



NATIONAL
AGENCY
FOR THE
PREVENTION
OF
TORTURE

ANNUAL REPORT 2014

Period under review:

1 January – 31 December 2014



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Design: Nicola Scharfenberg, Jina Song,
Marko Hemmerich and Giacomo Reichl

National Agency for the Prevention of Torture
Viktoriastraße 35
65189 Wiesbaden
Tel.: +49 (0)611-160 222 8-18
Fax: +49 (0)611-160 222 8-29
Email: info@nationale-stelle.de
www.nationale-stelle.de

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FOREWORD

The National Agency for the Prevention of Torture is the body responsible in Germany for ensuring humane conditions and treatment in custody. The National Agency for the Prevention of Torture comprises the Federal Agency for the Prevention of Torture and the Joint Commission of the *Länder* for the Prevention of Torture, which every year submit a joint Annual Report to the Federal Government, the German Bundestag, the *Land* governments and the *Land* parliaments. This Annual Report covers the period from 1 January to 31 December 2014.

The National Agency visited a total of 58 facilities in 2014, giving priority to youth detention centres. Its expectations in respect of the execution of youth detention are set out in Chapter III, section 1. The findings and recommendations of the Federal Agency and of the Joint Commission made on the basis of

their visits plus the responses of the supervisory authorities are presented in Chapters II and III.

The Federal Agency was already enlarged in 2013 following the appointment of a second member. On 6 November 2014 the Conference of Ministers of Justice of the *Länder* then decided to expand the Joint Commission as of 1 January 2015 by appointing four new members drawn from the field of psychiatry, from the police and youth welfare services.

Increasing the membership both of the Federal Agency and of the Joint Commission represents a key step towards creating a more effective preventive mechanism. Expanding their human resources will also lead to the scaling up of the programme of visits, as in future more facilities outside of the prison system are to be inspected. Moreover, the new members will enrich the work of the National Agency on account of their diverse professional expertise.

LIST OF ABBREVIATIONS

BVerfGE	Decisions of the Federal Constitutional Court
CAT	Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
CCTV	closed-circuit television
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
EU	European Union
OPCAT	Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
OJ	Official Journal of the European Union
PTSD	post-traumatic stress disorder
SPT	UN Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
UN	United Nations

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

I – BACKGROUND

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

1.1 – INSTITUTIONAL FRAMEWORK

The prevention of torture and ill-treatment is laid down in the Optional Protocol to the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (OPCAT). It supplements the UN Convention against Torture of 1984 by means of a preventive approach. Article 3 of the OPCAT requires that the States Parties set up, designate or maintain a national preventive mechanism. These mechanisms complement the work of the UN Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), which was also established on the basis of the OPCAT. The National Agency was set up to act as Germany's national preventive mechanism. It comprises the Federal Agency for the Prevention of Torture (Federal Agency), which is responsible for facilities run at federal level, and the Joint Commission of the *Länder* for the Prevention of Torture (Joint Commission), which is responsible for facilities at *Länder* (federal state) level.

In accordance with Article 18 of the OPCAT, the States Parties are obliged to guarantee the functional independence of the national preventive mechanisms and to make available the necessary financial resources

The Director and Deputy Director of the Federal Agency are appointed by the Federal Ministry of Justice and Consumer Protection; the Chair and three (as of 2015: seven) members of the Joint Commission are appointed by the Conference of Ministers of Justice of the *Länder*. The members of the National Agency are not subject to any technical or legal supervision and are independent in the exercise of their functions. They act on an honorary basis and may resign their office at any time. They may only be removed before the end of their term in office subject to the strict conditions set out in sections 21 and 24 of

the German Judiciary Act. The National Agency has a Secretariat staffed with full-time employees and is based in the Centre for Criminology (KrimZ) in Wiesbaden.

The Federal Agency and the Joint Commission work closely when it comes to planning and carrying out their activities, and are supported in this by the Secretariat. They hold regular joint working sessions to that end.

1.2 – TASKS

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

At the federal level this definition encompasses all of the approx. 280 detention facilities operated by the Federal Armed Forces, Federal Police and customs authorities. The Federal Agency is also responsible for monitoring forced returns being accompanied by the Federal Police. The overwhelming majority of places of detention, however, fall within the remit of the Joint Commission. As of May 2015 these comprised 186 organisationally independent prisons, approx. 1,430 *Land* police stations, more than 300 psychiatric hospitals, all courts with holding cells, seven facilities enforcing custody pending deportation, and approx. 27 child and youth welfare facilities with closed units. The around 10,900 residential care homes and nursing homes for the elderly in Germany are also considered places of detention under the above definition.

In September 2014 several incidents involving assaults on the occupants of reception centres for asylum seekers in North Rhine-Westphalia by staff employed by private security firms made the headlines. It appears that one person was deprived of their liberty on account of being locked in a room. The National Agency subsequently asked the *Länder* to provide information about the use of private security services in refugee centres and the possibility of people being deprived of their liberty. Thirteen of the 16 *Länder* to

PERSONNEL AND FINANCIAL RESOURCES

whom the enquiry was sent supplied the National Agency with information. Bremen, North Rhine-Westphalia and Thuringia did not respond; the information supplied by some of the other *Länder* was incomplete. According to the currently available information, reception centres are not places of detention within the meaning of Article 4 para. 1 of the OPCAT; however, comprehensive responses from all the *Länder* are needed in order to be able to reach a final assessment in this regard.

In addition to its visits, the National Agency is tasked with making suggestions and observations regarding both existing and draft legislation.

1.3 – POWERS

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

- + Access to all information concerning the number of persons being deprived of their liberty at places of detention as defined in Article 4 of the OPCAT, as well as the number of places of detention and their location;

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

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

2 – PERSONNEL AND FINANCIAL RESOURCES

When they were first established the Federal Agency consisted of one honorary member, the Joint Commission of four honorary members. It proved impossible for the two bodies to fulfil the official mandate resulting from the OPCAT under these preconditions; more specifically, they were unable to conduct regular visits as required. Not only were the five honorary members unable to visit even an approximately representative number of the total of around 13,000 facilities, the Joint Commission was also unable to visit specific types of facilities because it did not have any members with the relevant professional background. The National Agency has repeatedly drawn attention to this matter, for instance in its Annual Reports, and has called on the competent bodies to increase its personnel and financial resources. Similar calls have been made at national level,

including by the German Institute for Human Rights and several non-governmental organisations.¹

The National Agency's personnel and financial resources have also repeatedly come under criticism at international level. The SPT, for example, found fault with the National Agency's budgetary and personnel resources during its visit to Germany in April 2013.² The Federal Government responded to the criticism in June 2013 by appointing a Deputy Director to the Federal Agency. In June 2014 the 85th Conference of Ministers of Justice of the *Länder* then adopted a resolution to double the number of members of the Joint Commission to a total of eight. The additional members were proposed by the Ministry of Health, the Ministry of Social and Family Affairs, and the Ministry of the Interior so as to boost the Joint Commission's specialist knowledge in areas in which

¹ Follmar-Otto, Petra: *Die National Agency zur Verhütung von Folter fortentwickeln!*, Berlin: Deutsches Institut für Menschenrechte, 2013

² CAT/OP/DEU/1, paragraph 19 et seqq.

it had previously been lacking such expertise. The four new members of the Joint Commission took up their work on 1 January 2015. At the same time the Federal Government and the *Länder* agreed to increase the National Agency's budget. From 2015, therefore, it will have a total budget of EUR 540,000. In order to be able to cope with the additional workload, the

Secretariat will be hiring another full-time member of staff in 2015.

The National Agency feels that the increase in budgetary and personnel resources is an important step towards creating a preventive mechanism which is able to meet the requirements set out in the OPCAT.

3 – THE NATIONAL AGENCY IN THE INTERNATIONAL CONTEXT

The National Agency is Germany's national preventive mechanism pursuant to Article 3 of the OPCAT. Each State Party to the OPCAT must establish such a mechanism, and it may comprise one or several facilities. As at 30 April 2015, the OPCAT had 95 signatory states and had been ratified by 77 states, including all the Member States of the Council of Europe, with the exception of Andorra, Belgium, Iceland, Ireland, Latvia, Russia, San Marino and Slovakia.

Of these 77 States Parties, 61 have already designated a national preventive mechanism based on one of three models: Under one model, the remits of existing ombuds institutions were extended to include the prevention of torture (e.g. in Sweden, Austria and Spain); secondly, various existing monitoring mechanisms were combined to create a national preventive mechanism (e.g. in the United Kingdom); a third group of states, including France, Switzerland and Germany, established new national preventive mechanisms.

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

The SPT may visit the States Parties for two reasons: First, like the European Committee for the Prevention of Torture (CPT), it can visit places of detention in the States Parties with the aim of making recommendations regarding protecting people deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment. To that end it essentially has the same powers as the national preventive mechanisms. Second, it may also conduct visits to support the States Parties in setting up their national preventive mechanisms and to offer training and technical assistance. It made such a visit to Germany in April 2013.

Representatives of the National Agency were involved in various international activities in the period

under review. For example, a member of the Joint Commission gave a presentation on the work and structure of the National Agency during a seminar on "Measures to Improve Prison Conditions at EU Level" held at the Academy of European Law in Trier on 13/14 February 2014. On 19/20 May 2014 a member of the Joint Commission took part in the conference of the heads of prison training colleges in Austria, Switzerland and Germany, which was held in Vienna. The conference dealt, amongst other things, with cooperation between German prison training colleges and the Joint Commission in regard to prison staff training and development.

3.1 – MEETING OF PREVENTIVE MECHANISMS IN THE GERMAN-SPEAKING COUNTRIES

The National Agency and the Federal Ministry of Justice and Consumer Protection invited representatives of the Ombuds Board of Austria and of the Swiss National Commission for the Prevention of Torture to a meeting in Berlin on 3/4 April 2014 to discuss experience and with the aim of establishing closer cooperation between the three preventive mechanisms. During the two-day meeting the three organisations first shared information about the legal and practical framework for their work. Together with representatives from the Federal Ministry of Justice and Consumer Protection they also discussed the dilemma arising on account of the independence of the national preventive mechanisms on the one hand and their need to cooperate with public authorities on the other. Those taking part also shared experiences gained in applying their various methodologies during visits, following up on the implementation of their recommendations and continuing training for their members and employees. Other areas they addressed included monitoring pre-deportation detention facilities and forced returns by air and visiting residential care homes and nursing homes for the elderly. All

those who took part in the event said they felt that it had been extremely valuable and beneficial, which is why regular meetings are planned for the future. A first follow-on meeting is to take place in Vienna in 2015.

3.2 – INTERNATIONAL CONFERENCE ON HUMAN RIGHTS BEHIND BARS

A conference on “Human Rights Behind Bars” organised jointly by the Centre for Criminology and the National Agency was held in Wiesbaden on 16/17 October 2014. The conference dealt with important issues relating to the human rights of prisoners, for example the role criminology can play in this context. The requirements made of prison systems under international law and international visiting mechanisms were presented, as well as the work of national preventive mechanisms in other European countries, along with the associated challenges.

The second day of the conference revolved around the CPT’s long-standing experience and its significance for the German prison system. The conference was rounded off with an open discussion of effective ways of preventing human rights violations behind bars.

The conference was attended by representatives of the federal and *Land* ministries, international monitoring mechanisms, the relevant institutions and civil society representatives.³

3.3 – OTHER INTERNATIONAL EVENTS AND ACTIVITIES

The Ludwig Boltzmann Institute of Human Rights in Vienna held a workshop on “Strengthening the Effective Implementation and Follow-up of Recommendations by Torture Monitoring Bodies” on 6/7 October 2014. The National Agency attended the event, which was directed at European national preventive mechanisms and international human rights experts. The aim of the workshop was to discuss and further develop the national preventive mechanisms’ follow-up procedures. There are plans to hold the event again in 2015 as well as to publish a book containing insights gained from several such workshops.

The National Agency took part in the Fifth East European Conference on National Preventive Mechanisms, which was held on 13/14 November 2014 and was organised by the Ukrainian national preventive mechanism, the Kharkiv Institute for Social Researches and the Organisation for Security and Coop-

eration in Europe (OSCE). The conference provided the opportunity to share experience of various models adopted by national preventive mechanisms, working with volunteers and working in conflict areas. The National Agency gave a presentation describing its structure and working method. Presentations were also given by representatives of the Association for the Prevention of Torture (APT), the Network of People Living with HIV and the national preventive mechanisms of the United Kingdom, Poland, Kazakhstan and Kirgizstan.

“Protection of Human Rights Through Monitoring of the Police” was the topic of a three-day study visit which members of the Ministry of the Interior of Turkey paid to the National Agency from 25 to 27 November 2014 as part of an EU programme.

Turkey ratified the OPCAT in 2011 and in January 2014 designated the newly established National Human Rights Institution of Turkey as its national preventive mechanism. Turkey has a number of institutions which have, amongst other things, supervisory powers in regard to places of detention. So far the various mechanisms have been operating independently of one another. Turkey’s national preventive mechanism is still in the early phase of being set up. The study visit thus served to draw on Germany’s experience of creating a new monitoring institution under the OPCAT and to learn about the National Agency’s organisational structure and working method.

On the first day of the study visit representatives of the National Agency explained the facility’s structure and the challenges faced when implementing the OPCAT in a federal state. Another focus of the visit was on monitoring police stations and human rights issues arising in a police custody setting. On the second day of its visit the delegation accompanied the Joint Commission to Frankfurt am Main Police Headquarters. Issues addressed on the last day of the visit included cooperation with supervisory authorities, other monitoring mechanisms and non-governmental organisations. In this context a representative of the Federal Police based at Frankfurt am Main Airport reported about his experience of implementing the National Agency’s recommendations.

³ The Centre for Criminology will be publishing the conference papers in a separate volume in its publication series.

4 – VISITS

4.1 – BASIC PRINCIPLES

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

The National Agency applies several criteria when selecting the places of detention it wishes to visit. In line with their preventive mandate, the Federal Agency and the Joint Commission visit as many facilities with diverse remits as possible. They base their choice of places of detention to visit on the size and location of the facility, possible problem areas, and reports in the media or regarding individual cases. They endeavour to ensure an appropriate geographical distribution of the facilities visited.

4.2 – PROCEDURE

The procedure for the National Agency's inspection visits varies depending on the type of facility and local conditions. A general description of the methodology applied to these visits is provided below.

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

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

deprivation of liberty. In a final meeting with the head of the facility the delegation then discusses key outcomes of the visit. These are also communicated to the highest supervisory authority by telephone following the visit.

Nearly all of the visits the National Agency has conducted so far have given rise to a number of recommendations for improving the conditions of detention and treatment of detained persons, some of which related to unacceptable shortcomings. A summary of the recommendations made and responses of the supervisory authorities referring to the period under review are included in Chapters II and III of this Annual Report. These chapters also include reports on visits conducted in 2013 on account of either the report or the supervisory authority's response not yet being available at the time the Annual Report 2013 went to press. The National Agency publishes the reports of its visits and the relevant ministries' responses on its website.

The National Agency is not able to visit all of the facilities which fall within its remit. That is why recommendations should not only be taken up and implemented by the specific facilities at which a particular recommendation is directed, but by all the facilities concerned. The respective supervisory authorities thus have a key role to play when it comes to the dissemination and implementation of the recommendations made.

4.3 – ENQUIRIES BY INDIVIDUALS

In the period under review the National Agency received individual enquiries regarding 24 separate cases, which all referred to facilities within the Joint Commission's remit.

Since the National Agency does not operate as an ombuds institution, it is not authorised to remedy or offer legal advice regarding individual enquiries. Reference is explicitly made to this fact in the replies sent to those submitting enquiries and on the National Agency's website. Nevertheless, details regarding concrete incidents are of great practical relevance for the work of the National Agency. They provide background information for inspection visits and can draw attention to specific problems. In addition, concrete information and tips can have an influence on which facilities the National Agency visits and on the priorities it sets as a result.

Where an enquiry contains information regarding serious shortcomings, the National Agency will, with the consent of the person submitting the enquiry, contact the competent authority. In one instance this led to someone being examined a second time by a doctor not affiliated to the facility to establish wheth-

er he was in fact fit to be detained. Where an enquiry indicates that there is a risk of suicide or that someone is a danger to others, the National Agency will also immediately contact the head of the facility concerned.

5 – STANDARDS

The National Agency has standardised its recommendations in respect of complaints it has repeatedly raised in the past.

they wish to do so. Irrespective of this, at least one shower in each shower room should be partitioned off.⁶

5.1 – PROTECTING PRIVACY

5.2 – PHYSICAL RESTRAINTS

5.1.1 – Video surveillance

Privacy must be protected in a suitable manner wherever people are deprived of their liberty. Where video surveillance (CCTV monitoring) is in operation, this can be achieved, for instance, by pixellating images of the sanitary facilities. If need be, it may be conceivable, in carefully considered, substantiated and documented individual cases, to permit unrestricted monitoring of a cell where there is an acute danger of self-harm or suicide. The person concerned must at any rate be informed of the fact that optical surveillance is in operation. The surveillance must be apparent or at least perceptible to the person concerned; covert video surveillance is not permissible.⁴

The use of physical restraints should be ordered only as a measure of last resort and on the basis of clear and strict conditions, and should be applied only for the shortest possible period of time. Physical restraints should be applied in as careful a manner as possible, which is why the use of systems of belts or bandages is recommended. The use of metal devices should always be avoided on account of the high risk of injury. Out of respect for a person's sense of shame, it should be examined on a case-by-case basis whether the person concerned can change all or some of their clothes to ensure they are wearing clothing which is suitable or provided specifically for this purpose. Having to fully undress and wear only the underpants provided, as a standard procedure, is degrading and engenders a feeling of shame. Along with continuous, direct observation by a member of staff (known as "Sitzwache"), anyone who is subject to physical restraint must be checked on regularly by a doctor. Comprehensible and comprehensive written documentation of the entire procedure must be provided each time a person is put under physical restraint.

5.1.2 – Peepholes

Peepholes should not be used without giving advance warning by means of knocking on the door or some other prompt. This especially applies where a toilet is in full view of the person looking through the peephole. The detainee must be informed about the fact that the peephole will not be used without advance warning being given when they use the toilet.

In view of the possible risk of injury and to ensure full respect for human dignity in prisons, the practice adopted in Diez Prison, for example, is regarded as exemplary: A system of belts on a hospital bed in the prison infirmary is used whenever physical restraint is required. This guarantees medical supervision of the person put under physical restraint.⁷

5.1.3 – Clothing worn in specially secured rooms

When placed in a specially secured room containing no dangerous objects, both male and female detainees should be given a pair of paper underpants and a paper shirt to wear.⁵

5.3 – SOLITARY CONFINEMENT

5.1.4 – Communal showers

Those who have been deprived of their liberty should be given the opportunity to shower alone if

To mitigate the negative consequences of solitary confinement on the mental and physical health of the person concerned, sufficient opportunity to engage in

⁴ National Agency, *Annual Report 2013*, p. 27–28

⁵ cf. National Agency, *Annual Report 2013*, p. 83

⁶ see p. 42 below

⁷ cf. National Agency, *Annual Report 2012*, p. 20

purposeful activity and appropriate human contact (e.g. extended visiting times) should be provided. Those placed in solitary confinement should also be regularly visited by a psychiatrist/psychologist and by a pastoral worker. These meetings should be conducted in an appropriate and confidential environment.⁸

5.4 – FURNISHINGS AND FITTINGS IN PRISON CELLS

Prisoners should have access to natural, unfiltered light in their cells. Their view out of the window should not be obstructed by opaque plexiglass panes, for instance.⁹

Multi-occupancy cells must have a separate toilet with separate ventilation. The minimum required floor space of a multi-occupancy cell is dependent on the individual circumstances. Account must, for example, be taken of the time prisoners are permitted to spend outside the cell and whether they are able to look out of the window.¹⁰

5.5 – FURNISHINGS AND FITTINGS IN CUSTODY CELLS

Custody cells used by the police, the customs authorities and the military police should be equipped with fire detectors so as to guarantee the safety of those kept in custody in the event of fire. The custody cells should also have night lighting so that, for example, the emergency call button can be easily located without the source of light then preventing the detained person from sleeping. Likewise, custody cells should have an intercom, especially when they are located in remote parts of the building. The temperature in custody cells should not exceed 22°C. A sufficient number of washable, flame-resistant mattresses should be kept in stock. When new custody facilities are built, it should be ensured that natural light is available in the rooms. Facilities which do not have access to daylight are not suitable for detaining people for any significant length of time.¹¹

5.6 – DOCUMENTATION OF SHORT PERIODS IN CUSTODY

When checks are made of those detained in custody this should be documented in detail by officers in the custody record book. In addition to the exact time of the check, the name and signature of the officer checking on the person in the custody cell should

always be included. It should be possible to read and understand the custody record book without having to consult other documents. It should also be possible to verify whether checks have been carried out without first having to consult an occupancy sheet which is located elsewhere. That is why the custody record book should always be kept in the vicinity of the custody cells.

5.7 – INSTRUCTION ABOUT RIGHTS AFTER BEING TAKEN INTO POLICE CUSTODY

Whenever a person is taken into police custody they must immediately be instructed about their rights. Forms containing all the relevant information should therefore be available in various languages. They should at the very least include information about the fact that anyone who is taken into police custody has the right to be examined by a doctor, to consult a lawyer, to notify a trusted third party and, where applicable, their home country's consulate. As regards access to a legal adviser, it is not enough to simply inform those taken into police custody about their right to contact a "trusted third party". Rather, it must be made clear that access to legal advice constitutes a separate right. It should be documented in the police custody record book that the person taken into custody has been instructed about their rights so that it is clear following a shift change-over whenever the relevant information was not been provided for any specific reason.¹²

⁸ *National Agency, Annual Report 2010/2011, p. 19*

⁹ *National Agency, Annual Report 2013, p. 82*

¹⁰ *National Agency, Annual Report 2013, p. 81*

¹¹ *National Agency, Annual Report 2013, p. 75*

¹² *cf. National Agency, Annual Report 2013, p. 72, p. 76–77*

II
VISITS BY THE
FEDERAL AGENCY

I – FEDERAL POLICE AND CUSTOMS

<i>Superior authority</i>	<i>Station/office visited</i>
Bad Bramstedt Federal Police Regional Office	Neubrandenburg Federal Police Station
Berlin Federal Police Regional Office	Angermünde Federal Police District Office Berlin-Tegel Airport Federal Police District Office Gartz an der Oder Federal Police Station Pasewalk Federal Police District Office Pomellen Federal Police Station
Hanover Federal Police Regional Office	Bremen Federal Police District Office Bremen Airport Federal Police Station
Koblenz Federal Police Regional Office	Darmstadt Federal Police Station Frankfurt am Main Federal Police District Office
Munich Federal Police Regional Office	Mühlendorf an der Inn Federal Police Station Rosenheim Federal Police District Office Weilheim Federal Police Station
Sankt Augustin Federal Police Regional Office	Bielefeld Federal Police Station Bochum Federal Police Station Dortmund Federal Police District Office Duisburg Federal Police Station
Stuttgart Federal Police Regional Office	Stuttgart Airport Federal Police District Office Stuttgart Main Station Federal Police Station Ulm Federal Police Station
Berlin-Brandenburg Customs Investigation Office	Pomellen Office
Stuttgart Customs Investigation Office	Stuttgart and Stuttgart GER Customs Investigation Offices

In the period under review the Federal Agency visited 20 Federal Police stations and three offices of the Customs Service. It also monitored one person being brought in to Berlin-Tegel Airport prior to a forced return by air.

I.1 – FEDERAL POLICE STATIONS

I.1.1 – Recommendations of the Federal Agency and response

Protecting privacy

The Federal Agency continues to hold the view that particular importance should be attached to protecting the privacy of those who are taken into custody. In 2014 it again found that in the majority of the stations it visited the toilet doors in the custody suite had peepholes. The argument put forward by the Federal Ministry of the Interior in this regard is that peepholes are required in some individual cases in the Federal Police's remit to protect those taken into custody and in the interests of staff safety. Against this backdrop, the National Agency decided that officers should knock on the door or draw attention to

themselves in some other way before using a peephole. Those taken into custody are to be informed that they will only be observed after prior warning has been given.

In some police stations there were no peepholes in any of the doors. In others, the peepholes which have been fitted are not used. Officers reported that they did not feel the need to be able to monitor detainees whilst they are going to the toilet. Over and above the National Agency's general standpoint as regards the use of peepholes, it should thus always be examined in each individual case whether it is necessary for toilet doors to have a peephole in the first place.

The Federal Ministry of the Interior initially informed the National Agency that the peepholes in doors in Frankfurt am Main Federal Police District Office were only used in justified exceptional cases and only after prior warning being given. In addition, whenever a peephole is used this is documented in the custody record book. However, in a subsequent response following visits to Federal Police district offices in Stralsund, Pasewalk and Angermünde, the Ministry then informed the National Agency that officers

would not be issued with the general instruction to knock on the door or draw attention to themselves in another manner before entering a cell. The Ministry stated that it must be guaranteed that, for example, acts preparatory to an attempt to escape or to self-harm or the use of smuggled drugs can be observed without officers being observed and that these acts are then prevented.

