Länder* and the staff members of the secretariat shall be obliged to maintain silence with regard to confidential information which they receive during their activities. This obligation shall also last beyond the active membership of the Commission of the *Länder*.

(2) Documents containing personal and confidential data shall be kept securely and not made accessible to third parties.

(3) Personal data may only be passed on with the explicit consent of the person in question.

Section 12 Amendments and entry into force

(1) These rules of procedure shall come into force by resolution of the qualified majority of the statutory number of members of the Commission of the *Länder*.

(2) Amendments of the rules of procedure shall require a qualified majority of the statutory number of members of the Commission of the *Länder*.

National Agency for the Prevention of Torture
Viktoriastraße 35
65189 Wiesbaden
Tel.: 0611-160 222 818
Fax: 0611-160 222 829
E-Mail: info@antifolterstelle.de