Bremen Federal Police District Office has found an alternative to the peepholes: The toilet is partitioned off from the rest of the cell by means of half-height double doors. These sufficiently protect the privacy of the person going to the toilet and at the same time appropriately meet the individual's need for safety and protection.

Documenting periods in custody

The custody record books in nearly all the Federal Police stations visited are regularly checked by supervising officers. Nevertheless, shortcomings were still noted in some cases. For example, officers sometimes did not note who had carried out a custody check, or checks were entered at only irregular intervals. What was particularly surprising was that officers at Bochum Federal Police Station were not even aware of the existence of a custody record book. When anyone was taken into custody there, this was merely entered in the electronic processing system. According to the Ministry of the Interior, following the respective visits, officers in all the police stations were again informed of the need to keep the custody record book in order.

Some Federal Police stations use cell check sheets, i.e. forms which are stuck to the door of a custody cell when it is occupied and on which checks and other comments are noted. Reference was made in the respective custody record books that the cell check sheet was being used and the sheets were archived together with the custody record sheets.

Instruction about rights

The Federal Agency has for several years been calling for the introduction of written forms containing information about rights which are to be provided to those detained under police law. Those affected should be notified in writing about their right to be examined by a doctor upon request and at their own expense, to contact a lawyer and relatives, and to call in an interpreter in the case of language difficulties. In September 2014 the Federal Ministry of the Interior then introduced the form the Federal Agency had hitherto recommended. It was initially only available in the information section of the Federal Police's intranet (*Infothek*) and officers were unaware of it. However, by the end of the year it will have been

incorporated into the computer system used to process cases and will then automatically be called up whenever a person is taken into police custody. The Federal Agency recommended having the German version translated into other commonly spoken languages.

Fixtures, furnishings and equipment

Bochum Federal Police Station still had a mechanism for restraining and fixing someone to a bench. Given that the Federal Police as a whole no longer uses physical restraints, this mechanism was removed following the Federal Agency's visit.

Custody cells should always have dimmable lighting, smoke detectors and, when new facilities are built, access to daylight. This was still not the case in all the stations visited. Even though the Federal Ministry of the Interior confirmed that refurbishment work would be carried out in relevant cases, or that the matter would be raised with the owner of a particular property, stations in which these basic fittings are not yet available should be upgraded soon. The same applies to other rooms used by people who are taken into custody, for example those known as "secured rooms".

Insufficient human resources and room capacities

The Federal Police stations in Rosenheim and Weilheim are faced with a strong increase in the number of refugees being taken into custody. A total of 3,076 people had been taken into custody in Rosenheim Federal Police District Office by 31 July 2014 (2012: 1,670). Weilheim Federal Police Station had taken 105 people into custody in the same period. Refugees are generally apprehended in groups. Even though officers endeavour to ensure decent conditions of detention for those they apprehend, both stations have neither the human resources nor room capacities required to accommodate larger groups of people. For example, Weilheim Federal Police Station only has one single-occupancy custody cell with an open toilet. It is not possible to provide humane conditions of detention for more than one person under these circumstances. Rosenheim also only has capacity to accommodate up to 16 people. Although one room was equipped with camp beds, the station is also overstretched both logistically and organisationally when it needs to accommodate large numbers of people.

That is why the Federal Agency recommended initially adapting staff numbers in the facilities concerned to the new circumstances. However, room capacities need to be adapted in order to be able to deal with the increase in the number of detainees. It

urgently recommended that Weilheim Federal Police Station make an additional, separate toilet available.

The Federal Ministry of the Interior reported that an organisational audit of the Federal Police was currently being carried out, in the context of which staffing levels and, where applicable, room capacity in the police stations concerned were being examined. Account will also be taken of the need for a separate toilet to be installed. However, the audit will not be completed until late 2015, the Ministry reported. Due to the urgency of the problem, to which the Federal Agency again made reference, the staff toilet in Weilheim Federal Police Station will now also be made available to detainees.

1.1.2 – Accompanying return flights

In the period under review the Federal Agency was unable to accompany any forced returns. However, it was present when one person was brought in for an unaccompanied specific measure taking them from Berlin-Tegel Airport to Lagos. No fault was found with this procedure. However, it was noted that the toilet door in the custody area at Berlin-Tegel Airport Federal Police District Office has a peephole. The Federal Agency made the aforementioned recommendation.

How accompanied forced returns are to be organised is still a matter for discussion between the Federal Agency and the Federal Ministry of the Interior. As previously agreed, the Federal Agency is informed of upcoming collective returns by Federal Police Headquarters. It is notified of individual measures, upon request, for a specific period for a specific airport in Germany. In the period under review the Federal Agency was notified of 39 measures carried out on charter flights. Seven of these were Frontex measures organised by the German authorities and 10 were national measures carried out on charter flights. The remaining flights were Frontex measures which were organised by other states and in which the German authorities were involved.

Opinions differ as regards the financing of accompanied national forced returns. The Federal Ministry of the Interior believes that the accompanying of forced returns by the Federal Agency does not necessarily fall within its range of tasks under the OPCAT. It enables the Federal Agency to accompany national measures on condition that the Federal Agency itself covers any costs arising. The Federal Agency, by contrast, is of the opinion that it should be provided with the funding it needs to carry out its tasks. Further meetings regarding this matter will be held in 2015.

The European Border Agency (Frontex) coordinates forced return measures involving various European

states. Agreement has been reached with Frontex that the national preventive mechanism of the state organising a particular measure may accompany the relevant flights. Frontex carries the costs of accompanying these flights. However, a measure planned for late October 2014 fell through on account of the fact that Federal Police Headquarters was not able to guarantee that seats would be available on the flight for the Federal Agency's staff. When it was still unclear the day before the measure was to be carried out whether the Federal Agency would be able to accompany the flight, the Agency decided to call off the escort. The Federal Agency and the Federal Ministry of the Interior will be holding meetings on this matter too.

1.2 – CUSTOMS OFFICES

The Federal Agency visited three offices of the customs authorities: Stuttgart Customs Investigation Office, plus its Joint Narcotics Investigation Group, and the Pomellen Office of Berlin-Brandenburg Customs Investigation Office.

The customs authorities detain considerably fewer people in custody than the Federal Police do. In 2012 and 2013 a total of 52 people were detained in custody by Stuttgart Customs Investigation Office; three had been detained in Pomellen in 2013, and one person had been detained in custody up to 18 September 2014.

As was the case in many Federal Police stations, the doors to the custody cells in the customs investigation offices also had peepholes. The Federal Agency regarded this as particularly questionable when it came to the rooms of the Joint Narcotics Investigation Group, because the toilet was in the room and was thus in full view of anyone looking through the peephole. It made the same recommendations as described in the above in respect of the Federal Police. The Federal Ministry of Finance accepted these recommendations and agreed to take the necessary steps to remedy the situation. In addition, the doors to custody cells are to have windows rather than peepholes fitted when structural measures are carried out in future.

In previous years the Federal Agency has already recommended that custody record books be introduced in custody suites operated by the Customs Service. These books were found in all the customs investigation offices visited in the period under review. Nonetheless, the entries made in the record books were not always complete, for instance checking times or the name of the officer carrying out the check were sometimes missing. The Federal Agency therefore made the relevant recommendations. The Federal Ministry of Finance stated that officers would

again be informed of the need to keep the custody record book in order.

Further, it appears necessary, especially in view of the low number of cases of people being detained in custody, for customs officers regularly to undergo training on specific custody-related issues so that they can react appropriately whenever the need arises. The

Federal Agency asked the Federal Ministry of Finance to comment on this matter, whereupon the Ministry informed the Federal Agency that it felt that the current training courses were sufficient. The Federal Agency will address the topic of training and development in all types of facilities within its remit.

2 – FEDERAL ARMED FORCES

<i>Land</i>	<i>Base visited</i>
Baden-Württemberg	Wilhelmsburg Barracks, Ulm
Brandenburg	Kurmark Barracks, Storkow in der Mark Schönewalde/Holzendorf Airbase

In the period under review the Federal Agency was asked by Ulm Building Inspection Office to act in an advisory capacity in regard to refurbishment work being carried out on detention cells in the Military Police Station in the Wilhelmsburg Barracks in Ulm. In addition, it inspected the disciplinary cells in the Kurmark Barracks in Storkow in der Mark, the custody cells in the military police station in the Kurmark Barracks and on the Schönewalde/Holzendorf Airbase.

The Federal Agency recommended that the fittings and furnishings provided in the specially secured disciplinary and custody cells for detaining those at acute risk of suicide as far as possible rule out the possibility of committing self-harm or suicide. It also recommended taking measures to protect detainees' privacy, since the toilet in the detention cells in Ulm is fully visible through the peephole. Further, the cells in the military police station in the Kurmark Barracks should be retrofitted with smoke detectors. A form containing information regarding preventive detention should be made available to the military police, like the one which the Federal Police has drawn up.

Since general night sleeping hours are no longer enforced in the Federal Armed Forces, the Federal Agency suggested providing those placed in detention cells with the possibility of themselves switching the light in their cell on and off.

The Federal Ministry of Defence informed the Federal Agency that it would be making the recommended alterations. However, it still has concerns when it comes to installing light switches in disciplinary detention cells, first on account of the provisions on daytime rest periods and night-time sleeping hours in prisons and, second, on account of the fact that plans regarding how the prison system in the Federal Armed Forces is to be organised in future have not yet been finalised. The Ministry pointed out that each disciplinary detention cell has a call button which can be used to contact the prison support staff so that the light can be switched on. However, the Ministry stated that it was still being examined whether there are other, as yet unconsidered, options for taking account of the Federal Agency's recommendation within the scope of applicable legislation.

III
VISITS BY THE
JOINT
COMMISSION

I – SPOTLIGHT ON YOUTH DETENTION

<i>Recommendation:</i>	<i>Special precautions</i>	<i>Protecting privacy</i>	<i>Purposeful activities</i>	<i>Furnishings and fittings in rooms</i>	<i>Respectful treatment of detainees</i>	<i>Staffing level</i>	<i>Staff qualifications and training</i>	<i>External contact</i>	<i>Admissions procedure</i>	<i>Information about rights and duties</i>
Berlin-Lichtenrade Youth Detention Centre		X	X	X		X	X			
Chemnitz Prison (Youth Detention Centre)				X	X					
Düsseldorf Youth Detention Centre	X	X		X	X			X	X	X
Emden Youth Detention Centre			X							
Gelnhausen Youth Detention Centre		X		X	X					
Göppingen Youth Detention Centre				X		X				
Göttingen Youth Detention Centre										
Hahnöfersand Youth Detention Centre		X								
Halle an der Saale Youth Detention Centre			X	X		X	X	X		
Munich Youth Detention Centre			X		X	X				X
Neustrelitz Youth Detention Centre	X		X					X		
Nienburg Youth Detention Centre		X		X		X		X		
Nuremberg Youth Detention Centre		X	X	X		X				
Rastatt Youth Detention Centre		X		X	X					
Regis-Breitingen Youth Detention Centre										
Verden an der Aller Youth Detention Centre		X		X						
Wetter an der Ruhr Youth Detention Centre	X	X		X				X	X	X
Worms Youth Detention Centre		X	X			X				
Würzburg Youth Detention Centre						X				

1.1 – GENERAL ISSUES

In its decision of 31 May 2006 the Federal Constitutional Court ruled that a specific legal basis needed to be created for the execution of youth imprisonment.¹³ Once the *Länder* had enacted the relevant legislation, they began also creating the legal basis for the execution of youth detention. To that end 14 *Länder* (only North Rhine-Westphalia and Bremen did not participate) elaborated a joint draft on the basis of which the individual laws on the execution of youth detention are being drawn up. The Joint Commission enquired with the *Länder* as to what stage the legislative process had reached. As at 30 April 2015 Baden-Württemberg, Brandenburg, Hamburg, North Rhine-Westphalia and Schleswig-Holstein had adopted their own laws on the execution of youth detention.

The Joint Commission's task when visiting youth detention centres is limited to assessing the conditions of detention and treatment of those in custody. It is not in a position to make any statements regarding the – much-discussed – issue of the purpose and prospects of success of youth detention as a disciplinary measure.

In accordance with section 90 (1), first sentence, of the Youth Courts Law, the aim of youth detention is to “arouse the youth's sense of self-respect and make him fully aware that he must take responsibility for the wrong he has done”. Youth detention thus primarily serves educational purposes. In accordance with section 90 (1), third sentence, of the Youth Courts Law, the execution of youth detention is also to contribute to the young offender “overcoming those difficulties which contributed to his commission of the criminal offence” and thus to promote his rehabilitation. The Federal Constitutional Court ruled in regard to the execution of youth imprisonment that the educational purpose derives from the guarantee of human dignity and the principle of proportionality and that it thus has constitutional rank.¹⁴ The same must also apply to the execution of youth detention.

Section 13 (3) of the Youth Courts Law stipulates that the execution of youth detention may not carry the same legal consequences as a penalty and that it must thus differ from the execution of a prison sentence. These are therefore the guiding principles

underlying the joint draft law on the execution of youth detention.¹⁵

There are numerous documents at Council of Europe and United Nations (UN) level from which the human rights requirements in respect of the execution of youth detention can be derived. They include, in particular, the European Rules for Juvenile Offenders Subject to Sanctions or Measures,¹⁶ the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (“Havana Rules”)¹⁷ and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“Beijing Rules”).¹⁸

The Joint Commission bases its assessment of the execution of youth detention when it comes to the prevention of inhuman treatment on the aforementioned standards.

1.1.1 – Expectations in respect of the execution of youth detention

In the context of focusing on youth detention in 2014, the Joint Commission visited 22 youth detention centres across the 16 *Länder* and thus gained a comprehensive overview of how youth detention is executed in practice.¹⁹ It also looked at those laws on the execution of youth detention which have already been adopted and one draft law on the execution of youth detention.

The Joint Commission placed its main emphasis on the humane treatment and conditions of detention of those placed in youth detention. It focused on the statutory mandate, namely that when enforcing youth detention the focus must be on its educational purpose. Merely putting young offenders away is not compatible with human dignity.²⁰

Treating juveniles with dignity also requires that they be treated as people with their own rights and that they not be unfairly dictated to. That includes being treated with respect by staff.

Staff need the relevant training in order to be able to react appropriately to young offenders' age-specific

¹³ Federal Constitutional Court, judgment of 31 May 2006, file nos 2 BvR 1673/04 and 2 BvR 2402/04

¹⁴ Federal Constitutional Court, judgment of 31 May 2006, file nos 2 BvR 1673/04 and 2 BvR 2402/04, margin no. 51 (juris)

¹⁵ see Kunze, Torsten; Decker, Ursula: *Musterentwurf für ein Jugendarrestvollzugsgesetz*, 4 Forum Strafvollzug 63 (2014), p. 262 et seqq.

¹⁶ Recommendation CM/Rec(2008)11 of the Committee of Ministers of the Council of Europe of 5 November 2008

¹⁷ Resolution of the UN General Assembly No. 45/113 of 14 December 1990

¹⁸ Resolution of the UN General Assembly No. 40/33 of 29 November 1985

¹⁹ Youth detention executed against detainees from Bremen is enforced in Lower Saxony. Some detention centres were visited in 2015. The findings from the visits were, where available, incorporated into this general section. The reports and responses will be published on the National Agency's website (www.nationale-stelle.de).

²⁰ Federal Constitutional Court, judgment of 5 June 1973, file no. 1 BvR 536/72, BVerfGE 35, 202–245, margin no. 72

problems. This means that a range of initial and further training courses need to be available which are geared specifically to youth detention.

What is decisive when it comes to ensuring that youth detention observes human rights is that its enforcement is based on clear, comprehensible concepts. These should be set down in writing and made available to detainees. The Joint Commission assesses the pedagogical concepts, as far as they affect the conditions of execution of youth detention, from the point of view of ensuring full respect for human dignity.

The educational purpose of youth detention should also be reflected in the external conditions of detention. Structural precautionary measures should be restricted to what is necessary, since excessive structural and technical precautions are detrimental to that educational purpose. Internal safety precautions should be of such a nature that they do not further increase the already stressful situation of being deprived of one's liberty and that they grant young offenders a right to privacy.

The findings and insights gained during the visits which are of relevance to the execution of youth detention are summarised in the following.

1.1.2 – Findings and recommendations of the Joint Commission

Special precautions

In view of the educational purpose of youth detention and given that youth detention is not a penalty, special precautions should be applied circumspectly. This in particular applies to measures which exclude juveniles from educational activities.²¹ Moreover, for the afore-mentioned reasons, whenever special precautions or the use of direct coercion are ordered, they should be preceded by an especially strict examination of proportionality. Where placement in a specially secured detention room is being considered and in problematic cases, this should include a medical examination of the detainee and involve child and youth psychiatrists, psychologists, or child and youth psychotherapists. Placement in a specially secured detention room should be kept as short as possible. Positive mention should be made of the fact that Moltfelde Youth Detention Centre has completely abandoned the use of a specially secured detention room.²²

²¹ see also Walkenborst, Philipp: *Schriftliche Stellungnahme zum Entwurf eines Jugendarrestvollzugsgesetzes Schleswig-Holstein, Schleswig-Holstein Land Government, Printed Paper 18/2186, p. 21 et seq.*

²² *The visit was conducted in 2015.*

In any case, it does not appear necessary to provide the means of keeping someone under physical restraint, as is the case in the youth detention centres in Neustrelitz, Düsseldorf and Arnstadt.²³ Where required, the detention should be interrupted and placement in a child or youth psychiatric facility considered.

The specially secured detention rooms in the youth detention centres in Düsseldorf, Wetter an der Ruhr and Hahnöfersand are equipped with surveillance cameras, as a result of which the entire room, including the toilet, is in full view. Decent conditions of detention for people deprived of their liberty means that measures must always be taken to protect their privacy. This also applies to placement in the specially secured detention room. Here, too, privacy must be guaranteed by means of corresponding measures when detainees go to the toilet, for example partial pixellation of the camera image on screen. If need be, it may be conceivable, in carefully considered, substantiated and documented individual cases, to permit unrestricted monitoring of the detention room where there is an acute danger of self-harm or suicide. The person concerned must at any rate be informed of the fact that optical surveillance is in operation.²⁴ This should also be documented.

Educational measures

The same as applies to the ordering and enforcement of special precautions should also apply to educational and disciplinary measures. Such measures can include, amongst other things, the removal of articles or exclusion from communal activities. Juveniles should, however, never be prohibited from spending time outside and they should at the very least always be left with some reading material. According to those laws on the execution of youth detention which have been adopted so far, a meeting must first be held with the young offender, and the sanction can only be the last resort. According to these laws, segregation in a specially secured detention room does not constitute an educational measure. Rather, it represents a special precaution which is only indicated in specific exceptional cases, for example where there is a risk of self-harm or harm to others. It must never serve as punishment, and a clear distinction must always be drawn between disciplinary measures and special precautionary measures. No such clear distinction is, for instance, drawn in Wetter an der Ruhr Youth Detention Centre, where placement in the specially secured detention room is listed in the house rules under the

²³ *The visit was conducted in 2015.*

²⁴ cf. *National Agency, Annual Report 2013, p. 27–28*

heading “Rules and Punishments”, and the room is furthermore referred to as “the bunker”.

Admissions procedure

In the National Agency’s experience, many youth detention centres search young offenders upon admission without them having to fully undress first. Sometimes the detainees are at least allowed to keep their underwear on. Having to fully undress seriously impinges on a detainee’s privacy, and it must thus be weighed up in each individual case.²⁵ Even where there is a justifiable concrete danger, it should only be possible to order that the detainee undress where other clearly definable conditions are met. Nevertheless, Düsseldorf Youth Detention Centre always requires juveniles to fully undress upon admission.

All the youth detention centres visited carry out an initial medical examination of those being admitted. The examination serves to establish whether the young offender needs any treatment or not. It is thus of key importance that this examination be carried out as soon as possible after admission, even if the period of detention is relatively short. In some detention centres a doctor is in attendance once a week on a specific day, which can mean that those being admitted have to wait several days for their initial medical examination. It should be ensured that the initial medical examination is carried out as soon as possible.

Psychological and psychiatric care

During numerous visits the Joint Commission was informed that the number of juveniles with mental health issues who require one-to-one meetings with a professional psychologist, for example, was on the increase. Young offenders also need support in acute crises, therapy-motivated sessions and help finding a psychotherapist after release. The youth detention centres in Emden, Gelnhausen, Rastatt, Regis-Breitingen and Worms employ their own psychologists who are responsible for those in youth detention.

According to staff at Gelnhausen Youth Detention Centre, since the psychologist took up his work use of the specially secured detention room has dropped significantly. According to them, the psychological care provided enables the young detainees to “vent” so that situations do not escalate.

The cooperation between Verden an der Aller Youth Detention Centre and a child and youth psychiatric clinic is another good practice example: A psychiatrist from the clinic attends the youth detention centre once a week, and juveniles can also be treated in the clinic.

Furnishings and fittings in rooms

According to those laws on the execution of youth detention which have already entered into force and the laws on the execution of youth imprisonment, detainees and prisoners have a right to be placed in single-occupancy cells/rooms. This right should be introduced in youth detention centres in all the *Länder*. It would be desirable if single-occupancy detention rooms also had a completely separate toilet. Access to daylight should not be obstructed by close lattices or perforated sheets fitted to the windows. Detainees should also be able themselves to switch the lighting in the detention room on and off. Centrally regulated lighting, as was in evidence in some of the detention centres, is unnecessarily paternalistic. Experience gained in several facilities shows that allowing young offenders to adjust the lighting level themselves does not have any negative impact on the course of the youth detention.

Decent conditions of detention for people deprived of their liberty also requires that measures be taken to protect their privacy. Peepholes can encroach on privacy since the young offenders do not know when they are being observed through the peephole. The Federal Court of Justice ruled in 1991 in regard to the execution of criminal sentences that ordering that the peephole in the cell door be kept open always requires a prior case-by-case examination.²⁶ The same must also apply to youth detention centres. The youth detention centres in Düsseldorf and Göttingen, for example, do not use peepholes. Peepholes like those used in Wetter an der Ruhr Youth Detention Centre are unacceptable if the detention rooms do not have a completely separate toilet and the toilet is in full view of anyone looking through the peephole.

Happily, some of the facilities visited, such as the youth detention centres in Worms, Hahnöfersand, Göppingen and Moltsfelde, do not apply very conspicuous precautionary measures. The windows in the detention rooms are, if at all, only secured by means of a coarse grille, there is no barbed wire and in some cases the outer wall has been replaced by a fence.

Respectful treatment

Staff should treat those in detention with respect.

This includes that the juveniles should not be addressed using the informal “*du*” form in German without being asked beforehand. Private meetings showed that many juveniles feel that the use of the informal “*du*” form in German is derogatory and lacking in respect. The house rules and all the sets of rules which are handed to the youths should be written in friendly

²⁵ cf. Federal Constitutional Court, order of 4 February 2009, file no. 2 BvR 455/08, margin no. 35 (*juris*)

²⁶ Federal Court of Justice, order of 8 May 1991, file no. 5 AR Vollz 39/90, margin no. 6 *et seq.* (*juris*)

and respectful language. Any attempt to use youth-appropriate language, as is the case in some facilities, the Joint Commission noted, can have the opposite effect. The language then no longer comes across as youth-appropriate but as a mark of a lack of respect.

In the Joint Commission's opinion, holding detainees in esteem also means that staff should knock on the detention room doors before unlocking them and entering. There are numerous other everyday situations in which the juveniles should not be dictated to unnecessarily. For instance, detainees in North Rhine-Westphalia are required to walk in a circle when they are in the recreation yard. Staff referred to security considerations, while the Ministry of Justice informed the Joint Commission that detainees had themselves established the practice of "walking in a circle" and that they continue this practice. The juveniles themselves should decide how they wish to spend their time in the recreation yard. They should not be set any rules in this regard.

Fortunately, staff in nearly all the youth detention centres which the Joint Commission visited were motivated and had a good relationship with detainees. In the overwhelming majority of the youth detention centres visited the young offenders reported that relations with staff were good. Their dealings with the detainees were described as particularly friendly, open and helpful in the youth detention centres in Göttingen and Würzburg, for example.

Staffing level

Staffing levels in youth detention centres should permit concepts underlying the execution of youth detention to be implemented in order to be able to effectively carry out treatment and employment measures. Detainees should also be offered activities at the weekend so that they are not locked in their detention rooms over long periods without anything to do, unless this is necessary as an educational measure in a specific individual case. For instance, the insufficient staffing levels in the youth detention centres in Nuremberg and Arnstadt, amongst others, meant implementation of pedagogical concepts was limited.

The youth detention centres in Moltsfelde and Gelnhausen have a very high carer ratio, which also enables them to offer detainees numerous activities at weekends.

In some cases the Joint Commission found that the detention centres did not have sufficient staff on night duty. In one case the building in which the youth detention centre is housed is located on the grounds of a prison, and no member of staff is on night duty. Where necessary, detainees have to use a call button to draw attention to themselves and to call

staff across from the adjacent prison. In another youth detention centre, which was not near a prison, there was only one member of staff on duty and another was on call at night.

At night it should be ensured that two members of staff are immediately on hand in an emergency. In the case of youth detention centres located on the grounds of another facility, it may be sufficient for one member of staff to remain in the youth detention centre overnight if a second member of staff can be called in quickly from an adjacent building in an emergency. In all other cases two members of staff should always be on hand in the youth detention centre. On no account should a detention centre be without any members of staff whatsoever at any time. Detention centres which also hold female detainees should always have one female member of staff in attendance too. This was not the case, for instance, in Göppingen Youth Detention Centre.

Staff qualifications and training

In order to ensure that staff are able to react appropriately to the age-specific problems of juveniles, they must have the relevant education or training. Training courses are of particular importance where staff switch from penal institutions for adults or facilities executing youth imprisonment to facilities executing youth detention. The latter was the case in various youth detention facilities in Lower Saxony, where a special in-house training programme was developed in response to the new situation. The Joint Commission therefore welcomes the fact that the need for special qualifications has been provided for by law in the legislation pertaining to youth detention enacted in the *Länder*. Detention-specific training courses should not only be run on a one-off basis, but should be attended at regular intervals by all staff in detention centres. In the youth detention centres in Verden an der Aller, Nienburg and Emden the Joint Commission saw that the facilities' psychologists regularly run in-house training courses. Moltsfelde Youth Detention Centre offers its staff a comprehensive range of in-house training courses dealing with youth detention.

External contact

In some youth detention centres juveniles are only permitted to telephone their families or partners, for instance, or to receive visitors during their period in detention in the event of an emergency.

Entirely prohibiting contact is problematical from the human rights perspective. Restricting contact can only be an option where it is based on strategic or safety considerations.

Information about rights and duties

Juveniles should be given comprehensive information when they are booked in about their rights and duties during detention as well as the applicable house rules. In many youth detention centres the Joint Commission visited this information is first provided verbally and all the documents are then also handed out in writing. As already explained in regard to the matter of treating detainees with respect, the aforementioned sets of rules should be written in polite and respectful language and should provide balanced information about rights and duties. The focus should not, as for example is the case in Düsseldorf Youth Detention Centre, primarily be on sanctions.

Some youth detention centres impose sanctions on juveniles who do not begin their detention voluntarily without first informing them of this consequence in their summons. No sanctions should ever be imposed of which juveniles have not been informed beforehand.

Pedagogical concept and purposeful activities

To ensure that it is clear that the concept on which the execution of detention is based is a pedagogical one, all youth detention centres should have a written educational concept. That was not the case in all the facilities visited, though it is a statutory requirement in some *Länder*, for example in Schleswig-Holstein.

Many youth detention centres apply multi-stage models or points systems. Wherever these models or points systems are used, they should be transparent and comprehensible. Detainees should not get the impression that they are applied arbitrarily. In addition, they should not be excluded from purposeful activities for any length of time. The youth detention centres in Berlin-Lichtenrade and Worms, for example, have good models in operation. However, these systems should be no substitute for an educational concept, they can at most be supplementary to one.

Long lock-up times run counter to the educational purpose of youth detention and are therefore problematical. The majority of youth detention centres visited have a very wide range of educational measures and purposeful leisure-time activities on offer, and the young offenders spend relatively short periods of time in their detention rooms without anything to do.

Meals

Detainees in various youth detention centres complained to the Joint Commission about the fact that meal portions were too small. Attention should be paid to this matter.

1.1.3 – Outlook

The execution of youth detention has again been widely discussed in the public domain in recent years. The debate arose on account of the legislative activities in the *Länder* following the Federal Constitutional Court's ruling. This also once more focused public attention on the academic debate.

It is already apparent that the individual laws focus on the educational impact which detention should have on juveniles and that they prescribe what activities should be on offer. However, the statutory requirements are not yet being applied everywhere in practice. This is, amongst other things, due to the funding and staffing levels available in the detention centres. The quality of the execution of youth detention therefore currently varies considerably.

To ensure that youth detention has as sustainable an impact as possible, measures also need to be available after release. Some laws and draft laws make specific requirements in this regard.

It is also clear that facilities are turning away from repressive measures such as a “disciplinary punishment” (*Hausstrafe*) or special precautions, such as those which have tended to be used in prisons.

It remains to be seen to what extent the statutory requirements will have an impact on this specific form of detention.

1.2 – FACILITIES VISITED

A total of 19 youth detention centres were visited in the period under review. The reports have been published on the National Agency's website.²⁷

²⁷ www.nationale-stelle.de

2 – JUVENILE PENAL INSTITUTIONS

<i>Recommendation:</i>	<i>Protecting privacy</i>	<i>Special precautions</i>	<i>Disciplinary measures</i>	<i>Keeping cells clean</i>	<i>Supervision during unlocking times</i>	<i>Staff qualifications and training</i>	<i>Purposeful activities</i>	<i>Translations of house rules</i>
Hahnöfersand Juvenile Penal Institution	X	X						X
Neustrelitz Juvenile Institution				X	X			
Raßnitz Juvenile Institution	X	X	X			X	X	X
Regis-Breitingen Juvenile Penal Institution	X							
Wriezen Prison	X			X				X

2.1 – REGIS-BREITINGEN JUVENILE PENAL INSTITUTION, 13 FEBRUARY 2014

The Joint Commission visited Regis-Breitingen Juvenile Penal Institution and Detention Centre on 13 February 2014.

Regis-Breitingen Juvenile Penal Institution is responsible for enforcing youth imprisonment against male juveniles and young adults in Saxony. It has a capacity of 327; on 1 February 2014 it was holding 241 offenders.

The Joint Commission visited the admissions and diagnostic area, the medical section, a residential group for first-time offenders, including the sanitary facilities and common room, the basic residential group, the specially secured room containing no dangerous objects, the visiting area, classrooms and vocational training facilities, the recreation yard, the sports hall and the art therapy rooms.

It spoke with the head of the facility, the doctor, a psychologist, the chair and two members of the staff council, as well as other members of staff working in various units. In addition, the Joint Commission spoke with the prisoner representatives (five juveniles from various units).

2.1.1 – Recommendations and response

The Juvenile Penal Institution has two **specially secured rooms** which are furnished with a mattress and a squat toilet. The entire room, including the

toilet, is visible from the anteroom through two windows in the door as well as through a second large window. When the blind on the large window is pulled down it is not possible to see into the specially secured room.

The fact that the toilet is fully visible represents an invasion of the privacy of the juveniles detained in the specially secured room.

In the Joint Commission's view, priority should be given to protecting the physical integrity of those taken into detention. It follows from Article 1 of the Basic Law that each person has the right to the preservation of privacy when performing their bodily needs. The CPT shares this opinion and recommends that in-cell sanitary facilities be partially screened to preserve a minimum of privacy.²⁸

The documents sent to the Joint Commission reveal that the specially secured room is used extremely rarely. Nonetheless, the Joint Commission is of the opinion that only where there is an acute danger of self-harm or suicide does it appear conceivable, in carefully considered, substantiated and documented individual cases, to permit unrestricted monitoring of the room.

Response: CCTV monitoring is not in operation in any specially secured rooms in the prison system in Saxony.

A member of staff is posted in front of the specially secured room to supervise and communicate with the prisoner (known as "Sitzwache"), depending on the individual case either on a permanent or temporary basis. The decision to

²⁸ cf. CPT/Inf (2010) 16, paragraph 17

place a prisoner in a specially secured room under such conditions and the course of the placement and his supervision are comprehensively documented. By not carrying out CCTV monitoring, the prison system in Saxony already clearly and largely ensures respect for prisoners' right to privacy and the protection of privacy. Prisoners can sometimes feel that the cameras are being used to keep tabs on them and can feel intimidated, and this increases their feeling of defencelessness and of being at the mercy of others. That is why, where it is necessary to monitor the prisoner (risk of self-harm or suicide), less invasive measures are applied, for instance either checks are carried out at specific intervals or the detainee is kept under constant observation.

A prisoner being subjected to a coercive measure generally finds the situation extremely stressful. Prisoners need the conditions of detention and personal attention given to them to help them to feel secure and to regain trust. Since prisoners are placed in a specially secured room for only short periods of time, the staffing levels required to keep them under constant observation are feasible. In the past few years placement in the specially secured room has nearly always been ordered where the juvenile prisoner was at an acute and high risk of self-harm or suicide. Regis-Breitingen Juvenile Penal Institution only once in 2013 ordered that a juvenile prisoner be placed in a specially secured room.

The threat potential requires personal supervision so that it is possible at all times to establish the prisoner's state of mind. Supervising staff must be constantly available for the prisoner to talk to and so that they can act quickly in the event of danger. The duty of care requires that juvenile prisoners are not given the opportunity either to seriously harm themselves at times when they are unobserved, for example because of claiming to be using the toilet, or to damage wound care after it has been administered.

That is why no exception can be made when it comes to visibility of the in-cell sanitary facilities. The important function which the specially secured room fulfils, namely suicide prevention and supervision of juvenile prisoners, would be considerably impaired if partial screens were to be installed in the specially secured room. However, there are plans to install a privacy screen on the window in the ante-room to the specially secured room which the person carrying out the Sitzwache uses to safeguard a certain degree of privacy when a juvenile goes to the toilet. Awareness of this issue has been raised in the Juvenile Penal Institution and it will ensure that prison staff do not observe juveniles detained in the specially secured room when they are going to the toilet until these screens have been installed.

The communal shower rooms in the residential groups have no partitions between the individual showers. The Joint Commission recommends separating at least one shower off by means of a partition in order to protect privacy.

Response: The Juvenile Penal Institution as well as all the other prisons will look into partitioning off individual

showers in the communal shower rooms. These partitions have already been installed in some facilities (Chemnitz, Dresden and Zeithain prisons). It is expected that suitable partitions will have been installed in Regis-Breitingen Juvenile Penal Institution by late 2014.

Point 9.2 of Regis-Breitingen Juvenile Penal Institution's house rules lists institutions whose correspondence with the juvenile offenders is not monitored. The National Agency should also be included in this list.

Response: Correspondence with the National Agency is not monitored. Section 54 (4) of the Act on Juvenile Justice of Saxony provides that monitoring of correspondence is not permitted. Regis-Breitingen Juvenile Penal Institution will adapt the house rules accordingly.

2.1.2 – Positive findings

The conditions of detention in the Juvenile Penal Institution, which opened in 2007, are very good. The juveniles are accommodated in clearly arranged and friendly residential groups. Each residential group has a maximum of 11 juveniles, who share a common room and a kitchen. The rooms and furnishings were clean and in very good condition.

Both the general prison services and the specialist services in the facility are well-equipped. The facility employs nine psychologists, eight teachers, 12 social service staff members and two art therapists. This level of staffing guarantees comprehensive supervision of the juveniles and the availability of numerous treatment measures. All the staff also undergo training in areas relevant to the enforcement of juvenile imprisonment.

The Joint Commission was impressed by the wide-ranging measures taken to prevent violence amongst the juveniles. Detention cells are occupied by a maximum of two juveniles, and each residential group is assigned a dedicated group of staff members. The residential groups are differentiated according to numerous criteria (incl. experience of being in a penal institution, type of offence, behaviour in the institution, juveniles' personal strengths).

The facility attaches great importance to suicide prevention, and there are fixed standards and procedures for dealing with juveniles at risk of suicide. In addition, all members of staff undergo suicide prevention training at least once a year.

Special mention should be made of the fact that the Juvenile Penal Institution does not use physical restraints, and the ordering of disciplinary detention is not permitted in the juvenile justice system in Saxony. The specially secured room is used in only a few exceptional cases (twice in 2013).

The facility offers a wide range of **school and vocational training measures**. As at 1 January 2014 a total of 85.3% of its juvenile prisoners were either working, undergoing training, or were in school and vocational training measures. In addition, the facility offers an extremely wide and varied programme of leisure-time activities.

Finally, positive mention must be made of the **good atmosphere** in the facility and the respectful, friendly manner in which the staff and juveniles interact.

2.2 – RASSNITZ JUVENILE INSTITUTION, 20 FEBRUARY 2014

The Joint Commission visited Raßnitz Juvenile Institution on 20 February 2014.

Raßnitz Juvenile Institution is responsible for enforcing youth imprisonment against male sentenced prisoners, pre-trial detention against male juveniles and young adults, pre-trial detention against male adults, and confinement for contempt of court, precautionary detention, coercive detention and arrest to enforce a court order against male juveniles and young adults. It has a capacity of 382. On the day of the visit the facility was holding 17 juvenile pre-trial detainees and 218 prisoners serving youth imprisonment. There were also 19 prisoners in the open unit and 52 male adults in pre-trial detention.

The delegation visited various blocks, the pre-trial detention unit for juveniles and young adults, and the social therapy unit. It also inspected various prisoner files. During the visit the delegation spoke with members of staff in various units, the prison chaplain and three juvenile prisoners.

2.2.1 – Recommendations and response

All the cell doors have **peepholes**. Prisoners are not allowed to stick anything over or to cover up the peepholes and are punished if they do so repeatedly. In 1991 the Federal Court of Justice already ruled that ordering prisoners to keep the peephole in their cell door open requires an examination of each individual case.²⁹ Humane conditions of detention for those deprived of their liberty requires that measures be taken to protect their private and intimate sphere. Being aware that one could be being observed at any time by third parties can be a major source of stress. Following an enquiry which the National Agency sent to all the *Länder* in 2013 regarding the use of peepholes, several *Länder* reported that when new prisons were built doors would not be fitted with peepholes. In addition, any peepholes which had been fitted are

no longer used or are covered with a screw joint which only staff can open. Where this is not the case, the majority of prisoners agree to the peepholes being covered up, unless they need to be kept under observation in an individual case.³⁰

In Raßnitz Juvenile Institution **disciplinary detention** is enforced in special disciplinary detention rooms in which the toilet is not partitioned off from the remainder of the room, in contrast to established practice in normal cells. The toilet is visible through a peephole. For the aforementioned reasons, it should be ensured that the toilets in the disciplinary detention rooms can be used without privacy being invaded on account of the possibility of being observed through the peephole.

Response: The recommendations will be implemented. No peepholes were fitted in Burg Prison, which opened in 2009. Where the doors in older prisons still have peepholes, the procedure recommended in the report will be applied.

The specially secured rooms in the Juvenile Institution are fitted with **surveillance cameras** which also film the toilet. In addition, there is a large window in the wall between the two doors into the rooms which has a blind; the entire room is visible through the window. According to staff and the head of the facility, the blind is generally pulled up when someone is in the cell, as a result of which the person placed in the room can be observed at any time and without prior warning from the anteroom. The considerations regarding safeguarding privacy raised in section 1, point 5.1.1 above also apply to placement in a specially secured room. On account of the special situation which placement in the specially secured room represents, no fundamental objections can be raised to carrying out CCTV monitoring. However, privacy should be protected here as well by taking the corresponding measures, for example partial pixelation of the image on screen. Also, visibility of the specially secured room through the window should be restricted in such a manner that it is not possible to see the toilet. Only where there is an acute danger of self-harm or suicide does it appear conceivable, in carefully considered, substantiated and documented individual cases, to permit unrestricted monitoring of a specially secured room. The person concerned must at any rate be informed of the fact that optical surveillance is in operation.³¹

Response: For security reasons, the suggestions made regarding protecting privacy by taking corresponding measures and visibility of the toilet cannot be taken into consideration. During placement in a specially secured room juvenile prisoners again and again make attempts, using a

²⁹ Federal Court of Justice, order of 8 May 1991, file no. 5 AR Vollz 39/90, margin no. 6 et seqq. (juris)

³⁰ see National Agency, Annual Report 2013, p. 27

³¹ see National Agency, Annual Report 2013, p. 27–28

variety of methods, to harm themselves or to prepare renewed attacks against staff. Blind spots and cameras rendered unusable provide the ideal conditions for this. This is comparable to pixellating the images of the toilet. Experience has repeatedly shown that attempts are made to render the camera unusable by hitting it, spitting on it or besmearing it with other bodily fluids and human excrement in order to conceal such plans. Experience has also shown that prisoners smuggle objects, for example nails, screws and razor blades, into the specially secured room in their body orifices in order to be able to continue harming themselves in there or to attempt suicide. For instance, one prisoner in Burg Prison recently attempted to harm himself whilst he was in the specially secured room by trying to swallow small objects and items of clothing. Another prisoner attempted to drown himself by putting his head down the squat toilet. Against this backdrop, it is absolutely essential that unrestricted monitoring of prisoners using cameras and through windows is possible whilst they are placed in the specially secured room in order to be able to ensure rapid intervention in such dangerous situations. Further, continuous monitoring of the specially secured room also serves to protect staff members when they enter the room to carry out measures associated with the detention. Prisoners placed in a specially secured room are in any case informed that optical surveillance is in operation.

The Joint Commission added a written comment, stating that it was aware of the fact that prisoners placed in the specially secured room regularly present a greater danger to themselves and others. In making its general recommendation regarding video surveillance³² the Commission was indicating a middle road between safeguarding privacy on the one hand and protecting physical integrity on the other. The Joint Commission has observed exemplary implementation in Frankfurt am Main I Prison, where the toilet is pixellated in such a manner that the person is still visible in outline and staff are able to identify and prevent suicidal acts.³³ In view of the technical means available for conducting video surveillance, the Joint Commission cannot share the opinion that continuous monitoring via CCTV cameras and through a window is absolutely essential. This applies all the more in regard to the toilet in the disciplinary detention rooms being in full view of anyone looking through the peephole. People who are being subjected to disciplinary measures are not at any particular risk of self-harm or suicide.

People detained in a specially secured room are only given a pair of **paper underpants** to wear. This is questionable from the point of view of preserving human dignity. Other prisons give prisoners a pair of

tearable trousers and a shirt to wear. Raßnitz Juvenile Institution should also examine whether juvenile prisoners placed in the specially secured room can be given more appropriate clothing to wear. This in particular applies to cases where prisoners are subject to physical restraint.

Response: Juvenile prisoners placed in the specially secured room are currently given disposable clothing to wear as well as disposable underpants to respect their sense of shame. This practice is being reviewed. The recommendation will be carried out.

Staff in the Juvenile Institution undergo no **special training** in dealing with juvenile and young adult prisoners. However, juvenile and young adult prisoners have specific needs and require a different type of supervision than adult offenders, to whom training in the general prison service in particular is tailored. In order to be able to better meet the needs arising in the juvenile justice system, special training courses should be available to staff in Raßnitz Juvenile Institution.³⁴

Response: As regards the recommendation that special training courses be offered to staff so that they can better meet the needs of prisoners in the juvenile justice system, this opinion is shared, with the proviso that the requirements made of supervising staff in the juvenile justice system do not differ from those in the adult prison system when it comes to basic security standards. However, they do differ when it comes to the particularities of dealing with and treating the young clientele. For example, the in-house and the centrally organised training courses conducted in the Land initial and further training institute focus on the following issues: dealing with difficult juveniles, dealing with prisoners with mental disorders/mental health issues, dealing with (drug and alcohol) addiction, right-wing extremism, developments in the right-wing scene, de-escalation when dealing with violence in the juvenile justice system, suicide prevention and special needs education. Unfortunately, due to staff shortages it has not been possible to run the aforementioned number of training courses over the past two years.

In 2013 **disciplinary detention** was ordered a total of 45 times in the facility. In 11 of these cases the disciplinary detention lasted up to 14 days, fully exhausting what is legally possible. For the sake of comparison: In 2011 disciplinary detention was enforced only 13 times in Berlin Juvenile Penal Institution (which has a capacity of 499). Disciplinary detention is no longer imposed in any young offender institutions in Saxony. The Joint Commission suggests examining why Raßnitz Juvenile Institution orders disciplinary detention comparatively frequently and for compara-

³² National Agency, Annual Report 2013, p. 27

³³ National Agency, Annual Report 2013, p. 65

³⁴ see Recommendation Rec(2006)2 of the Committee of Ministers to Member States on the European Prison Rules, No. 81.3 and CPT/Inf/E (2002) 1 - Rev. 2010, p. 86, margin no. 33

tively long periods, and whether disciplinary detention can be avoided, or the disciplinary goal can be achieved, in individual cases, by less severe means.

Response: The recommendations gave occasion to ask the Juvenile Institution about its practice in regard to the ordering of disciplinary detention and to raise awareness for the issue. Raßnitz Juvenile Institution orders disciplinary detention responsibly, it applies the principle of proportionality and orders this disciplinary measure only as a last resort. However, offences are committed in everyday prison life, some of which are of a particularly serious nature, and prisoners are sometimes also particularly resistant to sanctions and can not (or no longer) be reached by means of consensual measures, and less severe disciplinary measures no longer induce them to change their behaviour, even when they are repeatedly imposed. In order to be able to appropriately influence deviant prisoners even in these few cases, taking into account the aforementioned principles the facility continues to require that the highest intervention level, i.e. disciplinary detention, be available.

Prisoners who do not take part in special measures in the evening are **locked in** at around 7 pm in their residential groups. The head of the facility primarily justified this on account of the staff shortages. However, especially in view of the purpose of juvenile imprisonment, namely social rehabilitation, it would be desirable for them to spend as much time as possible together with others in the residential group.

Response: In the Ministry's opinion, the targeted, guided supervision of prisoners between the first and second lock-in does not restrict the opportunity for social rehabilitation for the following reason: After the first lock-in at 7.30 pm, staff focus in a targeted fashion on young prisoners, working pedagogically with them in small groups, addressing individual deficits and strengthening their own resources. Since staff are assigned to a specific residential group, the juvenile prisoners can all be incorporated into these treatment measures within a short space of time.

Raßnitz Juvenile Institution has only a small number of **rental or subsidised TV** sets for prisoners. Prisoners who are not able to purchase their own TV set can only watch TV in the common room outside of lock-in times. Particularly when one calls to mind the sometimes long lock-in times, it would be appropriate to give all prisoners the opportunity to have a TV set in their cell as long as there are no special reasons (e.g. strategic considerations concerning a juvenile's treatment) which speak against this. Rental TVs offer prisoners who have no or only few own resources the opportunity to quickly gain access to a TV set. Prisoners who are unable to work through no fault of their own and who also have insufficient financial resources should be given a subsidised TV.

Response: The recommendations have been taken up. It is being examined whether Raßnitz Juvenile Institution can be provided with rental or subsidised TV sets.

The house rules and other documents and forms are written in readily comprehensible language. However, they are only available in German; there are plans for English **translations** to be done. According to the head of the facility, in those few cases in which a detainee does not speak (sufficient) German, an interpreter is called in to translate and explain the content of the relevant documents. Despite the small number of prisoners who speak a foreign language, the Joint Commission suggests translating the house rules into a larger number of those languages which are most commonly spoken by prisoners. The house rules in particular include a list of duties which are important for prisoners and at the same time inform them of their rights. Non-German-speaking prisoners should therefore also be able to understand them.

Response: The Ministry is of the opinion that translating the house rules into a larger number of those languages which are most commonly spoken amongst prisoners should be kept in appropriate relation to the small number of non-German-speaking prisoners in Saxony-Anhalt and especially in Raßnitz Juvenile Institution. On 30 April 2014 the share of foreign prisoners in prisons in Saxony-Anhalt was 9.01%. On that same date there were a total of 35 foreign prisoners in Raßnitz Juvenile Institution. In the Ministry's view, it appears appropriate and sufficient to only have the house rules translated into English. For the rest, the Ministry gives the assurance that an interpreter is always called in where insurmountable communication problems arise.

2.2.2 – Positive findings

Raßnitz Juvenile Institution opened in 2002. All the buildings and facilities are therefore in **very good condition**. In particular, the structural concept (blocks of houses organised around a green "market place" with a pond) makes for a **pleasant environment**. Staff with whom the Joint Commission spoke were also all very committed and had, for instance, individually arranged and decorated some of the blocks with the prisoners.

2.3 – WRIEZEN PRISON, 8 MAY 2014

The Joint Commission visited Wriezen Prison on 8 May 2014.

The visiting delegation spoke with the head of the facility, staff in various units, with an external doctor, a psychologist, the chair of the staff council and a prisoner representative.

Afterwards the delegation visited the social therapy unit, the prison blocks, the admissions area and the depository, the visiting area and the work area.

Wriezen Prison is responsible for enforcing youth imprisonment and pre-trial detention against male juveniles and young adults. It has a capacity of 198, and was holding 118 prisoners at the time of the visit.

2.3.1 – Recommendations and response

Each of the specially secured rooms is monitored using two cameras. In addition, the doors are fitted with peepholes and windows which can be shut using a flap. The cameras, peepholes and windows also provide an unrestricted view of the toilet.

Even when they are placed in a specially secured room, the decent treatment of people deprived of their liberty requires that measures be taken to **protect their private and intimate sphere**. Their genital area should be protected by, for example, partially pixellating the camera image. In addition, visibility of the specially secured room through the window should be restricted in such a manner that the toilet is not in full view. Only where there is an acute danger of self-harm or suicide does it appear conceivable, in carefully considered, substantiated and documented individual cases, to permit unrestricted monitoring of the specially secured room. The person concerned must at any rate be informed of the fact that optical surveillance is in operation.³⁵

Response: It was already decided following the Joint Commission's report subsequent to its visit to Brandenburg an der Havel Prison on 28 August 2012 that computer software would be used to pixellate detainees' genital area on screen. However, where required, especially in cases where there is a risk of suicide, it should be possible to reverse the pixellation. These plans are currently being implemented. As regards the fact that the entire cell is visible through the window, a solution is currently being sought to prevent the toilet being in full view. According to the prison, any structural changes are to be completed by late August 2014. Since the cameras are visible to prisoners, no special reference has previously been made to the fact that optical surveillance is in operation.

In her meeting with the Joint Commission, the prison psychologist reported difficulties, in some cases quite considerable, when it came to **accommodating mentally sick prisoners in psychiatric hospitals**. These prisoners are generally released from the hospital and returned to the prison only a short while after their medication regime has been adjusted. However, the prison is not equipped to accommodate prisoners suffering from mental illness.

Humane conditions of detention mean that those who are sick must receive adequate medical care, where necessary also by transferring them to a facility which is appropriate given their clinical picture. Where a prisoner suffering from a mental illness requires medical treatment, this should be provided in a ward or clinic which is adequately equipped and has appropriately trained staff.³⁶

Response: The provision of care to prisoners in the criminal justice system as well as the relevant follow-up care following release both need improving across the whole of Germany. The Ministers of Justice of the Länder have therefore resolved to ask the involved Land ministries to support the criminal justice system in fulfilling its obligation to create the structures to ensure that mentally sick prisoners are treated in line with the relevant guidelines and to incorporate them into appropriate care systems after their release. Irrespective of this, prisons in Brandenburg all have registered contract doctors specialising in psychiatry who can be called in when required. In addition, a cooperation agreement was concluded in 2009 with the Asklepios Specialist Clinic in Brandenburg in respect of providing in-patient psychiatric care to mentally sick prisoners in a psychiatric ward in Brandenburg an der Havel Prison. Follow-up care can be provided in the prisons in the form of psychotherapies, whose provision is set down by law (section 26, Prison Act of Brandenburg). Up until now juvenile prisoners in Wriezen Prison requiring psychiatric treatment have been accommodated in a local psychiatric facility. Young adults can, however, also be transferred to the psychiatric ward in Brandenburg an der Havel Prison. In order to be able to provide an appropriate range of services for juvenile prisoners under the age of 18, there are plans to conclude an additional agreement with the Asklepios Specialist Clinic in Brandenburg to cover the provision of specialist medical treatment by its child and youth psychiatrists. At the moment, the Ministry is planning to propose that the prison set up a "sheltered residential group" for mentally sick prisoners. This "sheltered residential group" is to be suitably equipped for juvenile prisoners who require follow-up psychiatric care and for those whose condition is being managed by means of medication or who are in need of special treatment. Since May 2014 all those members of staff in Wriezen Prison who registered an interest have been undergoing training as part of a special project run by specialists in which they are learning how to deal with young prisoners with personality disorders.

The walls of two of the detention rooms inspected in the admission unit were **covered with graffiti**. It should be ensured that the detention rooms have a homely appearance.

Response: These detention rooms are in the pre-trial detention unit. The walls in that unit are often covered with

³⁵ see National Agency, Annual Report 2013, p. 27–28

³⁶ see also CPT Standards, CPT/Inf/E (2002) 1 - Rev. 2013, p. 41

graffiti. Prisoners are always asked to pay to have the graffiti removed and the detention rooms are renovated directly.

The house rules are written using language which juveniles can readily understand. However, they are only available in German. According to the head of the facility, an interpreter is called in in those rare cases when someone is unable to speak (sufficient) German. The interpreter then translates and explains the content of the relevant documents. Also, some of the staff speak Polish.

Despite the fact that the number of prisoners who do not speak German is small, the Joint Commission suggests translating the house rules into a larger number of languages commonly spoken by prisoners. The house rules in particular include explanations of duties, which are important for prisoners and at the same time inform them of their rights. Non-German-speaking prisoners should therefore also be able to understand them straight away.

Response: The translation of the house rules into the most frequently spoken foreign languages was regulated by law in Brandenburg for the first time in 2013 (section 114, Prison Act of Brandenburg). Corresponding procedures have already been discussed with the heads of facilities in Brandenburg. Since these translations are very expensive, the first step will be to elaborate joint framework rules for all prisons in Brandenburg which will then serve as the basis for the translation. The work on revising the framework rules will be carried out soon.

2.3.2 – Positive findings

There is a good atmosphere in all the areas the delegation inspected, which is in particular reflected in the extremely **relaxed manner of communication** between prisoners and staff. Staff were without exception all **motivated**. This was also reflected in specific details, for example in the friendly yet youth-appropriate language in which the house rules have been written.

2.4 – HAHNÖFERSAND JUVENILE PENAL INSTITUTION, 17 JUNE 2014

The Joint Commission visited the Juvenile Penal Institution in Hahnöfersand Juvenile Institution on 17 June 2014.

The Juvenile Penal Institution is responsible for enforcing pre-trial detention and custody pending deportation against male juveniles as well as youth imprisonment. The Juvenile Penal Institution has a capacity of 176 and was holding a total of 100 prisoners at the time of the visit. One juvenile was being detained in the specially secured room with no dangerous objects on the day of the visit.

The visiting delegation inspected the building housing pre-trial detainees, including the residential groups, the sanitary facilities, infirmary, courtyard, visitors' room and the kitchen. It also inspected the secure, disciplinary detention and observation ward, including two specially secured rooms. Finally, it inspected the building housing the Juvenile Penal Institution, including residential groups, a detention cell and a group room in the social therapy unit.

The delegation held private meetings with staff in various units, including the medical service, as well as with the pastoral worker. It also spoke with eight juveniles in various units and residential groups, and it inspected documentation relating to placements in the specially secured room.

2.4.1 – Recommendations and response

Placement in the specially secured room was ordered 37 times in 2013, placement in solitary confinement 24 times. In the first six months of 2014 placement in the specially secured room was ordered 16 times, placement in solitary confinement 20 times.

The number of **special precautions** ordered is higher than in other comparable facilities the Joint Commission has visited. The Joint Commission therefore asks for it to be examined for what reasons these measures were ordered.

Response: Pursuant to section 74 of the Hamburg Act on the Execution of Youth Imprisonment, special precautions may be ordered where, based on the prisoner's conduct or on account of his mental state, there is an increased risk of flight or the risk of violence against persons or property or a risk of suicide or self-harm. Further, solitary confinement is only permissible under section 74 (3), first sentence, of the Hamburg Act on the Execution of Youth Imprisonment where it is indispensable for the aforementioned reasons. The measure may only last as long as is absolutely necessary. The prisoner concerned is visited at close intervals and a member of staff examines whether the measure can be lifted. Staff from various specialist disciplines (psychological and medical service, prison manager, prison unit manager, shift manager, head of the security service) visit the prisoner.

The Juvenile Penal Institution has analysed the prisoner files and concluded that these measures were ordered after prisoners had attacked other people and there was a risk that they would carry out further violent attacks. The measures were also ordered when prisoners had harmed themselves, or they had announced/threatened self-harm or even suicide.

It is not possible to assess to what extent the number of times these measures were ordered is comparable with cases in other juvenile institutions. The facility in Hahnöfersand Prison accommodates only relatively few young pre-trial detainees and juvenile detainees given the total prison population in Hamburg. This small group comprises young, often

violent people who display serious behavioural problems and who very frequently have mental issues and great difficulty dealing with conflicts which arise during their time in detention without resorting to violence. Particular account needs to be taken of the fact that juvenile prisoners often come from social backgrounds in which they have often experienced a great deal of violence and most have been convicted for committing violent offences.

The Joint Commission feels that the grounds which have been presented in regard to the ordering of special precautions are comprehensible.

As already explained, special precautions appear to be ordered comparatively frequently, however; some juvenile penal institutions in other *Länder* do entirely without the use of **physical restraints**. The Joint Commission therefore recommended examining whether and by means of which measures the ordering of special precautions can be prevented beforehand or the number of such orders reduced.

Hahnöfersand Prison has two cells in which physical restraints can be applied, both by means of a system of bandages and metal manacles and leg cuffs. Since metal cuffs represent a very high risk of injury, in particular to those who are very agitated, only the system of bandages developed specifically for that purpose should be used where physical restraint is required. Metal cuffs should no longer be kept in stock.

Further, a provision applicable across Hamburg stipulates that persons being kept under physical restraint must fully undress and then be wrapped in cloth underpants provided for such situations. This procedure is degrading for the person concerned and is also very impractical for the member of staff applying it.

Given that a *Sitzwache* is always ordered when physical restraints are applied, any potential suicidal acts using objects hidden in clothing can immediately be identified (in so far as a person subject to physical restraints is actually in a position to even carry them out). The Joint Commission recommends giving those concerned clothing which respects human dignity. The Joint Commission would also like to point out that in other *Länder*, for instance Saxony, physical restraints are no longer applied within the juvenile justice system.

Response: *All the prisons in Hamburg only use a system of belts as a means of physical restraint. In Hahnöfersand Prison, metal cuffs are only used in specific cases when prisoners are being transported within the prison up until they are placed in the specially secured room. However, this occurs only in rare exceptional cases where no other options for carrying out physical restraint are available.*

Taking account of all the facts, the cloth underpants used in Hamburg when a person is placed under physical re-

straint appear to be a non-degrading solution which is appropriate to the circumstances. Physical restraints are used in extremely rare cases and only for a very short period (of a few hours).

The **specially secured rooms** are equipped with a CCTV camera, as a result of which the entire room, including the toilet, is visible from outside.

The provision of humane conditions of detention to people deprived of their liberty requires that measures be taken to protect their private and intimate sphere. Their genital area should be protected whenever prisoners are being monitored, for example by partially pixellating the camera image. If need be, it may be conceivable, in carefully considered, substantiated and documented individual cases, to permit unrestricted monitoring of a specially secured room where there is an acute danger of self-harm or suicide. This should be documented on the order for the special precautionary measure. The person concerned must at any rate be informed of the fact that optical surveillance is in operation.³⁷

Men are given paper underpants to wear when they are placed in the specially secured room, women are also given a paper shirt. As is the case when being subject to physical restraint, suitable clothing should also be handed out when someone is placed in the specially secured room. The Joint Commission recommends also giving men a paper shirt to wear when they are placed in the specially secured room.

The specially secured rooms have safety flaws, for example windows which do not fit seamlessly into the wall. Whenever someone is placed in one of these rooms they are therefore always monitored by a member of staff, since the rooms are not suitable for longer term placement for that reason. The two rooms also have no ventilation system, which is all the more important since it is not possible to open the windows. The Joint Commission recommends remedying these defects.

Response: *The specially secured rooms in the Juvenile Institution currently have no CCTV cameras, though there are cameras in the Youth Detention Centre, which the Joint Commission also inspected. There are plans to equip the two specially secured rooms in the Juvenile Institution with surveillance cameras. The partial pixellation of the images, as recommended in the Joint Commission's report, is being examined within this context. The monitoring is carried out by staff of the general prison service, depending on the individual case, and the order documented on the detention sheet.*

No definitive response can yet be given as regards the recommendation that men should also be issued with paper shirts when placed in the specially secured room. Discussions

³⁷ see National Agency, *Annual Report 2013*, p. 27–28

have not yet been concluded. As well as respecting people's sense of shame, account also needs to be taken of other aspects, such as practicability. The remedying of the reported security flaws (the window which does not fit seamlessly into the wall) and the installation of a ventilation system are both still being examined.

There is no separate **ventilation** anywhere in the secure and observation ward (Block 6). The cells can therefore get very hot, especially in the summer. Various people whom the delegation spoke to during the visit confirmed this. The Joint Commission recommends installing a ventilation system.

Response: The various options for installing a ventilation system are currently being examined. In view of the presumably very high costs, implementation of this building measure will require a long lead-time.

The **house rules** for pre-trial detention and custodial sentences are only available in German. The facility has several staff members who speak the relevant foreign languages and, in the rare cases where this is necessary, it calls in an interpreter during the admissions meeting. However, some 80% of the juveniles have a migration background, and as a result they sometimes have extreme difficulty understanding what they are being told. The Joint Commission therefore suggests having the house rules translated into a larger number of languages commonly spoken by prisoners. The house rules in particular contain information which is important for prisoners and at the same time inform them of their rights. They should therefore also be readily comprehensible for non-German-speaking prisoners.

The Joint Commission would also like to suggest being included in the list of those institutions whose correspondence with prisoners is not monitored.

Response: A translation of the house rules has been commissioned. The National Agency has been included in all of Hamburg's laws which relate to the justice system.

There has possibly been a misunderstanding here. The Joint Commission requests that it too be included in the house rules in the list of facilities whose correspondence with prisoners is not monitored.

Several juveniles informed the Joint Commission that the **evening meal** was insufficient, since an unlimited supply of bread was available but not nearly enough toppings. The Joint Commission suggests following up on these complaints.

Response: The facility followed up on the complaints voiced by several juveniles to the Joint Commission, namely that the evening meal, especially toppings, was not sufficient. Such complaints have in the past also been made directly to the head of the facility. The quantities of toppings provided objectively correspond to the findings of nutritional science. For organisational reasons the evening meal is handed out together with breakfast. On account of the layout of the

facility, which has many buildings spread across a large area, this is the only practicable solution.

Prisoners should learn (incl. from a pedagogical perspective) to ration their portions for the evening meal and for breakfast the next morning. The portions are appropriate. Some prisoners find this hard to do. Perhaps this may be due to them being given as much bread as they like, but that toppings are measured out (with the exception of margarine). Some prisoners may feel there is a discrepancy in this. Others, by contrast, appreciate the fact that the evening meal is handed out together with breakfast, because they can then freely choose what they prefer to eat in the evening and what they want to keep for breakfast. Some prisoners do not eat breakfast and thus prefer to eat the food allocated to them for breakfast in the evening. The head of the facility has previously received positive feedback about this modus operandi.

2.4.2 – Positive findings

It is worth mentioning that, according to several juveniles, **relations with prison staff are good**.

Positive mention should also be made of the **wide range** of social pedagogical measures and training courses available in the prison.

2.5 – NEUSTRELITZ JUVENILE INSTITUTION, 22 JULY 2014

The Joint Commission visited Neustrelitz Juvenile Institution on 22 July 2014. Neustrelitz Juvenile Institution is a closed facility with one open unit. It is the central juvenile institution in Mecklenburg-Western Pomerania, and has a capacity of 282.

2.5.1 – Recommendations and response

The delegation was notified several times of the recent amendment made to **unlocking times** in the Juvenile Institution. Under the new regulation, the doors to the detention cells are secured during unlocking times so that prisoners cannot retire into their rooms. The aim is to prevent prisoners attacking each other. In meetings with the Joint Commission prisoners complained about the new rule. They complained about the fact that the checks during unlocking times are not done every 15 minutes but only once an hour. That, for instance, meant that it was not always possible to ensure that prisoners can quickly access the sanitary facilities. There are neither toilets on the landing nor a call button, which means that the only means prisoners have of drawing attention to themselves is by knocking on the door. The minutes of meetings of the prison advisory committee, which were made available to the Joint Commission, also show that the rule on unlocking times has been raised

several times. Upon written enquiry, the head of the facility informed the Joint Commission that the checks are in principle carried out every 15 minutes.

In the Joint Commission's view, measures to prevent violence amongst prisoners are at any rate to be welcomed. Given that human rights must be observed, though, it must be ensured that prisoners have access to sanitary facilities at all times. It should also be ensured that help is on hand quickly in an emergency.

Response: The amendment made to unlocking times which the Joint Commission reported has led to a significant drop in violent attacks during unlocking times. Further planned organisational restructuring measures will, presumably from March 2015, ensure continuous supervision of prisoners during unlocking times. Until then, prisoners can, as in the past, draw attention to themselves by knocking on the unit door. This already guarantees that a member of staff will be able to react without delay. In addition, the units are checked at intervals of at most 15 minutes during unlocking times.

The walls in both the disciplinary detention rooms and individual detention rooms in the pre-trial detention unit had graffiti on them and were dirty. A **swastika** drawn on the wall of one of the disciplinary detention rooms was particularly noticeable. Placement in a detention room which another prisoner has dirtied or covered with racist graffiti can constitute a violation of human rights.³⁸

Whenever a detainee is moved out of a detention room special attention should be paid to the fact that comments or drawings of an unconstitutional nature which may be insulting or constitute provocation for certain groups of prisoners must be removed as soon as possible.

Response: Staff in the juvenile and youth detention units in Neustrelitz always ensure that comments and drawings of an unconstitutional nature are removed as soon as possible. Since the Joint Commission's visit record sheets have also been developed for the youth detention unit for use when detainees are moved into or out of their detention rooms, based on the model applied in the juvenile institution. A record of damage, stains, comments and drawings is made on the sheets, and their removal is occasioned at short notice.

The Joint Commission suggests including in section 52 (2) of the Act on Youth Imprisonment an explicit reference to the fact that **correspondence with the National Agency is not monitored**. The same goes for point 7.2 of the house rules.

Response: An explicit reference to the fact that correspondence with the National Agency is not monitored will be added to section 52 (2) of the Act on Youth Imprisonment

of Mecklenburg-Western Pomerania of 1 January 2008 as part of the planned amendment to that Act. The same goes for the reference in the house rules. There is, by contrast, no need to include an explicit reference to the fact that correspondence with the National Agency is not monitored in the draft of the Act on the Execution of Youth Detention of Mecklenburg-Western Pomerania since there are no stipulations regarding correspondence being monitored during youth detention (section 16 (2), second sentence, Act on Juvenile Detention of Mecklenburg-Western Pomerania).

2.5.2 – Positive findings

Neustrelitz Juvenile Institution opened in 2001. As a result, all the buildings and facilities are in very **good condition**. The prison has very pleasant and well-tended outdoor facilities, including several ponds, vegetable patches and greenhouses, a vineyard and a farm. The buildings are also all light, well looked after and have a friendly appearance. Only the windows in the disciplinary detention rooms have **perforated sheets** in front of them. The perforated sheets actually allow sufficient daylight to enter the rooms so that they are adequately lit. The windows can also be opened, so that sufficient fresh air is available. The facility also largely does without **peepholes**, which are only fitted to the doors to the disciplinary detention rooms. The delegation was also impressed by the **mother-and-child unit**, especially its child-oriented design, furnishings and fittings.

The Joint Commission would like to make positive mention of the fact that prisoners are given overalls to wear when they are placed in the specially secured room. In view of the need to observe human rights, this option is more preferable than the use of paper clothing, such as that used in other prisons. Depending on requirements, a mobile partition wall can be set up in front of the sanitary facilities in the cell which has CCTV monitoring so that the privacy of the person detained is sufficiently guaranteed.

³⁸ see Federal Constitutional Court, order of 15 July 2010, file no. 2 BvR 1023/08

3 – PRISONS

3.1 – SCHWÄBISCH GMÜND PRISON, 28 JULY 2014

The Joint Commission visited Schwäbisch Gmünd Prison on 28 July 2014.

Schwäbisch Gmünd Prison is responsible for enforcing prison sentences, youth imprisonment, preventive detention and pre-trial detention against women. It can accommodate 341 detainees in its closed unit and 14 in its open unit. At the time of the visit the prison was holding 290 prisoners, nine of them in the open unit. Of the 281 women being detained in the closed unit, 35 were in pre-trial detention and 21 were undergoing youth imprisonment.

Amongst other things, the delegation inspected the units for those serving long-term sentences, youth imprisonment, pre-trial detention, the specially secured rooms in various units, a disciplinary detention room, the preventive detention unit, the prison infirmary and the visiting area.

The visiting delegation also spoke with several prisoners, with the prison doctor, the staff representative and the spokeswoman for Block 1 (long-term sentences).

3.1.1 – Recommendations and response

Schwäbisch Gmünd Prison has several **specially secured rooms** which have a squat toilet, but no CCTV monitoring. Only one of the four specially secured rooms has a peephole through which the toilet is in full view.

Providing people deprived of their liberty with humane conditions of detention also requires that measures be taken to protect their private and intimate sphere. This also applies to those placed in a specially secured room. Here, too, the privacy of someone who is going to the toilet must be protected by taking appropriate measures. Only where there is an acute risk of suicide or self-harm does it appear conceivable, in very carefully considered, substantiated and documented individual cases, for unrestricted monitoring of the room to be permissible.

Response: On the grounds of the protection of life, this form of (thorough) monitoring should not entirely be relinquished.

During its visit the delegation was told of the very difficult **staffing situation** in Schwäbisch Gmünd Prison. It was also informed that Block 2 is currently not in use on account of staff shortages. Amongst

other reasons, the staffing situation is strained due to the high rate of absences. The facility provided the Joint Commission with the relevant figures to underscore this point.

The Joint Commission suggests reviewing the staffing situation in Schwäbisch Gmünd Prison.

Response: As regards the staffing situation it should be noted that other prisons in Baden-Württemberg are also overstretched on account of significant absences, which is why it does not appear necessary to support Schwäbisch Gmünd Prison, for instance by issuing orders, especially since the occupancy rate, as noted in the report, is currently well below capacity.

The shower rooms which the Joint Commission inspected do not have any **partitions** between the individual showers. The visiting delegation was told that there used to be partitions between the showers. However, after these led to mould developing in the shower room, the decision was taken to remove the partitions. The head of the facility explained that the long unlocking times meant that it was possible for prisoners to shower alone if they wished to do so. The delegation welcomed this fact. Irrespective of that, the Joint Commission recommends partitioning off at least one of the showers.

Response: There do not appear to be any deep security concerns which would speak against partitioning off one shower in each shower room in the women's prison. The Ministry is therefore happy to take up the Joint Commission's recommendations and has passed them on to the relevant building authority.

3.1.2 – Positive findings

Schwäbisch Gmünd Prison is a former Dominican monastery which is in very good **structural condition** and has spacious, well-tended grounds. The good atmosphere, the homely furnishings and the cleanliness of the prison should be emphasised.

The prison offers prisoners diverse **activities and job and training opportunities**.

Particular positive mention should also be made of the **medical care** available in the facility. It has a very well-equipped infirmary led by two highly committed doctors (1.5 posts) and their team. One prison doctor spoke to the delegation about the main emphases of his work and his daily surgery hours. Cooperation with external doctors and clinics, such as the Staufer Clinic, and other specialists (e.g. a psychiatrist, dentist and gynaecologist) who visit the facility once a week works very well, he said.

There was a thermometer in each of the **specially secured rooms**, making it possible to note the temperature in the room when it is occupied. Further, the specially secured rooms in the entire facility are used remarkably rarely. In recent years the rooms have always been used less than 10 times.

3.2 – NUREMBERG PRISON, 19/20 OCTOBER 2013

The Joint Commission visited Nuremberg Prison on 19 and 20 November 2013.

At the time of the visit the prison was responsible for enforcing first-time and regular prison sentences of up to two years against men, first-time and regular prison sentences of up to three months against women, custody pending deportation against men and women, pre-trial detention and youth detention. On account of changes being made to the prison's scheme of execution, since 25 November 2013 custody pending deportation has been enforced in Mühldorf am Inn Prison, which has been designated a pre-deportation detention facility. The facility in Nuremberg has a capacity of 1,039; 554 can be accommodated in the men's prison, 417 in pre-trial detention and 68 in the women's prison. At the time of the visit the prison was holding 874 prisoners, 486 in the men's prison (including 11 detainees awaiting deportation), 45 in the women's prison (including five detainees awaiting deportation) and 343 in the pre-trial detention unit. One pre-trial detainee was in solitary confinement on judicial order.

The delegation visited the unit for male detainees awaiting deportation, the unit for male sentenced prisoners, the women's unit, including pre-deportation detention, the pre-trial detention unit and their respective secure areas. The delegation held private meetings with members of the general prison staff, the social worker responsible for male detainees awaiting deportation, with two male and three female detainees awaiting deportation, two female pre-trial detainees and one prisoner representative. It also held a meeting with the chair of the staff council, with the pastoral workers, a doctor and the pre-trial detainee who had been placed in solitary confinement by judicial order.

The visiting delegation inspected the files of the detainees awaiting deportation and those of the last prisoner to be placed in solitary confinement and disciplinary detention, respectively.

3.2.1 – Recommendations and response

Prisoners in the men's prison are given paper underpants to wear when they are **placed in the specially secured room containing no dangerous objects**.

Female prisoners are also given a shirt which the prison designed especially for this purpose. The men should also be given such a shirt to wear when they are placed in the specially secured room containing no dangerous objects.

Further, the Joint Commission found during its visit that the **temperature** in one of the specially secured rooms in the pre-trial detention unit was 32°C. Some people may find this too warm. According to the head of the facility, the temperature is adjustable. It should be ensured that the temperature is kept at a comfortable level.

Response: The suggestion made by the Joint Commission following a visit to Bernau Prison on 4 May 2011 was already taken up in 2011. In addition to disposable paper or non-woven fabric underpants, prisoners are to be given a vest and a blanket made of tear-resistant material. Shirts are provided on a case-by-case basis. The report following the visit to Nuremberg Prison provided the opportunity to once more raise the prison's awareness for this matter. Nuremberg Prison has in the meantime deposited these shirts in all the anterooms to the specially secured rooms containing no dangerous objects.

The temperature in the prison cells can be adjusted at any time if prisoners detained in them feel uncomfortable. It should also be mentioned that in recent years prisoners have not complained about the temperature in the prison.

The disciplinary detention rooms which the delegation inspected were clean and functionally furnished. However, an SS symbol and a swastika had been drawn on the table in one of the rooms. Particular attention should be paid during a **room handover** to ensuring that comments or drawings of an unconstitutional nature which may cause offence to or act as provocation for certain groups of prisoners are removed.

Response: The disciplinary detention rooms are generally checked before a new prisoner is moved in to see if there are any symbols or marks. The Joint Commission's finding has provided occasion to once more raise awareness amongst the relevant staff members for this specific matter. For the rest, the swastika on the table which had been noted during the visit was removed that same day and a report sent to the supervisory authority.

The **shower rooms** in the men's prison which the Joint Commission inspected each have six showers, which are not partitioned off. Even though unlocking times are comparatively generous, some prisoners only shower in their underpants out of a sense of shame or for religious reasons. The Joint Commission therefore recommends partitioning off at least one shower so that prisoners' genital area is covered when they are in the shower. These arrangements have been made in other prisons and have not led to any increase in the number of attacks on account of it being difficult to get a good overview of the shower room.

Response: The prison's special duty of care towards prisoners mandatorily requires that it provide the best possible protection against violent or sexually motivated attacks amongst prisoners. In order to protect prisoners against such attacks by fellow prisoners, it is at the very least necessary to be able to carry out spot checks of the shower rooms. Effective and discreet checks of communal shower rooms by staff presuppose that they can easily get an overview of the rooms. Installing partition walls would mean that it would then be hard to carry out the required spot checks in a manner which encroaches on prisoners' privacy as little as possible whilst they are showering. By contrast, the open layout of the showers means that staff can quickly get an overview of the room and prevent or immediately put a stop to attacks amongst prisoners. It is particularly in the interest of protecting prisoners that partition walls have not yet been installed in the communal showers.

Nevertheless, Nuremberg Prison will take up the suggestion and successively install partition walls in at least one shower in the prison shower rooms which at least cover the genital area. It remains to be seen what experience the prison gains in this regard.

3.2.2 – Further suggestions for improving the conditions of detention

Prisoners placed in the **transport unit** generally arrive there by bus at around 6 pm. They are given an evening meal and are then locked in. Only those prisoners who are not moved on straight away the next day are able to take a shower. According to members of staff, prisoners are unable to shower when they arrive in the evening because it is too time-consuming and requires too much manpower. That is why prisoners may end up not being able to shower for four to five consecutive days. The Joint Commission recommends giving those arriving in the transport unit the opportunity to shower.

Response: The transport unit in Nuremberg Prison has a capacity of 65 and is part of a total of six prisoner transport circuits. Each year more than 4,000 prisoners (2013: 4,418) from across Germany spend at least one night in this unit. The majority of transported prisoners generally arrive in the prison between 5 pm and 7 pm. Admission of the on average 20 prisoners who arrive during this period requires a not inconsiderable amount of organisational effort (proper accommodation, possibly being taken to see the doctor, removal of valuables and belongings, handing out food etc.). Given the very diverse tasks which need to be carried out, it is not possible to enable those arriving in the evening to take a shower without neglecting other, more urgent tasks. New arrivals are, in addition, entirely unknown to officers, as a result of which a risk assessment cannot be carried out until the transport documents have been studied. Given this situation it is therefore not possible for new arrivals to shower until the next day.

Shower times in the transport unit are Mondays to Fridays from 8.30 am to 10.30 am on the ground floor and 9.30 am to 10.30 am on the first floor. Showers are not available on Saturdays and Sundays. Prisoners who are being transported to another facility the next morning are not, unfortunately, able to shower because they generally leave the prison between 7 am and 8 am. Early morning departures also require a considerable amount of organisational effort (waking prisoners, cell handover, searching prisoners before they leave etc.). Irrespective of whether they can take a shower or not, prisoners who only spend one night in Nuremberg Prison can also wash themselves in their detention cells, as all the cells have a washbasin and detainees are given toiletries and fresh towels.

3.2.3 – Custody pending deportation: Recommendations and response

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

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

Response: Given recent court decisions, Mühldorf am Inn Prison has had to be converted, at extremely short notice, into a temporary pre-deportation detention facility. That is why it was only possible to successively establish the relevant conditions of detention, which must differ significantly from those of sentenced prisoners.

The recruitment procedure for the around 30 additional members of prison staff and the specialist services who are to support existing staff was immediately launched. In addition, some EUR 1.6m was invested in structural measures and in furnishings and fittings in order to create the necessary conditions in the rooms as well. According to the current state of planning, it is anticipated that both the required staff and rooms will be available around the middle of this year so that the following projects, which are currently at the planning stage, can then be implemented.

Unlocking times for male detainees awaiting deportation are from 8.30 am to 12 noon on Mondays to Fridays and between 10.30 am and 3.45 pm at weekends. From 4.15 pm onwards detainees awaiting deportation are locked into their rooms. Female detainees awaiting deportation are allowed out of their rooms between 8 am and 12.30 pm on Mondays to Fridays and from 3 pm to 4 pm at the weekend. At the weekend they are allowed out of their rooms for 1 hour in the morning and 1 1/2 or 2 hours in the afternoon. Both men and women are given access to the yard during these times. Female detainees awaiting deportation are only able to shower on weekdays during unlocking times.

These hours should be extended. Since detainees awaiting deportation are not prisoners, they should only be subject to those restrictions which are absolutely essential to the enforcement of this form of deprivation of liberty. That is why the rooms should be unlocked for as long as possible and detainees should be given **access to the courtyard and the shower rooms** when they are allowed out of their rooms.

An exemplary rule applies in Berlin-Köpenick Pre-Deportation Detention Facility, where detention rooms are only locked during shift change-overs and access is provided to the recreation yard several times each day. Unlocking time in Ingelheim Detention Centre for Persons Required to Leave the Country are between 7 am and 10 pm each day, and detainees have access to the recreation yard and the showers during those times.

Response: The recommendation has already been implemented in Mühlendorf am Inn Prison. Female detainees awaiting deportation are able to leave their detention rooms, which have normal doors, at any time of day or night, and they may, for example, use the central sanitary facilities or the common room, including the kitchen. Unlocking times for male detainees awaiting deportation are currently from 7 am to 5.15 pm. There are plans to extend these times to 7 pm. During unlocking times detainees can shower at practically any time, seven days a week. It is not possible, both for structural reasons and due to staff shortages, to establish an unlimited "open door policy", nor is it possible to grant detainees continuous access to the yard during unlocking times, as members of the prison service must be present for security reasons, especially since male and female detainees need to be kept separate in the yard area. Nevertheless, it should be mentioned in this context that detainees have the additional option of using, at specific times, the sports and leisure area which was set up specially in the former working room.

According to the prison management, the social service lets detainees awaiting deportation make **telephone calls** every other week. Other calls may be

authorised in urgent cases. However, it is often difficult for detainees to make calls to their home countries on account of the connection failing.

The Joint Commission is aware that for security reasons, on account of other types of detention also being enforced in the facility, detainees may not use mobile phones. However, it would like to point out that the use of mobile phones is variously permitted in specialist facilities enforcing custody pending deportation. At any rate, detainees awaiting deportation should be permitted regular access to a telephone which they can also use to make international calls.

The **visiting times** granted to detainees awaiting deportation (30 minutes per week) are comparatively short. Considerably longer visiting times should be granted, as is the case in the facilities in Ingelheim, Berlin and Büren.

Response: The recommendations regarding increasing external contacts are likewise already largely being implemented in Mühlendorf am Inn Prison. There are plans to enlarge the visiting area. There are also plans to extend visiting times as soon as the requisite staff are available. Detainees are regularly given access to a telephone which they can also use to make international calls. Calls currently still have to be made through the prison's telephone exchange. However, there are plans to set up a separate telephone room for detainees.

The prison already employs one social worker, and three additional social workers will be hired to provide intensive support to detainees awaiting deportation. Some of these social workers have remarkably wide-ranging language skills and experience dealing with migrants. In addition, representatives of the Jesuit Refugee Service, Nuremberg Refugee Aid, Amnesty International and private volunteers regularly visit the facility.

Prison staff reported that no external **interpreter** is generally brought in during the admission meeting and the initial medical examination of detainees awaiting deportation. Where communication problems arise, other detainees are, where possible, used to interpret, including sentenced prisoners. In some cases communication is only possible using sign language, they said. Sometimes everyday life in the unit is only possible through indirect means of communication. The Joint Commission also came to this conclusion after inspecting the files of detainees awaiting deportation, since it noted that one person's applications were often written by other people.

Detainees awaiting deportation are often at particular risk on account of their background (flight, experiencing violence). Because they often suffer from mental illnesses, they find custody awaiting deportation a particularly stressful situation. The following is taken from the resolution adopted in 2011 at the 114th German Medical Assembly:

“It is a well-known fact that the health of detainees awaiting deportation deteriorates whilst they are in custody. Detrimental conditions include a lack of information about the reason for and duration of their detention, being accommodated together with prisoners, isolation, not being able to communicate due to language barriers, re-traumatisation following trauma experienced during a previous arrest and period in detention, and the lack of psychological and medical care.”³⁹

Against this backdrop it is especially important that staff are able to get as broad a picture of a detainee’s mental and physical state as possible. Firstly, drawing in other detainees to interpret does not guarantee that what those concerned say is rendered fully and correctly in German. Secondly, it does not ensure a confidential atmosphere during the meeting.

It should be ensured that external interpreters are called in where necessary to take part in admission meetings and especially during medical examinations. It must also be possible for staff and detainees awaiting deportation to communicate on a day-to-day basis in the unit.

During its inspection of the pre-deportation detention unit in the women’s prison the Joint Commission found that in some cases staff were unable to communicate with detainees. When Mühlendorf am Inn Prison becomes the central facility responsible for enforcing custody pending deportation, attention should be paid to the targeted selection of staff to work in this area. Staff should have various cultural backgrounds and cover as large a range of languages as possible.

Response: Where required, Mühlendorf am Inn Prison can call in external interpreters to deal with language difficulties. In addition, foreign language skills are one of the necessary requirements being made of social workers during the ongoing recruitment procedure. Language skills are also an important selection criterion in the general prison service. As desirable as it would be for staff to come from different cultural backgrounds and to cover a wide range of foreign languages, this is, unfortunately, not feasible given the labour market situation and the prison’s location.

The civil servants employed in the pre-deportation detention unit are not given any **specific training or ongoing training** in dealing with detainees awaiting deportation. However, this group of people find themselves in a very particular situation on account of their facing deportation. In Mannheim Prison, for instance, staff in the pre-deportation detention unit are given special training. The National Agency suggests running similar courses for staff once Mühlendorf am Inn Prison has been reorganised.

Response: Mühlendorf Prison recognised the specific training requirements of staff who are employed in enforcing custody pending deportation early on. At the start of the conversion process it therefore drew on the specialist knowledge of staff in prisons in which custody pending deportation is already being enforced. There are plans for the local district office to run training courses on the law concerning foreigners. In addition, the director of Mühlendorf am Inn Prison plans to contact Mannheim Prison to benefit from its best practice experience. Finally, a former prison director at Mühlendorf am Inn Prison who has the relevant training is acting as supervisor.

According to the house rules, detainees may be permitted to wear their own **clothes**. However, according to staff, detainees awaiting deportation have to wear prison clothing. In order to approximate their situation as closely as possible to normal life, it should be ensured that detainees awaiting deportation can wear their own clothes. Likewise, opportunities should be created for them to wash their clothes.

Response: The option of wearing one’s own clothes generally fails in reality because detainees do not have sufficient financial means to ensure that they have a change of clothing or that they can have their clothes washed, as they primarily use the pocket money they are given to buy food, drinks and tobacco.

3.2.4 – Positive findings

The **atmosphere** in Nuremberg Prison was good. Prisoners/detainees in particular mentioned the relationship with general prison service staff. It became clear in meetings with the staff and detainees awaiting deportation that assigning a dedicated **social worker** to the custody pending deportation unit has improved the situation of those being detained there. Both detainees awaiting deportation and the social worker mentioned the great commitment shown by one **member of the refugee aid**, who has been looking after detainees awaiting deportation for many years.

³⁹ German Medical Council (2011), 114th German Medical Assembly, Resolution, p. 125

4 – POLICE STATIONS

<i>Recommendation:</i>	<i>Fire detectors</i>	<i>Mattresses</i>	<i>Protecting privacy</i>	<i>Instruction about rights</i>	<i>Custody documentation</i>	<i>Night lighting</i>	<i>Dealing with specific groups of people</i>	<i>Time outside</i>	<i>Access to daylight</i>
Chemnitz North East Police Station	X	X		X	X	X	X		
Frankfurt am Main Police Headquarters			X	X		X		X	X
Leipzig Central Police Custody	X	X	X	X					
Winnenden Police Station	X	X	X		X	X			

4.1 – GENERAL ISSUES

In 2014 the Joint Commission visited four police stations in Baden-Württemberg, Saxony and Hesse. Whilst some of the visits were announced, others were not.

The Joint Commission makes the following observations based on the outcome of the visits.

4.1.1 – State-wide implementation of the Joint Commission's recommendations

In order to remedy deficiencies as broadly and as effectively as possible, those recommendations which are made following visits to specific police stations should always be implemented in all stations across the *Land* concerned. A comparable procedure has become established at federal level. For instance, based on a recommendation made by the Federal Agency, the Federal Ministry of the Interior instructed all police stations to have washable, flame-resistant mattresses available in their custody cells. This procedure has not yet become established at *Land* police level, as the visits to police stations in Baden-Württemberg and Saxony, for example, showed.

4.1.2 – CCTV monitoring of custody cells

In the Annual Report 2013 the Joint Commission explained its general stance in regard to video surveillance of people deprived of their liberty, especially in respect of the protection of privacy.⁴⁰ Privacy must as

a matter of principle be protected in a suitable manner in all places where measures depriving people of their liberty are enforced. Where CCTV monitoring is in operation this can, for instance, be achieved by pixellating images of the sanitary facilities. If need be, it may be conceivable, in carefully considered, substantiated and documented individual cases, to permit unrestricted monitoring of a custody cell where there is an acute danger of self-harm or suicide.

CCTV monitoring is in operation in some of the cells in Frankfurt am Main Police Headquarters. Images of the toilet are not pixellated. The Joint Commission recommended that measures be taken to protect detainees' privacy.

Independently of the question of protecting privacy, CCTV monitoring of the cells in police stations is, as a matter of principle, only permitted when the statutory requirements are met, that is in justified and documented individual cases. Continuous monitoring is only possible after weighing up the circumstances and requires special justification. Such justified exceptional cases include, for instance, extremely drunk, aggressive or suicidal people. It therefore appears sufficient for only half of the available cells in a police station to be equipped with a CCTV camera for such cases or, if all the cells are equipped with a camera, for the cameras only to be used in justified exceptional cases.

In Winnenden Police Station the Joint Commission found, for example, that constant CCTV monitoring is in operation in all three cells and that it is thus not only used in justified and documented individual cases. The explanations provided by the Ministry of

⁴⁰ see National Agency, *Annual Report 2013*, p. 27–28

the Interior of Baden-Württemberg, especially the reference to the Federal Court of Justice's judgment of 4 September 2014 in the Oury Jalloh case⁴¹ (according to which continuous optical surveillance had been necessary) only refer to such aforementioned individual cases of people who are either drunk or suicidal and thus do not conflict with the Joint Commission's opinion. Nevertheless, the Joint Commission was informed during its visit to the police station that continuous CCTV monitoring was not only carried out in such exceptional cases, but that it was standard procedure. This contradicts the explanations provided by the Ministry of the Interior, namely that "CCTV monitoring is not carried out continuously, but only to the extent provided by law and only where the conditions provided under the Police Act are met".⁴²

Further, the custody checks were carried out using the surveillance camera, as the Joint Commission learned when it inspected the police station's custody record book. The Joint Commission therefore once more emphasises that CCTV monitoring can on no account be a substitute for regular, direct cell checks by duty officers, but that it can at most be supplementary to such checks.

4.1.3 – Dealing with conflicts arising due to communication problems

When conflicts arise, dealing with people with a different cultural background and with whom communication is difficult or impossible presents a particular challenge for police officers. Officers then have to de-escalate the conflict without being able to resort to language as a means of communication. Knowledge of the specific cultural background of the people in question is helpful in order to be able to better assess a person's behaviour. Especially those officers working in police stations which have reception centres within their district, for example, should be sensitised to this issue and supported by means of relevant measures. Taking part in one single intercultural skills training seminar, as detailed by the Ministry of the Interior of Saxony,⁴³ is not sufficient. To avoid situations escalating due to communication problems, it should be possible to call in external interpreters for commonly spoken languages at short notice, or at least for it to be possible to get them on the telephone at short notice. Further, information sheets translated into the most important/most frequently spoken languages should

be available, for instance to explain the situation and procedure to those taken into custody.

Incidents which occurred in Chemnitz North East Police Station serve as an example of this type of problem and how difficult it is to handle the ensuing conflicts: People of African origin taken into custody have on several occasions in the past begun hitting their head against the cell wall intent on hurting themselves. To stop these people self-harming, they were required to wear a police helmet. The officers in the police station are aware that this is not an appropriate solution to the problem. The Joint Commission recommended acquiring suitable protective headgear to prevent head injuries. In addition, it recommended finding a way of dealing with this special problem, which, according to the officers, mainly occurs in one particular cultural group.

In any case, a special register should be kept in the police station of such special incidents, as is already the case in Frankfurt am Main Police Headquarters. Systematic documentation is the only way in which the reasons for self-harm and other special incidents can be analysed and suitable counter-measures then taken.

4.1.4 – Requiring detainees to fully undress prior to a physical search

During its visit to Frankfurt am Main Police Headquarters the Joint Commission noted that people taken into custody are always searched after being required to fully undress. Having to fully undress represents such serious interference with a person's privacy that the circumstances of each individual case must always be weighed up first.⁴⁴ The Joint Commission believes that it is not permissible to issue a general order to carry out physical searches only after a person has fully undressed.

4.2 – FACILITIES VISITED

4.2.1 – Leipzig Central Police Custody, 12 February 2014

The Joint Commission visited Leipzig Central Police Custody on 12 February 2014.

The Central Police Custody is part of Leipzig Regional Police Headquarters. It has 42 custody cells (single-occupancy cells with a plank bed), eight drying-out cells and six multi-occupancy cells for detaining several people for a short period of time. At the time of the visit there was one person being detained in custody.

⁴¹ *Federal Court of Justice, judgment of 4 September 2014, file no. 4 StR 473/13*

⁴² *see response of the Ministry of the Interior of Baden-Württemberg, p. 50*

⁴³ *see response of the Ministry of the Interior of Saxony, p. 53*

⁴⁴ *cf. Federal Constitutional Court, order of 4 February 2009, file no. 2 BvR 455/08, margin no. 35 (juris)*

In addition to the custody cells the delegation inspected the sanitary facilities, the medical room in which examinations are carried out and the service room. In addition, it inspected the custody record book.

Recommendations and response

The cells in the central custody facility have no **fire detectors**. In the event of a fire detainees would therefore have to contact the duty office via the intercom, which represents an increased risk. That is why the fire detectors in the corridors outside the cells are not sufficient. The Joint Commission recommends installing fire detectors in the cells in order to guarantee detainees' protection in the event of a fire.

Response: As regards installing fire detectors in custody cells, it must be said that each cell has a smoke detector in the exhaust air system, as a result of which, in the event of smoke developing, an alarm will sound to warn the duty officer in the central custody facility.

The custody cells in Leipzig Central Police Custody only have a wooden plank bed but no **mattress**. According to staff, those taken into custody are given one, if required several, woollen blankets. Officers reported that people are rarely kept in overnight.

The CPT has repeatedly recommended, for instance to the police authorities in Baden-Württemberg during its visit in 2010, that detention facilities be provided with mattresses.⁴⁵ In its report, the Federal Government again called on all the *Länder* to immediately implement the CPT's long-standing recommendation.⁴⁶ The Joint Commission shares this opinion. It is recommended that washable, flame-resistant mattresses be acquired for the *Land* police in Saxony and that at least a few be kept in stock and made available to those held in custody overnight.

Response: The Ministry in principle endorses the recommendation that flame-resistant, disinfectant-proof mattresses be provided. However, before the purchases can be made the costs and availability of budget funding first need to be examined.

The toilets in the single-occupancy cells are located on one side of the cell next to the door. The wide-angle peephole in the cell door means the **toilet is in full view**. The Joint Commission is of the opinion that providing people with humane conditions of detention also means that their privacy needs to be respected. This is not guaranteed if the toilet is in full view of anyone looking through a peephole.

However, account should be taken of the fact that there is a shower room with a separate toilet on each floor of the building. This toilet is not visible from the

outside. The Joint Commission feels that the privacy of those who are taken into custody is sufficiently protected if they are informed upon being booked in that they may use the toilet which is located in the shower room. This information should be provided in writing to ensure that all those taken into custody are aware of it.

Response: The Joint Commission's suggestion that those taken into custody be informed that they can, upon request, use the toilets available in the shower rooms will be taken up. Whether panels (max. chest height and 20 cm above the floor) can be installed in the cells is currently being examined. Installing panels higher than this is regarded as critical for security reasons, since the cells in Leipzig Central Police Custody do not have a grille in front of them.

People who are taken into custody under the Police Act are only **informed of their rights** verbally by the admitting officer. By contrast, those taken into custody under the Code of Criminal Procedure are informed of their rights in writing.

The Joint Commission recommends standardising the rules on informing those taken into custody of their rights. Legal information should be provided as quickly as possible and always in writing; this also serves to protect officers. The information should also contain references to the right to inform a family member and a legal adviser, as well as the right to be examined by doctor. Relevant documents should be available in the same languages as the forms required under the Code of Criminal Procedure.

Response: The Joint Commission's recommendation on handing out written information about rights in all relevant languages will be implemented at short notice.

Positive findings

Positive mention should first be made of the good structural condition and the noticeable cleanliness of Leipzig Central Police Custody. Police officers reported that the custody cells are cleaned every day by an external firm. The Commission also welcomes the fact that sanitary facilities, including a shower and a separate toilet, are available on each floor.

What was also noteworthy was the stock of food and drinks kept in the fridge in the service room for detainees. Vegetarian food and halal food for Muslims is also kept in stock. When someone is kept in custody for more than 24 hours, which occurs extremely rarely according to officers, they are also given a warm meal.

On inspecting the custody record book the Joint Commission found that the times of the checks are not entered in the book but are recorded electronically in a computer program. The Joint Commission in particular welcomes the automatic warning and reminder function available in the program for docu-

⁴⁵ CPT/Inf (2012) 6, p. 18, paragraph 27

⁴⁶ CPT/Inf (2012) 7, p. 17, re paragraph 27

menting cell checks. The intervals between the required checks (depending on who is being checked on) are entered in the programme. Once these intervals are exceeded and the time of the check is not entered, officers are reminded to carry out the check by means of a red blinking light. The reason why checks are carried out late must be justified in writing. These data cannot be changed afterwards.

4.2.2 – Winnenden Police Station, 29 July 2014

The Joint Commission visited Winnenden Police Station on 29 July 2014.

The visiting delegation inspected the three custody cells and inspected the custody record books. At the time of the visit no-one was being detained in custody.

Recommendations and response

All three cells in Winnenden Police Station are equipped with CCTV cameras, which are visible. All those taken into custody are subject to continuous CCTV monitoring. A red light on the camera indicates whether it is on or off. According to police officers, in accordance with section 21 (5) of the Police Act in conjunction with no. 4.4 of the Police Custody Regulations, they inform detainees that video surveillance is in operation. Given that some of those taken into custody are in no state to be able to understand what they are being told, the Joint Commission recommends that notices be available containing this information or pictogrammes, which the Ministry of the Interior said it would be procuring in a letter dated 29 May 2013 (ref. 3-0525/54). At the moment there is only a small, hardly visible sign in the ante-room to the cells between the second and third door. This is a relic from when only one cell was equipped with a CCTV camera. However, the other cells were retrofitted with CCTV cameras.

The Joint Commission is of the opinion that CCTV monitoring of police cells is only permitted in justified and documented individual cases. Continuous surveillance requires separate justification. The need to examine each individual case is also set out in the detailed requirements in the Baden-Württemberg Police Custody Regulations. Pursuant to no. 4.3 of the Custody Regulations, “the number of checks and the times when they are to be carried out is based on the circumstances of each individual case. [...] Special circumstances (e.g. a person not being fit to be kept in prison – cf. no. 2.1.2, Physical restraints – cf. no. 4.6) may necessitate that the intervals between checks be shortened so far as to constitute constant observation.” Constant observation, as is carried out using the CCTV camera, is, thus, only possible in exceptional cases, for example when a person is extremely drunk. It therefore appears sufficient for only one of the cells

to be fitted with a CCTV camera for such cases or for the cameras not to be switched on all the time.

Further, the Joint Commission would like to point out that CCTV monitoring must on no account be a substitute for regular, direct cell checks by duty officers, and that it can at most be used to supplement such checks. The delegation was informed during its visit that the cells are often only checked using the CCTV cameras, since officers are sometimes alone in the station at night and cannot therefore carry out checks in person. Entries made in the custody record book confirmed this, as only the word “camera” was entered next to the time. This is not sufficient for an effective check of the cells.

The Joint Commission recommends ensuring that regular direct checks are carried out in the custody suite. CCTV monitoring should in future only be applied in justified individual cases, and such use should be documented and justified.

Response: The signs (pictogrammes) which ought to indicate that CCTV monitoring is in operation in the custody cells have now been installed.

There is no continuous CCTV monitoring; such monitoring is only done to the extent provided by law and only where the requirements set out in the Prison Act are met. People are often taken into police custody because they represent a danger to themselves or to others. Often they are drunk and/or aggressive. In such cases continuous CCTV monitoring primarily serves to protect detainees (e.g. in case of the risk of suicide or to monitor their physical state) and police officers (e.g. against aggressive and rowdy behaviour). Continuous CCTV monitoring guarantees that officers are able to recognise and prevent self-harm or a deterioration in a person's physical state at an early stage and thus enable early intervention. Where a detainee is showing aggressive behaviour, staff can then be deployed appropriately during personal cell checks. Especially when there are indications of possible health risks and the person concerned is asleep or resting, a personal check in addition to regular monitoring of vital functions is indicated.

In such cases CCTV monitoring thus serves to fulfil the state's duty of protection. If breached, the responsible police officers might possibly face criminal prosecution. Especially in the case of detainees whose volition is restricted and/or who show signs of being at risk of self-harm, these duties comprise as uninterrupted an optical surveillance as possible. The Federal Court of Justice, for instance, expressly ruled that carrying out checks every 30 minutes is not sufficient and that instead continuous optical surveillance was necessary and that, if this is not done, then a breach of duty has occurred (Federal Court of Justice, judgment of 4 September 2014, file no. 4 StR 473/13, margin no. 37).

The Ministry does not deny that CCTV monitoring represents interference with the detained person's personal right. However, for the aforementioned reasons, this interference is

justified, necessary and not disproportionate. No other, equally suitable method is apparent. In particular, it cannot be assumed that monitoring by a police officer posted in front of the room actually constitutes less severe interference. The measure also appears appropriate in the narrow sense of the meaning, since where there are concrete indications that a person is at risk of harming themselves, greater importance must be attached to protecting life than to the right to determine the use of one's personal data.

When inspecting the **custody record books** during its visit, the delegation noted that the documentation was sometimes incomplete both regarding custody checks and the provision of information about rights.

Although the times at which the custody cells are checked are noted, sometimes the officers who carried out the check do not add their initials. Careful documentation serves to protect those taken into custody as well as officers.

In addition to not signing their initials, officers often did not indicate that they had instructed those taken into custody about their rights. This is necessary whenever someone is booked in. If someone is not in a position, when they are booked in, to understand this legal information, it must be provided afterwards, at the latest upon their release. The custody record book has a special field for such cases, in which a note can be made of the fact that the legal information was provided at a later point in time. However, in many cases this field was empty, although it had been noted when a person was booked in that the legal information was “not given”. In addition, no note had been made as to why information about rights had not been subsequently provided.

The Joint Commission recommends examining how thorough, full documentation in the custody record book can be guaranteed.

Response: No. 1.4 of the Baden-Württemberg Police Custody Regulations of 17 December 2013 already regulates the full documentation of information relating to custody. In order to guarantee that information is carefully documented in the custody record book, regular checks of the books would have to be done in each police station. The heads of the organisational units at Aalen Police Headquarters have therefore once more been instructed to carry out these checks as part of their supervisory function and, where necessary, to draw the staff's attention to their obligation to keep the records up to date.

The custody cells in the police station do not have **fire detectors**. This poses an increased risk for those detained in custody, because in the event of a fire they first have to contact a police officer via the intercom. The visiting delegation was told that no fire detectors had been installed because they were not deemed necessary on account of the rooms being continuously monitored via CCTV cameras. The Joint Commission

doubts whether continuous CCTV monitoring is equally as reliable as a fire detector.

The Joint Commission recommends installing fire detectors in the cells in order to guarantee that people detained in custody are protected in the event of a fire.

Response: According to the current planning status, fire detection systems will be installed in all police custody facilities by the end of 2015. Either a vandal-resistant smoke alarm or an adequately protected smoke extraction system will then be in operation in the cells.

The custody cells in Winnenden Police Station each have a wooden plank bed, but no **flame-resistant, washable mattresses**. Those who are taken into custody are only given disposable blankets. In a letter dated 21 August 2013 (ref. 3-0525/54), the Ministry of the Interior of Baden-Württemberg notified the Joint Commission that police stations in Baden-Württemberg had been instructed to immediately acquire and provide the mattresses and blankets which so far had been not available.

Providing mattresses in custody cells is already standard practice, for example, in Federal Police stations and also corresponds to international standards.

Response: The flame-resistance, washable mattresses which the Joint Commission recommends should be purchased for the cells were acquired immediately following the visit. The available disposable blankets are likewise flame-resistant.

It is not possible to regulate light intensity in the cells, as a result of which people are either held in custody with all the **lights** on full or in complete darkness. The delegation was informed during its visit that the light in the cells is always on so as to be able to monitor the detained person via the CCTV camera. The Joint Commission has serious concerns as regards having the lights on continuously, because it can deprive those detained in custody of sleep.

The Joint Commission therefore recommends installing night lighting in the custody cells (e.g. a dimmable lamp or a nightlight).

Response: New and existing cells will be fitted or retrofitted with a dimming device, which is installed and operated from outside the cells.

Positive findings

The Joint Commission read in the documents it was sent that seven “Provocation, Aggression and Violence against Police Officers” training seminars were run in autumn 2014 as part of the Baden-Württemberg Ministry of the Interior’s Reducing Provocations, Aggression and Violence against Police Officers Strategy. In line with the National Agency’s preventative activities, the focus is in future to be placed on initial and further training for police offic-

ers, especially to prepare them for stressful situations. The aim is thereby to prevent them over-reacting in certain situations. The Joint Commission therefore welcomes the Ministry of the Interior's strategy and asks that a list of available training measures and materials be forwarded.

4.2.3 – Chemnitz North East Police Station, 30 September 2014

A delegation of the Joint Commission visited Chemnitz North East Police Station on 30 September 2014. The Joint Commission notified the State Ministry of the Interior of Saxony the day before of its intention to visit the facility. In an initial meeting the delegation discussed the course of the visit with the head of patrol duty and also asked for various documents relevant to the visit to be made available.

The delegation then visited the eight custody cells, including two multi-occupancy cells, and inspected the custody record books. No-one was being detained in custody at the time of the visit.

Recommendations and response

During its visit the delegation's attention was drawn to a police helmet which was lying on the floor of the anteroom to the custody area.

The delegation was told that there had been an increasing number of incidents in which people taken into custody had begun hitting their head against the wall intent on injuring themselves. To stop detainees hurting themselves, officers had begun getting them to wear a **police helmet**. This was not the best solution, they said. That is why the officers had recommended procuring a more suitable item, for example the kind of protective headgear used in martial arts. However, the procurement department had refused to follow up on the recommendation. When asked, the police officers reported that the incidents frequently involved people of African origin.

In the context of the information which has to be provided on the occasion of a visit, the police station initially informed the National Agency that it was not possible to say how many incidents there had been in which someone had injured themselves or how many other special incidents there had been. Cases of self-harm are not recorded in the system, it was informed.

The Joint Commission feels that it is necessary to **record** self-harm and other **special incidents** in the digital system or – if this is not possible – separately. Systematically documenting such incidents is the only way in which the grounds for self-harm can be evaluated and analysed and thus suitable and timely counter-measures taken.

Response: All special incidents which occur in police custody are recorded in detail in the existing system (electronic

custody record book). Searches can currently only be made of standard information such as time intervals, name and legal basis. Searches of general and case-specific information about self-harm incidents are time-consuming because they necessitate a manual search of all cases which have been entered in the system. However, such searches are not required in the fulfilment of police tasks, which is why this function was not programmed in the system.

According to the police station, the reason for this “cluster” of cases of self-injury was linked to the fact that it was responsible for a reception centre for asylum seekers located in the district of Ebersdorf. Due to the high turnover of asylum seekers in Chemnitz, the space available in the reception centre and the resulting mood of some of the asylum seekers, including on account of what they had gone through in their home countries, meant that the same number of people from the aforementioned group are taken into custody as German nationals, although refugees make up only a share of 4.45% of the total population in Chemnitz. According to officers' estimates, some of the asylum seekers do not recognise the authority of the state (as represented by uniformed police officers) or have strong misgivings against intervention measures. This attitude was often particularly marked in the case of refugees from northern Africa and was then reflected in their behaviour, officers reported. This conduct was aimed at evading the police measure, even if it meant attempting self-harm and being taken to hospital.

The Joint Commission recommends procuring protective headgear which is suitable for preventing head injuries. In addition, it should be examined how this particular problem could be tackled in the medium term, given that, in the officers' analysis, it notably occurs in one specific group of people.

Response: The use of protective headgear appears necessary to prevent self-injury on the part of those taken into custody and those at risk of self-harm. It is suggested that standard protective headgear (such as that used by boxers) be used. The suitability of such protective headgear and its procurement is being reviewed. Attention is drawn to the fact that in cases in which the use of protective headgear is supposed to prevent self-injury, additional surveillance or fettering of the person concerned is also necessary.

The police station justified the incidents by, amongst other things, quoting cultural specifics and detainees' fundamentally negative attitude towards state authority. The Joint Commission notes that other circumstances might also explain this escalation, specifically in this group of people. Communication problems, for example, can lead to misunderstandings with police officers. Account must also be taken of the fact that these people are in an especially unstable and difficult situation and that they may, in some

cases, be traumatised on account of their experiences back home. It is hard for them to gauge the consequences of being arrested by the German police. For instance, the self-harm attempts may not only be a means of evading police custody, as officers suspect, they may also be acts of desperation aimed at avoiding the deportation they fear they are facing. That is why it seems important to help the arrested person understand both the situation they are in and the further procedure in order to prevent disproportionate resistance. Calling in an interpreter as soon as possible has a key role to play in this. Pre-prepared documents in the respective mother-tongue of the person taken into custody could help to prevent misunderstandings and to diffuse the situation. In the interests of greater mutual understanding, those with an expert knowledge of the regions concerned and their cultural specifics could take part in a training measure in an advisory capacity.

The Joint Commission recommends examining which measures can be taken to teach police officers general intercultural skills and specifically to sensitive them to the challenge of **dealing with the above group of people and refugees**, respectively. Officers should be taught how to de-escalate situations involving people taken into custody so as to be able to prevent self-harm attempts.

Response: The staff employed in police custody all take part in decentralised training courses, their official duties permitting. In order to be able to de-escalate situations involving people taken into custody, an additional "Intercultural Communication" course will be offered as part of police training.

The cells in Chemnitz North East Police Station each have a wooden plank bed, but no flame-resistant, washable **mattress**. Those taken into custody are merely issued with disposable blankets.

The Joint Commission already noted this during its visit to Leipzig Central Police Custody on 12 February 2014 and recommended procuring a small number of such mattresses. In a letter dated 14 May 2014 the State Ministry of the Interior of Saxony in principle agreed to issue such mattresses, but announced that the costs would first have to be examined. The Joint Commission asked to be informed of the outcome of this review and recommended, in view of the line of argumentation it put forward in its report following the visit to Leipzig Central Police Custody,⁴⁷ that at least a small number of flame-resistant, washable mattresses be procured.

Response: The review of whether flame-resistant, disinfectant-proof mattresses can be procured centrally has not yet been completed. An alternative may, for example, be the use

of flame-resistant disposable blankets which can also be used as a mattress. There are currently no entirely risk-free mattresses available on the market.

There are no **fire detectors** in the custody cells in the police station. This represents an increased risk for those taken into custody, because in the event of fire they first have to contact officers via the intercom.

The Joint Commission recommends installing fire detectors in the cells to guarantee detainees' protection in the event of a fire.

Response: The Free State of Saxony's service provider for buildings and real estate (SIB-NL Chemnitz) has been commissioned with examining whether fire detectors can be retrofitted into the cells. However, the fire detectors would have to be installed on the cell ceilings in such a manner that those placed in custody are unable to destroy or misuse the devices. That is why the long-term alternative is to have smoke detectors installed in the ventilation system. Irrespective of this, there is already a smoke detector in the corridor in front of the cells. In addition, there is a manually activated alarm in the corridor in front of the custody suite.

It is not possible to regulate the **light intensity** in the custody cells, as a result of which people are either held in custody with all the lights on full or in complete darkness. The Joint Commission therefore recommends installing night lighting in the cells (e.g. a dimmable lamp or a nightlight).

Response: The current building guidelines do not provide for dimmable lighting or light intensity controlled night lighting. The option will be borne in mind in future, depending on the budget situation. However, in the interests of police officers' safety, the cells need to be sufficiently lit when checks are carried out.

The visiting delegation was presented with an instruction sheet which is handed out to those taken into custody pursuant to section 22 (4) of the Police Act of Saxony. The delegation welcomes the fact that written instructions are also given to those taken into police custody under the Police Act. For the sake of completeness, the document should also mention that those taken into custody are able to bring in an interpreter, and that they may be examined by a doctor at their own expense in addition to being examined to establish whether they are fit to enter custody.

Response: Whether the recommended additions can be made to the instruction sheet and it can be made available electronically across Saxony, including in a number of different languages, is likewise currently being examined.

The National Agency replied to the Ministry of the Interior's response. The Ministry's second response has not yet been received and can therefore not be included here.

⁴⁷ ref.: 232-SN/1/14

4.2.4 – Frankfurt am Main Police Headquarters, 26 November 2014

The Joint Commission visited Frankfurt am Main Police Headquarters on 26 November 2014. There are a total of 43 multi-occupancy cells and 94 single-occupancy cells (24 of which are currently not usable) in the Police Headquarters. The multi-occupancy cells can each hold between 10 and 16 people. The custody cells are spread across a total of three floors; the central holding area is located on the ground floor.

Recommendations and response

The cells are sufficiently large and are furnished with the bare essentials. The toilet is not separate and is in full view of staff looking through a peephole. That means that when they are going to the toilet people in custody could be seen either by someone looking through the peephole or if someone opens the door unannounced. The Joint Commission therefore recommends, in the interest of protecting privacy, that staff should draw attention to themselves before using the peephole or entering a cell. This will ensure that whoever is inside has the opportunity to indicate that they are using the toilet. On the afternoon of 26 November 2014 the head of the police custody suite informed his staff by email that this recommendation was to be implemented. The Joint Commission would like to make positive mention of the fact that the police station reacted so promptly to its recommendation.

Response: This recommendation was already implemented by the head of the police custody on 26 November 2014 in an email sent to all members of staff, and the matter was again raised in subsequent meetings of teams and supervising police officers.

Two of the multi-occupancy cells have a toilet which is separated off from the rest of the cell by means of a wall, but there is no door. According to staff, those who need to go to the toilet are taken out of the cell. People taken into custody are informed of this when they are booked in. The multi-occupancy cells are no longer used, staff said, apart from during large-scale events. The Joint Commission believes that, in order to be able to protect privacy, it is only not necessary to completely separate the toilet off from the rest of the room if previous practice is retained without exception, namely that detainees are always taken out of the multi-occupancy cell when they need to go to the toilet.

Response: Since custody pending deportation was relocated to Frankfurt am Main I Prison in 2012, the second floor has no longer been used to accommodate detainees. No final decision has yet been taken in regard to the future use of these rooms. Should the second floor retain its current structure,

Frankfurt am Main Police Headquarters will have simple doors installed in front of the toilets.

The custody cells have access to daylight, although the frosted glass windows prevent detainees being able to look out. The National Agency feels that this is problematical. At least when people are detained for a longer period (in what is known as “preventive custody”), then they should be able to look outside. The documents submitted to the Joint Commission indicated that preventive/long-term custody was enforced twice so far in 2014 and three times in 2013.

Response: Preventive custody is not comparable to criminal procedural measures or certain measures under the law of threat prevention (e.g. drying out after consuming alcohol or drugs). Therefore, there can be no reservations against enabling those in custody being able to look out of the window. Given the structural conditions, it would be possible to enable them to look out onto Polizeimeister Kasper Street and Courtyard 5 or 6 in Police Headquarters, although it would need to be ensured that those in the cells cannot be seen/observed from outside. There are plans to remove the frosted glass windows in two of the cells and to swap them for windows with mirrored foil.

There are a total of eight custody cells which are monitored by means of CCTV in Frankfurt am Main Police Headquarters; five of these cells have a toilet. The images of the toilet are not pixellated on the screens in the central CCTV monitoring area. According to staff, CCTV monitoring is primarily used when detainees are drunk.

Privacy must always be protected in an appropriate manner. In the case of CCTV monitoring, this can be achieved, for instance, by pixellating images of the toilet. The National Agency would like to point out that Frankfurt am Main I Prison pixellates images, thereby respecting prisoners’ privacy without, in the opinion of the head of the facility, neglecting security aspects.⁴⁸ In all other respects, only where there is an acute danger of self-harm or suicide does it appear conceivable, in carefully considered, substantiated and documented individual cases, to permit unrestricted monitoring of a custody cell. The surveillance should be apparent or at least perceptible; covert surveillance is not permissible.⁴⁹

Further, the Joint Commission would like to point out that CCTV monitoring can on no account be a substitute for regular, direct checks of the custody cells by duty officers, and that it can at most be supplementary to such checks.

Response: CCTV monitoring is used only in addition to other monitoring measures. The recommendation as regards

⁴⁸ see National Agency, Annual Report 2013, p. 65

⁴⁹ National Agency, Annual Report 2013, p. 27–28

technical adjustments to CCTV cameras which have already been installed is being examined.

According to staff, it is the admitting officer who is responsible for **instructing those taken into custody** about their rights. Officers in the police station are not always able to check whether those taken into custody have been instructed about their rights in full. In particular, they are not in a position to give such instruction at a later point in time, since they lack the competence to do so.

It is of key importance for the Joint Commission that people are fully informed of their rights before a measure depriving them of their liberty, irrespective of the legal basis therefor. Particular emphasis should here be given to the right to inform family members or trusted third parties, to call in a doctor and consult a legal adviser. Especially when someone is taken into custody it should be possible to ascertain whether they have been fully instructed of their rights. If need be, it must be possible to give such information at a later point in time. This should at any rate be done in writing.

Response: Pursuant to existing formal requirements under applicable legislation (generally the Hesse Act on Public Safety and Order and the Code of Criminal Procedure), people who have been taken into custody or who have been arrested must immediately be informed of why the measure depriving them of their liberty is being enforced. In addition, they must be informed of other rights linked to the deprivation of liberty.

According to statutory provisions set out in federal and Land legislation, each detained person is given the opportunity to inform a family member or a trusted third party. They are informed of this fact unless there is a risk of collusion. In Hesse, this information is provided ex officio if the detained person is incapable and the information does not conflict with their presumed will (section 10 (4), Hesse Police Custody Regulations).

Special forms (which differ depending on the grounds for arrest) are available. If necessary, interpreters are also called in to inform those taken into custody of their rights. The Police Custody Regulations are currently being revised/updated. The recommended additions have already been made to the Admissions Report form available in the electronic processing system used by the police in Hesse (obligatory fields to document that the information has been given have been added).

People are always required to fully undress when they are **taken into custody**. Searches which are done after a person has had to fully undress represent serious interference with the general right of privacy.⁵⁰ It

must, therefore, be weighed up in each individual case whether there are grounds to justify such interference.

It must be considered that people who are taken into custody, like pre-trial detainees, may only be subjected to those restrictions which are absolutely unavoidable. This principle is also expressed in section 34 (3), second sentence, of the Hesse Act on Public Safety and Order, in accordance with which detained persons may only be subjected to those restrictions which serve the deprivation of liberty or order for detention.

By judgment of 27 September 2010 Gießen Administrative Court, for instance, ruled that the physical search of a female industrial climber who had been taken into custody was unlawful.⁵¹ The court held that in this specific case there had been no special circumstances which necessitated the detainee having to fully undress.

Taking account of the above court decision, it must be made clear that requiring detainees to fully undress before a search can only be considered after weighing up the circumstances of the individual case. The requirement that each person must routinely fully undress when taken into custody is, in the Joint Commission's view, not permissible.

Response: All searches carried out in Frankfurt am Main Police Headquarters meet the applicable legal provisions. These legal provisions and other associated considerations were explained in detail to the Joint Commission during the visit. The Ministry explicitly points out that searches must also be carried out in such a manner as to guarantee the safety of staff in the police custody suite. According to statistics kept in Frankfurt am Main Police Headquarters, approx. 1.5% to 2% of searches on admission revealed objects which could have been used to commit self-harm or to harm others.

According to staff, detainees are permitted to spend **time outside** once a day only after they have been in custody for 48 hours. However, in the opinion of the Joint Commission, detainees need to be given the opportunity to exercise outside in the fresh air for at least one hour after only 24 hours in custody. This requirement is set out in the CPT standards.⁵²

Response: People are very rarely detained in police custody for more than 24 hours. The recommendation will be followed in future by making use of a specially secured open space on the sixth floor of the custody area.

It is not possible to regulate the **light intensity** in the custody cells, as a result of which people are either held in custody with the lights on full or in complete darkness.

⁵⁰ cf., e.g., Federal Constitutional Court, order of 4 February 2009, file no. 2 BvR 455/08

⁵¹ Gießen Administrative Court, judgment of 27 September 2010, file no. 9 k 1708/09.GI

⁵² CPT Standards, CPT/Inf/E (2002) 1 - Rev. 2010, p. 17

The Joint Commission therefore recommends installing night lighting in the custody cells (e.g. a dimmable lamp or a nightlight). This is, incidentally, already provided for under section 5 (5) of the Police Custody Regulations.

Response: The Hesse Police Custody Regulations currently do not include such a rule. If this recommendation were to be followed, 95 of the cells in the custody suite in Frankfurt am Main Police Headquarters which have a bed would have to be retrofitted accordingly. Cost-effective implementation (across Hesse) is being examined.

Further suggestions for improving the conditions of detention

Up until now staff working in the custody area have been able to take part in hardly any **specific training courses**. In the opinion of the Joint Commission, staff need to be trained to deal with typical situations which arise in custody (e.g. dealing with those who use addictive substances, drunk or mentally sick people, use of direct force, de-escalation). These issues should already be addressed during initial training. The Joint Commission therefore recommends developing special training and development modules for those working in police custody.

Response: The Hesse Police Academy offers a wide range of seminars which deal with custody situations in diverse ways. The following topics have been addressed so far: legislation (Police Custody Regulations, Code of Criminal Procedure, Hesse Act on Public Safety and Order), including the duration of deprivation of liberty, duty to instruct, a person's fitness to be detained etc.; intercultural skills (ability to work under stress, conflict prevention); communication (and dealing with existing conflicts); deployment training (e.g. tactical approach to entering cells).

This list is by no means complete. However, it shows that the police in Hesse provide a diverse range of information on "police custody" both in training courses and as part of initial police training.

A special seminar geared exclusively to staff in the custody service of the Hesse police is currently not felt to be necessary, because the aforementioned topics are addressed extensively in various seminars.

Positive findings

The delegation saw during its visit that the head of the central custody unit manages the area under her responsibility **sensitively and empathetically**. This is

also apparent in her staff's positive and open attitude towards their task.

Response: This is the result of a targeted and careful selection process. Well-trained staff with very good social and intercultural skills, who can react calmly to stressful situations and routinely handle the tasks assigned to them, are particularly important in police custody.

The head of the custody unit made several suggestions to the delegation regarding how the situation in custody could be improved, for example by using impact-absorbing materials to reduce the in-cell risk of injury. The Joint Commission expressly welcomes such **initiatives** and advises the Ministry to give favourable consideration to these practical suggestions.

Response: The Commission was told during the visit that using this material in the drying-out cells may minimise the risk of injury to those who are disoriented/incapable. The material has already been examined by Frankfurt am Main Police Headquarters. However, manufacturers were unable to guarantee that the material would not give off any fumes when used in an enclosed space with no fresh air supply or that it was disinfectant-proof, which is why the idea was not pursued any further.

Further emphasis must be given to the fact that neither **physical restraints** nor a straight jacket are used in the central custody unit. In addition, a separate register is kept of special incidents occurring in the custody area. In the Joint Commission's view, this is a suitable instrument for better assessing special incidents and being able to take measures to prevent them occurring.

Response: Police custody units in Hesse will continue their practice of not applying such measures.

Personal items which are removed from people when they are taken into custody are kept in separate, **sealed plastic bags**. After the end of a period in custody the contents of the bag are returned to their owner.

The Joint Commission has noted during its visits that personal effects are handled differently. Sometimes belongings are kept in open boxes, sometimes they are locked away in lockers. On occasion the safe deposit of personal effects and/ or valuables can lead to considerable insecurity on the part of those being detained, even if there is absolutely no objective reason. That is why the Joint Commission believes that placing personal belongings in a bag is the most effective means for eliminating any insecurity, and that this can also contribute effectively to de-escalation.

5 – PRE-DEPORTATION DETENTION FACILITIES

5.1 – GENERAL ISSUES

Since the National Agency turned its focus on custody pending deportation in 2013, the conditions of this form of detention have fundamentally changed. In accordance with Article 16 (1) of Directive 2008/115/EC (Return Directive), people who are to be returned are to be detained in “specialised detention facilities”. Further, “[w]here a Member State cannot provide accommodation in a specialised detention facility and is obliged to resort to prison accommodation, the third-country nationals in detention shall be kept separated from ordinary prisoners.”

Germany implemented the Return Directive in such a manner that placement in standard detention facilities was permissible if the *Land* in question had no specialised detention facility. By judgment of 17 July 2014, the European Court of Justice ruled that this interpretation of the Return Directive was not permissible.⁵³ The National Agency had already recommended in its Annual Report 2013 that custody pending deportation be enforced separately from other forms of detention in specialised detention facilities.⁵⁴

In addition, in an order dated 26 June 2014 the Federal Court of Justice ruled that the Residence Act did not meet the requirements of the Dublin II Regulation and that therefore the detention of those who are to be returned to another EU Member State under this Regulation is not permitted on account of the risk of flight.⁵⁵ In December 2014 the Federal Government adopted a draft law to amend the Residence Act. The bill contains, amongst other things, more precise regulations regarding the risk of flight as required under the Dublin II Regulation and it provides that detainees awaiting deportation may not be placed in normal prisons.⁵⁶

In view of these major changes, in the period under review the National Agency enquired of the competent ministries in the *Länder* where custody pending deportation will in future be enforced. Their respons-

es showed that many of the pre-deportation detention facilities which the Joint Commission had visited in 2013 had since been closed or were no longer being used to enforce custody pending deportation. This applies to Goldlauter, Mannheim, Bützow, Nuremberg, Frankfurt am Main I prisons and to Rendsburg Pre-Deportation Detention Facility. The separate facilities in Berlin, Eisenhüttenstadt, Ingelheim and Bremen are still in use and also take in detainees awaiting deportation from other *Länder*. In addition, Mühlendorf am Inn Prison in Bavaria and Hanover-Langenhagen Prison in Lower Saxony have, at least provisionally, been declared specialised pre-deportation detention facilities. North Rhine-Westphalia was planning to classify Büren Prison as a pre-deportation detention facility as of the end of 2014. Baden-Württemberg had also not yet made a final decision in regard to where custody pending deportation is to be enforced.

The distinction drawn between pre-deportation detention facilities and prisons is to be welcomed from the human rights perspective. However, attention must be drawn to the fact that the National Agency found a number of deficiencies in some facilities in which custody pending deportation is enforced for several *Länder*.⁵⁷ These should be remedied by the competent *Länder* at the earliest opportunity.

The Joint Commission would like to point out once more in this context that attention should in particular be paid when selecting sites for pre-deportation detention facilities to the fact that it must be possible to call in interpreters at short notice. In addition, custody pending deportation must differ distinctly from penal detention. Detainees awaiting deportation should not be subjected to the restrictions and security measures which are specific to penal detention.

5.2 – FACILITIES VISITED

5.2.1 – Rendsburg Pre-Deportation Detention Facility, 13 January 2014

The report on the visit to this facility was included in the Annual Report 2013 as part of the spotlight on custody pending deportation.⁵⁸

⁵³ European Court of Justice, judgment of 17 July 2014, *Joined Cases C-473/13 and C-514/13*, margin no. 33

⁵⁴ National Agency, *Annual Report 2013*, p. 22

⁵⁵ Federal Court of Justice, order of 26 June 2014, file no. V ZB 31/14

⁵⁶ Draft bill of 2 December 2014, available (in German) at http://www.bmi.bund.de/SharedDocs/Downloads/DE/Nachrichten/Kurzmeldungen/gesetzentwurf-bleiberecht.pdf?__blob=publicationFile

⁵⁷ cf. National Agency, *Annual Report 2013*, p. 46 et seqq.

⁵⁸ National Agency, *Annual Report 2013*, p. 67

5.2.2 – Mühldorf am Inn Prison, 27 May 2014

A delegation of the Joint Commission visited Mühldorf am Inn Prison (Pre-Deportation Detention Facility) on 27 May 2014.

Mühldorf Prison is, for the time being, responsible for enforcing custody pending deportation against all adult detainees in Bavaria. It can hold up to a total of 68 men and 14 women. So far, however, the men's unit can only hold half that number due to the fact that the staff who have been recruited are not yet sufficiently trained. At the time of the visit 28 male detainees and one female detainee awaiting deportation were being held in the facility.

The delegation visited the unit for male detainees awaiting deportation, the unit for female detainees awaiting deportation, the specially secured room, a disciplinary detention room, the former workshop (which now serves as the refectory and sports area), the kiosk, the visiting room and the cellar, where there are plans to install new common rooms for the male detainees.

The delegation also spoke with several detainees awaiting deportation and with a representative of the Jesuit Refugee Service.

Up until November 2013, Mühldorf Prison was responsible for holding those serving their first prison sentence. Detainees awaiting deportation in Bavaria had previously been placed in units in various prisons. On account of recent court decisions,⁵⁹ it was decided at very short notice to temporarily place all detainees awaiting deportation in Bavaria in Mühldorf Prison and to await the pending decision of the European Court of Justice in regard to the principle of keeping detainees awaiting deportation and prisoners separate. The European Court of Justice issued its decision on 17 June 2014, ruling that, based on the wording of the Return Directive, illegally staying third-country nationals must as a matter of principle be detained in specialist detention facilities for the purpose of their deportation, regardless of the national federal structures.⁶⁰

Against this background the Joint Commission asked to be notified by the Bavarian State Ministry of Justice whether Mühldorf Prison would be turned into a pre-deportation detention facility on a permanent basis or whether there were plans to implement custody pending deportation in another facility as a result of the judgment.

Response: *The Ministry first pointed out that, in light of the decisions of the European Court of Justice and of the*

Federal Court of Justice which had in the meantime been issued, the State Ministry of the Interior, for Building and Transport, which had originally been responsible for framing the enforcement of pre-deportation detention, and the State Ministry of Justice, which is currently enforcing custody pending deportation on the basis of an administrative agreement, are cooperating closely on examining how pre-deportation detention is to be enforced in future. Until a decision has been taken, Mühldorf am Inn Prison (Pre-Deportation Detention Facility) will be retaining its provisional character. In consequence, it will not be possible to make all the improvements to the conditions of detention at short notice which the Ministry deems desirable. Nevertheless, measures to improve the conditions of detention have been taken. For instance, a central refectory has been set up in the former workshop and opportunities to engage in sports have been created. Office space has been created for the specialist services and external support staff. A common room has been set up for female detainees awaiting deportation and a washing machine made available to them. There are plans to carry out building measures in 2015 to improve fire safety. Other building measures are also planned (e.g. creating additional office space, fitting a kitchen, and setting up a telephone and internet room as well as a common room). The total costs of these building measures is estimated to be some EUR 660,000.

Recommendations and response

At the time of the visit Mühldorf Prison was in the process of being converted from a penal detention facility into solely a pre-deportation detention facility. Both the head of the facility and members of staff are doing their best to adapt to the new situation.

The Bavarian State Ministry of Justice pointed out in its response to the Joint Commission's report following its visit to Nuremberg Prison⁶¹ that detainees awaiting deportation are entitled to conditions of detention which differ significantly from those of sentenced prisoners. Mühldorf Prison did not yet meet these requirements at the time of the visit. However, the head of the facility gave the Joint Commission the Strategy for Transforming Mühldorf Prison into a Facility for the Enforcement of Pre-Deportation Detention in the Free State of Bavaria, which sets out what changes are to be made in the facility. The Joint Commission will therefore not be making any recommendations here regarding the planned changes, but will merely address the relevant areas in brief:

The visiting area in Mühldorf Prison comprises a small, sparsely furnished room. It has a small number of connected tables plus partition walls. The room is likewise described in the Strategy for Transforming

⁵⁹ see, e.g., Nuremberg-Fürth Regional Court, order of 25 September 2013, file no. 18 T 8112/13

⁶⁰ Judgments in Joined Cases C-473/13 and C 514/13 and in Case C 474/13

⁶¹ see p. 43 et seqq. above

Mühldorf Prison as an “inadequate visiting area”. In addition to creating a more friendly atmosphere and removing the partition walls, it should be ensured that detainees awaiting deportation and their visitors are given a certain amount of privacy during visits. The solution provided for in the Strategy for Transforming Mühldorf Prison is that mobile office cabins are to be set up in the prison farmyard. Rooms could then be made available to the specialist services and non-governmental organisations, which have so far not had sufficient office space.

At the moment, male detainees awaiting deportation have neither a common room nor a communal kitchen on their landings. According to the Strategy for Transforming Mühldorf Prison, both a common room and a communal kitchen with refrigerators are to be installed in the cellar for detainees awaiting deportation to use. Computers are to be set up in the corner of the common room.

The Joint Commission would like to make recommendations regarding the following issues which are not addressed in the Strategy for Transforming Mühldorf Prison:

The delegation was informed during its visit that a doctor visits the facility once a week to provide medical care to detainees awaiting deportation. The doctor was responsible for examining detainees on admission, it was told. He can also be called in at any time, if required. Further, it was reported that no interpreter was generally called in during the medical exam. Given the facility’s rural location, it was not easy to get interpreters. Whenever required, though, an interpreter was called in, the Commission was told.

The **initial examination** should be done as soon as possible after admission to Mühldorf Prison. The fact that, in extreme cases, it is not done until a week after detainees have been admitted is also worrying given the need to identify traumatisation and other mental disorders. Detention should not be detrimental to the health of detainees awaiting deportation. Where people are already traumatised, however, detention will generally lead to their health deteriorating. That is why any signs indicating that a person may be traumatised must be reliably identified upon admission to detention. Only professionals with the relevant training will be able to do this. The Joint Commission therefore recommends carrying out the initial medical examination as soon as possible, examining whether staff employed need to undergo specialist training in regard to trauma and arranging for the relevant measures to be implemented. An interpreter should always be called in where language problems arise.⁶²

Response: The initial medical examination is done at the earliest on the day on which a detainee is admitted and six days after admission at the latest. Where those providing close supervision, namely general prison staff, social workers, representatives of refugee aid services and private volunteers, already notice signs before the initial medical examination is done of an acute need for action, these are immediately followed up by consulting the duty or on-call doctor or by describing the situation to a local doctor or an external hospital. As regards mental or psychological illnesses, reference is here made to the close cooperation with the Inn Salzach Clinic (which specialises in psychiatry, psychotherapy, psychosomatic medicine and neurology). In addition, a psychologist employed by Landsbut Prison is available in acute cases. It is currently being examined whether an additional member of staff could be hired (i.e. a psychologist who would be on hand in the facility) also and especially so as to be able to diagnose mental illnesses which are not readily discernible at an early stage.

External interpreters should always be called in where necessary to aid communication. However, especially in urgent cases and when detainees awaiting deportation are admitted at short notice, this requirement comes up against practical limits. This applies all the more given that interpreters for less common languages are generally not resident in Mühldorf am Inn, and that they would have to travel quite considerable distances, that is if they are actually available in the first place.

The Joint Commission is aware that Mühldorf Prison’s location makes cooperation with interpreters difficult. However, access to interpreters is essential to facilitate communication with detainees awaiting deportation. That is why the Joint Commission would like to suggest that Mühldorf am Inn Prison’s locational disadvantage be taken into account when considering how custody pending deportation is to be organised in future in Bavaria.

Response: In a second response the Ministry explained that discussions on how custody pending deportation is to be organised in Bavaria in the future have not yet been concluded. When the relevant decision is taken, Mühldorf am Inn Prison’s locational disadvantage when it comes to calling in interpreters at short notice will be taken into consideration as one of the aspects raised by the Joint Commission.

Mühldorf Prison has one **specially secured room**. It has two CCTV cameras, which means the entire room, including the toilet, is visible from the outside.

Providing persons deprived of their liberty with humane conditions of detention also requires that measures be taken to protect their private and intimate sphere. This also applies when they are placed in a specially secured room. Here, too, privacy must be guaranteed by means of the corresponding measures when detainees are going to the toilet, such as partial pixellation of the image. If need be, it may be conceiv-

⁶² cf. National Agency, *Annual Report 2013*, p. 24

able, in carefully considered, substantiated and documented individual cases, to permit unrestricted monitoring of a cell where there is an acute danger of self-harm or suicide. The person concerned must at any rate be informed of the fact that optical surveillance is in operation.⁶³

During the delegation's visit the head of the facility suggested that a small sticker be placed on the camera lens in order to cover up the relevant area. The delegation welcomed this simple and practicable suggestion and asks to be informed as soon as it has been implemented.

Response: The recommendation that the private and intimate sphere of detainees awaiting deportation who are placed in the specially secured room be protected when they are going to the toilet is being implemented. Mechanical means have been applied to ensure that the camera in the room does not film the toilet. Further, there are plans to appropriately inform detainees placed in the room of the fact that optical surveillance is in operation.

At the time of the visit the facility very much **resembled a prison**: The grounds are surrounded by high prison walls and barbed wire, and some of the windows, such as those in the kitchen in the women's unit, have perforated sheets in front of them. This conflicts with the aforementioned principle that custody pending deportation must differ significantly from penal detention. In other pre-deportation detention facilities, such as Ingelheim Detention Centre for Persons Required to Leave the Country, such measures, for instance the barbed wire fence, have already been removed. The Joint Commission therefore recommends reconsidering the need for these structural measures.

Response: The extensive structural measures are due to the well-known circumstance that the facility was not designed to enforce custody pending deportation, but that it was a prison which had to be rededicated at very short notice. The Ministry would ask the Joint Commission to understand, not least given the limited financial resources available within the prison system, that extensive renovation and dismantling measures will not be carried out until a final decision has been taken on the long-term use to which the property is to be put. However, the Ministry points out that certain measures for securing the building and the grounds will be essential in the long term in order to be able to guarantee the purpose of custody pending deportation. The attempt by one detainee awaiting deportation to flee the facility a few months ago made this need clear.

There are **no partitions** between the individual **showers** in the shower rooms which the Joint Commission inspected. Even though unlocking times are relatively long, this means that some detainees will

only shower in their underpants out of a sense of shame or for religious reasons, something which staff in the general prison service also reported. The Joint Commission therefore recommends partitioning off at least one shower in such a way that at the very least a person's genital area is covered. These precautions have been taken in other facilities and have not led to an increase in the number of attacks on account of it not being possible to get a good overview of the entire shower room.

Response: It is true that the shower rooms have no partitions between the individual showers. This is due to the fact that the partitions – which leave showers open at the front – can, at best, only partially respect a person's sense of shame, and that fitting shower cubicles would not meet security requirements. In addition, experience has shown that practically every item of inventory which some detainees do not regard as absolutely essential and which cannot be adequately secured to prevent removal is wilfully damaged. Nonetheless, the facility meets the requirements of those who feel a sense of shame. For example, they are permitted to shower in their underpants (in the manner of swimwear) and can then hand these in to the laundry. Anyone who does not feel that this sufficiently protects their privacy has the option of having the communal shower room assigned to them for their sole use for a certain amount of time. Given that detainees have unrestricted access to the shower room at all times during unlocking times, seven days a week, this need does not in fact generally arise in practice.

Further suggestions for improving the conditions of detention

The delegation found during its visit that detainees awaiting deportation in Mühldorf Prison were wearing prison clothing. In order to adapt the conditions of detention as much as possible to normal life, it should be ensured that detainees awaiting deportation are able to wear their **own clothes**. They should also be given the opportunity to wash these clothes.

The Joint Commission would like to point out that the Strategy for Transforming Mühldorf Prison provides for the following: "Detainees awaiting deportation are entitled, under sections 173 and 174 of the Prison Act, amongst other things, to use their own clothing, underwear and bedding if they are able to carry the costs of cleaning, mending and regularly replacing these items."

The Joint Commission would welcome the timely implementation of this regulation, especially since all the other pre-deportation detention facilities it has previously visited allow detainees to wear their own clothes.

Response: Compliance with section 173 of the Prison Act, which provides that detainees are to be permitted to wear their own clothes, amongst other things, if they themselves

⁶³ cf. National Agency, Annual Report 2013, p. 27–28

can pay for their cleaning, mending and regular replacement, is also guaranteed in Mühldorf am Inn Prison (Pre-Deportation Detention Facility). However, detainees are often prevented from wearing their own clothes because they are unwilling themselves to carry the associated costs, which in accordance with the prevailing provisions is the precondition for the entitlement. They generally use the money they have at their disposal to pay for additional food, drinks and tobacco.

The Joint Commission is pleased to note that detainees awaiting deportation in Mühldorf Prison have the option of wearing their own clothing. Experience gained visiting other pre-deportation detention facilities has shown that being able to wear one's own clothes is standard practice across Germany. The Joint Commission therefore asks the facility to examine whether cheaper or free means of cleaning own clothes (as are available in other pre-deportation detention facilities) can be provided; a washing machine is already available.

Response: In a second response the Ministry stated that the option of wearing own clothing was generally not only not taken up on account of the issue of detainees having to pay for their clothes to be cleaned, but often also because detainees simply lack a change of clothes. However, the washing machine which is already available already ensures that the clothes detainees are wearing when they arrive in the facility can be washed at the facility's expense. This means that detainees have fresh and clean clothing to wear on release. Under the expansion programme, however, additional washing machines are to be acquired, as per the Joint Commission's suggestion, and functional rooms are to be set up to enable detainees awaiting deportation to wash their own clothes, in so far as they have a change of clothing.

In a letter dated 18 November 2013 the Bavarian State Ministry of Justice informed the Joint Commission, amongst other things, that the following changes had been made to the Prison Scheme of Execution of the Free State of Bavaria: "When Mühldorf am Inn Prison (Pre-Deportation Detention Facility) is **overcrowded**, the pre-deportation detention unit in Nuremberg Prison will take on **responsibility** for male detainees awaiting deportation."

In accordance with the judgments of the European Court of Justice referred to in the above, accommodating detainees awaiting deportation in a prison violates the EU Return Directive. Placing such detainees in penal detention facilities is only permitted in "emergency situations" as defined in Article 18 of the Return Directive. The Joint Commission suggests, in the event of overcrowding, considering cooperating with other *Länder* in order to guarantee that detainees awaiting deportation are detained in a separate pre-deportation detention facility.

Response: In its judgment of 17 July 2014 (Joined Cases C-473/17 and C-514/13) the European Court of Justice ruled that illegally staying third-country nationals must as a matter of principle be placed in specialised detention facilities even when the Member State has a federal structure and the federal structure responsible under national law for ordering and enforcing custody pending deportation does not have such a detention facility. That is why the Prison Scheme of Execution of the Free State of Bavaria had already been amended with immediate effect by letter dated 21 July 2014. Nuremberg Prison's mandate, in cases of overcrowding in Mühldorf am Inn Prison (Pre-Deportation Detention Facility), was revoked. Since that date the facility in Mühldorf has had sole responsibility for enforcing custody pending deportation in Bavaria. There have so far been no cases of overcrowding. Naturally, though, if this situation did arise, consideration would be given (as suggested by the Joint Commission) to cooperating with other *Länder*.

According to the Strategy for Transforming Mühldorf Prison, a telephone room is to be set up in the cellar. Detainees will then be able to request authorisation to make calls. The Joint Commission suggests reconsidering the need for a restrictive application procedure. Detainees awaiting deportation should only be subject to those restrictions which serve to safeguard their deportation. Telephones should be freely accessible in order that detainees can maintain or establish **contact** with their families and home countries and to facilitate their return. Further, some pre-deportation detention facilities permit detainees to use their own mobile phones.

Response: In so far as detainees have mobile phones on them in rare individual cases upon admission, they are not permitted access to them whilst they are in the facility. However, detainees are permitted regular access to a land-line so that they can also make international calls. These calls currently still have to be made via the facility's phone exchange. This is necessary in order to allocate the still limited capacities fairly amongst the detainees. The facility is sticking to its plan of creating a separate telephone room for detainees. The relevant preparatory measures have already been initiated.

5.2.3 – Büren Prison, Pre-Deportation Detention Unit, 18 September 2013

The Joint Commission visited Büren Prison on 18 September 2013.

The prison has a capacity of 513, including for up to 151 sentenced prisoners. The facility is responsible for enforcing pre-deportation detention, terms of imprisonment of up to three months and substitute prison sentences.

The Pre-Deportation Detention Unit can accommodate 320 male and 42 female detainees awaiting

deportation. At the time of the visit the facility was holding 72 male and seven female detainees awaiting deportation and 168 sentenced prisoners. The male detainees awaiting deportation (Block 2) are kept separate from prisoners (Block 1).

The Joint Commission visited various parts of the facility, including the specially secured room, the enhanced supervision room, the various units accommodating male and female detainees awaiting deportation plus their tea kitchens and common rooms, the family room, the sanitary facilities, the visiting and admissions area, the medical section, the outdoor sports facilities, as well as the sports and recreation section. The Joint Commission also spoke to several detainees awaiting deportation, to the prison doctor, the Catholic priest, a representative of the staff council and a member of staff of European Homecare (EHC).

Block 2, in which male detainees awaiting deportation are accommodated, is divided into three units: one admissions unit (closed unit) and two open units. A “suitability check” is carried out in the admissions unit to establish whether there is an increased risk of flight and the detainee awaiting deportation’s level of social competence. Detainees generally spend three to four days in this unit.

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

Recommendations and response

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

The Joint Commission would like to emphasise that it follows from Article 1 of the Basic Law that each person has the right to the protection of privacy when performing their bodily needs. The CPT has also repeatedly stressed that privacy must be protected when a person is using the toilet or washing. (In-cell) sanitary facilities must at least be partially partitioned off.⁶⁴ According to the CPT’s report, this also applies to high security cells, which are comparable to an enhanced supervision room.⁶⁵ The Joint Commission is of the opinion that measures must also be taken in the enhanced supervision room to protect detainees’ privacy.

Further, the furnishings and fittings in the specially secured room give occasion to draw attention to the need to protect detainees’ privacy. The specially secured room in the facility is a very large room which has a squat toilet. This toilet is also visible via a CCTV camera installed in the room. Human dignity demands that where CCTV monitoring of a cell, including the toilet, is in operation, the detainee’s genital area must be obscured on screen. Unrestricted monitoring of the specially secured room can at most be considered on the basis of a carefully weighed up, well-founded and documented decision in an individual case where there is an acute risk of suicide or self-harm.

However, mention should also be made in this context of the possibility of pixellating the images, which helps protect privacy and at the same time shows the detained person’s actions in outline. The Joint Commission witnessed this approach being applied in Frankfurt am Main I Prison, for instance. Reference must also be made to the fact that Lower Saxony has already started pixellating images as standard procedure, including those captured in specially secured rooms.

Response: The recommendation made regarding the enhanced supervision room in the infirmary, namely that the sanitary facilities should at least be partially screened off to prevent them being visible, and the recommendation made regarding the specially secured room, namely that the detainee’s genital area be obscured by pixellating the CCTV footage, cannot be implemented for security reasons. Detainees are placed in these rooms after examining each individual case where there is an acute risk of suicide. In such situations the protection of the life which is at risk has absolute priority over the protection of privacy.

The head of the institution reported that detainees awaiting deportation are not returned to Büren Prison after a **failed deportation procedure**. By order of the Ministry of Justice of North Rhine-Westphalia of 12 November 2012 (ref. 4431-IV.28), after a failed deportation procedure the persons concerned must be taken to another prison in North Rhine-Westphalia. The order contains a breakdown for the entire year, according to which a different prison is obliged to take in detainees awaiting deportation every six weeks. Other than Büren Prison, there are no other prisons in North Rhine-Westphalia which are equipped to accommodate detainees awaiting deportation. However, other prisons would also have to guarantee that they can hold detainees awaiting deportation separately from prisoners. If the principle of the separation of prisoners and detainees awaiting deportation cannot be observed, the Joint Commission recommends rethinking this *modus operandi*.

Response: The recommendation regarding the procedure to be adopted following a failed deportation procedure has

⁶⁴ cf. CPT report on Finland CPT/Inf (2009) 5, paragraph 109

⁶⁵ cf., e.g., CPT report on Hungary, CPT/Inf (2010) 16, paragraph 17

since been followed. Detainees awaiting deportation must now be returned to Büren Prison after a failed deportation procedure.

Positive findings

During its visit the Joint Commission noted the positive atmosphere in the facility. The impression it gained was confirmed by staff and detainees. Those interviewed mainly spoke positively about the facility, people's dealings with one another and the atmosphere. Cooperation with staff of the private security firm Kötter had also proved successful, they said.

Emphasis should be given to the broad range of activities which are available to detainees awaiting deportation. They include a landing with sports and recreational facilities, for example sports equipment and exercise machines, table tennis, billiards, table football, as well as a library with foreign-language books. In addition, cookery and film-watching groups meet in the recreation room. Detainees can play football, volleyball, badminton and basketball outside. Detainees awaiting deportation are offered the opportunity, for instance, to do maintenance and cleaning work, work in the depository and cleaning the yard. They can do woodwork, making nesting boxes for birds and other items, as part of workshops, for example. In Works Hall 1 they can do simple packaging and assembly work.

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

Five European Homecare employees are responsible for providing social assistance to detainees. Four members of staff are responsible for the social service and one is responsible for organising workshops. The staff are generally available on weekdays, as well as at weekends where required. According to many of the members of staff in the facility, they make a key contribution to the good atmosphere. The fact that these staff members also have different cultural backgrounds and different nationalities is a not insignificant factor for the success of their work. It also means they speak a wide range of languages, which is why they are often involved in the admissions meeting and medical examination. They support the detainees in, amongst other things, filling in asylum applications,

contacting and communicating with the authorities or organising visits by relatives. According to various members of staff, the Catholic priest and the doctor, the European Homecare employees show great personal commitment and have gained the trust of the detainees. During its visit the Joint Commission witnessed the familiar manner in which one employee treated detainees.

The Joint Commission would like to emphasise that the facility gives the impression of being in very good condition, that is the detention rooms, the common rooms and the outdoor area. For example, there was hardly any graffiti on the walls, although in some cases it was more than two years since they had last been repainted.

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

5.2.4 – Custody pending deportation in Hanover Prison, Langenhagen Unit, 19 September 2013

The Joint Commission inspected custody pending deportation being enforced in Hanover Prison's Langenhagen Unit on 19 September 2013.

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

According to Lower Saxony's Prison Scheme of Execution, Hanover Prison's Langenhagen Unit is the central facility responsible for enforcing custody pending deportation against all men and women. Custody pending deportation is enforced by way of

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

In February 2014 the Ministry of Justice of Lower Saxony informed the Joint Commission, as a preliminary result, that the Langenhagen Unit has since 1 January 2014 been responsible solely for enforcing custody pending deportation. The male sentenced prisoners who had latterly been accommodated in the unit had since been moved to the main facility in Hanover Prison. Further, a working group comprising members of staff in Hanover Prison, led by the head of the facility, is currently drafting a recommendation for reorganising the enforcement of custody pending deportation which will then be discussed and, if necessary, developed further with external people and groups in the context of a round table.

In May 2014 the Ministry of Justice of Lower Saxony informed the National Agency of the outcome of the round table, which had in the meantime taken place. Representatives of the refugee council, the Catholic aid organisation *Caritas*, the churches, Hanover Local Court and the ministries of the interior and of justice had taken part. The results are outlined in the following.

Recommendations and response

During its visit the delegation found that most of the detainees awaiting deportation were in their rooms. The majority of them gave the impression of being quite apathetic. Staff confirmed that they often neither went outside during yard exercise times nor engaged in any sports or recreational activities. There are also no employment opportunities, a fact the detainees criticised in their meetings with the Joint Commission.

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

Specialised facilities with higher occupancy rates could offer detainees awaiting deportation more activities. In addition, it would be easier for detainees to get into contact with other detainees, to share their experiences and engage in recreational activities together. In the long term, the Ministry of Justice of Lower Saxony should, therefore, possibly together

with other *Länder*, sound out how the conditions of detention could be made more suitable in future.

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

Response: Times which detainees can spend outside have been extended to two hours each morning and two hours each afternoon; sports and leisure-time activities run by full-time staff are available at these times. The aim is to counter the detainees' tendency to withdraw into their rooms.

Female detainees are kept in a separate unit in the prison. According to the head of the institution, sometimes only one woman is held there. At the time of the visit there were no women in custody pending deportation. The documents shown to the Joint Commission indicate that the number of women being detained in custody pending deportation has steadily dropped. So far in 2013 only four women have been held in custody pending deportation. This can prove a problem. The detention of individual females who do not have the opportunity to talk to other women is tantamount to solitary confinement. The Joint Commission therefore recommends ensuring that women are not kept alone in custody pending deportation, for example by cooperating with other *Länder*.

Response: After the necessary building measures have been completed, women will in future be accommodated in the Hildesheim Unit of Vechta Prison, which is responsible for adult women.

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

The CPT standards also emphasise that staff have a key role to play in dealings with detainees awaiting deportation.⁶⁶ According to the CPT, staff must be carefully selected and given appropriate training in order to be able to deal with interpersonal and intercultural problems. Further, they need the relevant language skills.

An external interpreter is involved where necessary in the admission meetings as well as medical examina-

⁶⁶ CPT/Inf/E (2002) 1 - Rev. 2010, p. 63

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

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

Response: The Ministry does not feel the need to take any action as regards the linguistic qualifications of staff employed in the Langenhagen Unit. Staff speak the following languages: Arabic, Bosnian, English, French, Italian, Croatian, Polish, Russian, Serbian, Spanish and Turkish. Particular attention is paid when recruiting new staff to their linguistic, cultural and ethnic background. The Ministry thus shares the Joint Commission's opinion that this has a very positive impact on the atmosphere in the facility.

The Joint Commission had the impression that the range of **training courses** available to staff working in custody pending deportation could be expanded. For example, there is no training course which deals with intercultural skills or identifying traumatised. However, staff have a key role to play in spotting problems, since it is they who experience detainees on a day-to-day basis. Staff should also be able to recognise the signs of trauma and to call in psychiatric or psychological help.

Response: Based on the recommendation that staff should undergo training, an event for staff in all civil service grades has been included in the 2015 training and development plan in order to improve intercultural skills for dealing with detainees.

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

Response: The peephole in the specially secured room has been rendered unusable.

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

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

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

Response: The internal review into whether existing budgetary means can be used to provide free legal advice to detainees awaiting deportation has not yet been completed. The review being conducted by the Ministry of the Interior as lead ministry into whether and if so to what extent cooperation could be entered into with other Länder is also still ongoing.

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

According to the European Prison Rules, each prisoner must have access at all times to sanitary facilities which are hygienic and protect their privacy.⁶⁷

Response: Detainees awaiting deportation are no longer locked into their detention rooms at night. Only the doors to the unit in the stairwell are locked between 7.30 pm and 7.30 am on weekdays and between 6.50 pm and 8 am at weekends. Detainees awaiting deportation are therefore not prevented from going to the toilet, and do not first have to ring a bell.

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

Response: Partitions have been installed in the communal showers to protect detainees' privacy.

So far, the facility's **house rules** are only available in German. The visiting delegation was informed that an

⁶⁷ Council of Europe, Recommendation CM/Rec(2006)2, No. 19.3

English translation was being done. This is expressly welcomed. However, translations into other languages, namely those most commonly spoken by detainees awaiting deportation, should also be provided, in the same way as some leaflets are already available in different languages.

Other improvements made as part of reorganising the enforcement of custody pending deportation

The Ministry of Justice of Lower Saxony notified the Joint Commission of further changes which had been made:

- + The walls between separate outside areas have already been removed. Detainees awaiting deportation thus have a significantly larger amount of free space at their disposal; they are also permitted to use the biotope on the grounds.
- + The detention rooms have been furnished entirely with wooden furniture. Each detention room has a TV set with a DVB-T receiver which can be used free of charge.
- + Detainees awaiting deportation are permitted to be in possession of cash (EUR 50 per week) and to receive an unlimited number of parcels, including those containing food, drinks and tobacco.
- + Visiting times have been considerably extended. Detainees awaiting deportation can now receive visitors every day (including at weekends) without having to apply for visits and without any time restrictions being imposed.
- + A computer with internet access is available for use by detainees awaiting deportation.
- + For violence prevention reasons, all the detention rooms have been fitted with what are known as “prisoner locks”. Detainees awaiting deportation are thus able to stop other detainees (but not staff) gaining unauthorised access and to prevent their property being stolen.

In its response to a question for oral answer raised by several members of the Lower Saxony *Land* Parliament, the Ministry of Justice of Lower Saxony referred to the following additional changes, amongst others:⁶⁸

⁶⁸ Response to a question for oral answer by the Members of the Lower Saxony Land Parliament Marco Brunotte, Andrea Schrö-

- + The prison doctor’s surgery hours have been increased from four to eight hours per week; he is now available on two days per week.
- + An additional pastoral group meeting is now held weekly.
- + Two Maintenance Worker posts have been created, giving detainees awaiting deportation a (voluntary) job opportunity.
- + More staff have undergone or will be undergoing training so as to be able to offer additional sports activities. New sports equipment and exercise machines have been provided in the outdoor and indoor sports areas, and a separate gym has been set up for female detainees awaiting deportation.
- + The post of Supervising Member of Staff has been created. Detainees awaiting deportation can turn to this member of staff with any questions they may have regarding leisure-time activities and any personal matters.
- + The rules on making purchases have been amended: instead of items being purchased by the prison commercial employee, staff in the unit will once a week buy goods in local supermarkets based on detainees’ wishes. Lockable compartments in the refrigerators in the communal kitchen are available to detainees awaiting deportation who wish to store perishable goods.

5.2.5 – Pre-Deportation Detention Unit in Nuremberg Prison, 19/20 November 2013

With effect from 23 November 2013 Mühldorf am Inn Prison was designated as the facility responsible for enforcing custody pending deportation for the whole of Bavaria. The Bavarian State Ministry of Justice therefore did not respond to the recommendations regarding the Pre-Deportation Detention Unit. Section 5.2.2 contains the report on and response to the Joint Commission’s visit to Mühldorf am Inn Prison.

der-Eblers (SPD) and Belit Onay (The Greens) regarding “A paradigm change in custody pending deportation practice”, printed in Lower Saxony Land Parliament Printed Paper 17/1535, p. 52 et seqq.

5.2.6 – Hesse Reception Centre for Refugees in Gießen – Frankfurt am Main Airport Branch, 5 December 2013

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

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

After the Joint Commission had received the response of the Hesse Ministry for Social Affairs and Integration, a meeting with the responsible State Secretary and the Head of Division in the Ministry was held at the suggestion of the National Agency. Both the report on the visit and the Ministry's response were discussed at the meeting. The National Agency made various additions to its report, in order, amongst other things, to clarify some of the misunder-

standings which had arisen. The Ministry then, however, informed the National Agency that it stood by its response, which is set out in below.

Recommendations and response

Neither minors travelling alone who are regarded as capable of acting in the asylum procedure (i.e. they are over the age of 16) nor minors travelling with their families are kept separate from other adults. According to the social worker, in one case this led to an under-age refugee witnessing an adult attempting suicide. The Hesse Ministry for Social Affairs and Integration admitted after the visit that the incident most likely referred to an underage female who was to be separated from her adult husband as she needed to be taken into care by the Youth Welfare Office. The husband had thereupon attempted to hang himself using bed sheets. The incident was still being investigated.

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

Response: Minors who are capable of acting in the asylum procedure and who are travelling alone are only kept separate in separate rooms for unaccompanied, underage refugees where there is a need to do so on account of identified developmental deficits and/or in the case of uncertainty, or from a socio-educational perspective, or the minors explicitly request to be accommodated separately. Minors generally wish to be accommodated together with their compatriots, with whom they have shared cultural links and whose language they speak and understand. The Ministry is aware of no problems which have arisen in the past in applying this policy. Otherwise, the rooms for unaccompanied, under-age refugees are available to minors who are capable of acting in the asylum procedure and who are travelling alone, who generally only spend a short period (of one to three days) in the Reception Centre.

Minors travelling with their families are accommodated on the “family landing”. They are therefore kept separate from other adults. Since the rooms have windows which look out onto the courtyard and the common and functional rooms are used by all the refugees, the aforementioned minors may also come across or see adults. Naturally, and based on the Ministry's experience, minors also wish to have contact with adult compatriots.

Against this backdrop it is possible that a suicide attempt will not go unnoticed and that minors may also be confronted with such a sight. If this group of people were in effect to be isolated from others, this would no doubt give rise to negative comments from those who are critical of the airport procedure and possibly also from the National Agency. In addition, this would exceed the resources (i.e. rooms) available in the airport reception centre.

The case which the church refugee support group raises, and which it again and again brings up in every conceivable context, concerns the daughter of an Armenian family who was looking through a window when she saw an asylum seeker purportedly attempting to commit suicide. The Armenian family was in the facility between 16 September and 15 November 2012. Their relatively long stay was due to the fact that the father had to be admitted to a psychiatric hospital.

The concerns regarding the assumed danger to the well-being of the underage girl referred to on account of her not being kept separate from adults may, possibly, have to be clarified in another context, since in the Ministry's opinion the context referred to here is too far-fetched and inappropriate. The explanations given by the National Agency give the overall impression that the airport facility is not suitable for minors (even those who are travelling with their families). This is what the church refugee support group has again and again claimed. Unfortunately, the group has not yet been able to propose a pragmatic solution which meets legal requirements.

Regardless of specific incidents, the Joint Commission feels there are still fundamental concerns about whether, given the conditions in the Reception Centre, accommodating unaccompanied minors and families with underage children together with adults is in the children's best interests. Due to the especially stressful situation which those accommodated in the Reception Centre are generally under, it seems reasonable to assume that there is an increased risk that minors may witness acts which, in their case specifically, can lead to trauma or exacerbate existing traumatisation. The Joint Commission drew attention to the new EU Reception Directive. Article 11 (3) of that Directive specifies that detained unaccompanied minors must be accommodated separately from adults, Article 11 (4) that detained families be provided with separate accommodation.⁶⁹ The Joint Commission thus recommended examining how the requirement that minors be protected can be better complied with in the Reception Centre.

The Joint Commission welcomes the fact that each time a person is booked in they are examined by a doctor as soon as possible. However, special attention should be paid during these examinations to **noticing**

signs of traumatisation and suicidal tendencies.

The examining doctor should have been specially trained in diagnosing trauma and other mental illnesses, or he or she should call in a specially trained psychologist. It must be ensured that traumatisation is accurately diagnosed.

Response: According to the Ministry, the Reception Centre's registered contract doctor is extremely conscientious when it comes to the initial examinations and subsequently providing medical care to the refugees. Where he suspects that a refugee has mental health issues he consults a registered contract psychologist or a registered contract psychiatrist employed by the Reception Centre or he refers the refugee to a psychiatric unit in a hospital. These decisions are taken on the basis of conspicuous features in a refugee's medical history and how refugees present themselves upon examination (e.g. dejectedness, symptoms of depression). He himself says that he has not undergone any specialist training in identifying traumatisation, but that psychiatry was a part of his medical degree. Further, he has more than 30 years' experience in medical practice.

The Ministry regards the Joint Commission's call for it be reliably ensured that traumatisation is identified to be entirely unrealistic. By employing a freelance psychologist or psychiatrist the Ministry guarantees that the best possible medical care is available during the airport procedure. It is not possible to make the same demands of the Reception Centre as are made of a diagnostic or treatment facility. It should also be borne in mind that identifying traumatisation is extremely time-consuming, even for those few specialist facilities which provide the service, and may even be impossible in the time available. Findings suggest that refugees are usually focussing on the asylum procedure at this time and as a result post-traumatic stress disorders (PTSDs) do not become apparent until much, sometimes months, later. Nevertheless, in the context of implementing the EU Reception Directive, which was amended in 2013, the Ministry and the other Länder set up a special working group to look into the question of the early recognition of PTSDs. The Reception Centre is now planning to carry out a pilot study in cooperation with the Clinic for Psychiatry and Psychotherapy at Gießen and Marburg University Hospital to identify traumatised refugees as part of a screening process without diagnostics.

The Joint Commission thereupon underscored its recommendation that one particular focus during the initial examination should be on identifying traumatisation and other mental disorders. The examining doctor should have been specially trained in this matter or should bring in a specially trained psychologist or psychiatrist.⁷⁰ It must be ensured that indications pointing to traumatisation or mental illness are reliably diagnosed.

⁶⁹ Directive 2013/33/EU of 26 June 2013

⁷⁰ cf. German Medical Council (2011), Resolution, p. 125

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

Response: Information for those accommodated in the Reception Centre is available in Arabic, English, French and Tamil. It thus largely covers the languages spoken by those accommodated there. In addition, many asylum seekers themselves speak other languages (e.g. English). There is not enough space on the walls in the facility to hang up this information in all the languages which are spoken there. Also, things would get very confusing as a result. The information is of no significance for the asylum procedure but was merely designed as additional material to help refugees find their way around the facility. Experience shows that most refugees find their bearings when they first arrive in the facility by other means, for example by talking to staff, members of the church refugee support group and/ or others detainees. For the rest, an easily comprehensible general information sheet with pictures is handed out to each refugee on arrival.

The Joint Commission then reiterated its stance, namely that the house rules should be available in several languages based on the most frequent countries of origin, as is standard practice in pre-deportation detention facilities, and should be handed to refugees where required.

Further suggestions for improving the conditions of detention

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

Response: For security reasons, lockable rooms are a great disadvantage in dangerous situations (e.g. suicidal tendencies, arson). That is why the rooms generally do not have locks. Unaccompanied, underage refugees – like women travelling alone – must be regarded as in need of particular protection. That is why they can lock the doors to their rooms by turning a knob. The security service can open these doors from the outside using a square-section key. Of course, this can lead to a loss of valuable time in an emergency. The need to protect minors and women was weighed up against practicability in an emergency. It is impossible to find the best possible solution to this problem in all respects.

The staff of the church social service reported cases in which the medical and psychological examination

identified problems as regards whether a person was fit to get on an aeroplane, but this information was not passed on to the Federal Police, who then began the procedure for returning the persons in question regardless. It should be examined whether **communication between the Land and the federal authorities** can be improved.

Response: In the Ministry's opinion, communication between all the authorities based at the airport works very well. Identifying physical and mental illnesses and stress is the responsibility of the registered contract doctor (psychologist and psychiatrist), who is bound by medical confidentiality and takes this very seriously. If the doctor were to allow himself to be relieved of this professional secrecy and were to pass on information to other authorities to the disadvantage or to the advantage of those concerned (e.g. ability to travel in the case of planned forced returns), this would possibly violate the principles of data protection, which could, amongst other things, have criminal law consequences for the doctor. In such cases, in the opinion of the specialist departments in the Ministry, the competent lawyers would have to obtain comprehensive information about the health of their clients or, if necessary, take the necessary action. This example clearly shows that some demands made by the church social service come to nothing and that on occasion their suggestions indicate a lack of sound legal knowledge.

The Joint Commission thereupon underlined the fact that information which is key when it comes to assessing whether someone is fit to get on an aeroplane should at any rate be handed to the Federal Police doctor who is accompanying the return flight.

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

Response: Various leisure-time activities are available in the facility and are taken up by the refugees (football pitch/basketball court, gym, film screenings, painting/arts and crafts, library, board games and games, children's playground etc.). German lessons, occasional sports activities and other games on the sports field are indeed supervised. Often those accommodated in the Reception Centre themselves take

the initiative and cross cultural boundaries to do sports and play games together. During the visit the head of the facility explained that experience had shown that regular events at fixed times are unrealistic for various reasons (fluctuation, new admissions, returns, entries, doctor's surgery hours, lack of occupants' reliability etc.). The activities on offer take place as and when required and this generally works well, the head of the facility told the Joint Commission. Naturally, the extent of the activities provided is also always dependent on the mindset and interests of the refugees being accommodated in the Centre at any given time.

The church-run refugee support service is well aware of all these factors. Clearly, failing any other aspects it can criticise, it has for several years been calling on the Land social service to offer regular, at best daily, supervised leisure activities, although it does not itself organise any leisure activities at all during those times when it is responsible for supervising the asylum seekers. Rather, it tends to spend its time analysing the Federal Office for Migration and Refugee's decisions. "Actively encouraging" asylum seekers to take part in leisure activities, one of the refugee support service's demands, would be tantamount to taking on the role of tour operator and surely does not fall within the remit of a reception centre for asylum seekers. In view of the task assigned to the National Agency, i.e. the prevention of torture, the refugee support group's demand appears almost cynical. It must therefore be reminded of the realities of those people who are being accommodated in the Reception Centre: In view of the everyday situation of those seeking refuge and their average stay of nine days, one can hardly speak of their being kept in "mere safe-keeping". Within this short period of time refugees have to undergo several formalities plus two hearings with other authorities. The question thus arises of why, against the backdrop of this relatively short stay, such

great importance is attached in the National Agency's report to leisure activities.

The Joint Commission thereupon repeated its finding that the Reception Centre provided a good range of leisure-time activities. It added that during its visits to pre-deportation detention facilities it had found that supervised activities contributed to improving the atmosphere in the facility. It again suggested examining whether the facility could offer more supervised activities at fixed times each week in order to counter the frequent observation that those accommodated in the facility withdraw internally.

Positive findings

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

Social workers provide **psycho-social support** each day between 7 am and 9 pm; an on-call service is also available. Detainees can also contact a **church social service** between 9 am and 5 pm on Mondays to Fridays with any questions they may have. A doctor holds surgery twice a week.

6 – CHILD AND YOUTH WELFARE FACILITIES

6.1 – SCHLOSS STUTENSEE YOUTH WELFARE FACILITY

On 13 November 2014 the Joint Commission visited Schloss Stutensee Youth Welfare Facility. As the supervisory authority's response was not yet available

when the Annual Report 2014 went to press on account of the visit only recently having taken place, both the report and the response will be published on the National Agency's website and in the Annual Report 2015.

IV
ANNEX

I – CHRONOLOGICAL LIST OF VISITS

<i>Date</i>	<i>Facility/measure</i>
13 January 2014	Rendsburg Pre-Deportation Detention Facility
28 January 2014	Berlin-Lichtenrade Youth Detention Centre
30 January 2014	Stuttgart and Stuttgart GER Customs Investigation Offices
31 January 2014	Stuttgart Airport Federal Police District Office and Stuttgart Main Station Federal Police Station
10 February 2014	Duisburg and Bochum Federal Police Stations
11 February 2014	Dortmund Federal Police District Office, Bielefeld Federal Police Station
12 February 2014	Leipzig Central Police Custody
13 February 2014	Regis-Breitingen Juvenile Penal Institution and Youth Detention Centre
19 February 2014	Halle an der Saale Youth Detention Centre
20 February 2014	Raßnitz Juvenile Institution
17 March 2014	Wilhelmsburg Barracks Ulm
18 March 2014	Ulm Federal Police Station
31 March 2014	Worms Youth Detention Centre
23 April 2014	Nuremberg Youth Detention Centre
24 April 2014	Würzburg Youth Detention Centre
25 April 2014	Berlin-Tegel Airport Federal Police District Office, monitoring of forced return
8 May 2014	Wriezen Prison (Juvenile Penal Institution)
22 May 2014	Oldenburg Federal Police Station
23 May 2014	Bremen Federal Police District Office, Bremen Airport Federal Police Station
27 May 2014	Mühldorf am Inn Prison (Pre-Deportation Detention Facility) and Munich Youth Detention Centre
10 June 2014	Frankfurt am Main Federal Police District Office
17 June 2014	Hahnöfersand Juvenile Penal Institution and Youth Detention Centre
22 July 2014	Neustrelitz Juvenile Institution and Youth Detention Centre
28 July 2014	Schwäbisch-Gmünd Prison
29 July 2014	Winnenden Police Station
31 July 2014	Mühldorf am Inn Federal Police Station, Rosenheim Federal Police District Office
1 August 2014	Weilheim Federal Police Station
4 August 2014	Verden an der Aller and Nienburg Youth Detention Centres
5 August 2014	Darmstadt Federal Police Station
5 August 2014	Emden Youth Detention Centre
17 September 2014	Neubrandenburg Federal Police Station, Pasewalk Federal Police District Office
18 September 2014	Pomellen and Gartz an der Oder Federal Police Stations; Berlin-Brandenburg Customs Investigation Office, Pomellen Office; Angermünde Federal Police District Office
29 September 2014	Chemnitz Prison (Youth Detention)
30 September 2014	Chemnitz North East Police Station
1 October 2014	Düsseldorf Youth Detention Centre
2 October 2014	Wetter an der Ruhr Youth Detention Centre
13 November 2014	Schloss Stutensee Youth Welfare Facility
25 November 2014	Kurmark Barracks, Storkow in der Mark; Holzdorf Airbase
25 November 2014	Gelnhausen Youth Detention Centre
26 November 2014	Frankfurt am Main Police Headquarters
10 December 2014	Göttingen Youth Detention Centre
12 December 2014	Rastatt Youth Detention Centre and Göppingen Youth Detention Centre

2 – HISTORY AND LEGAL BASIS

10 December 1948	<i>UN General Assembly Resolution (adopting the General Declaration of Human Rights), including the prohibition of torture and other cruel, inhuman or degrading treatment or punishment</i>
10 December 1984	Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UN Convention against Torture)
26 November 1987	European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
18 December 2002	Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 (OPCAT)
20 September 2006	Germany signs the Optional Protocol
26 August 2008	The Optional Protocol is implemented in German law by means of an act of assent of the German Bundestag
20 November 2008	The Federal Agency is created by organisational decree of the Federal Ministry of Justice
4 December 2008	Germany ratifies the Optional Protocol; appointment of an honorary Director to the Federal Agency
1 May 2009	The Federal Agency takes up its work, based in the headquarters of the Centre for Criminology in Wiesbaden
25 June 2009	Signing of the State Treaty on the Establishment of the Joint Commission on the Prevention of Torture by means of a State Treaty between all the <i>Länder</i>
23/24 June 2010	The members of the Joint Commission are appointed at the 81st Conference of the Ministers of Justice of the <i>Länder</i>
1 September 2010	Entry into force of the State Treaty on the Establishment of the Joint Commission and the Administrative Agreement between the Federal Government and the <i>Länder</i> on the National Agency for the Prevention of Torture
24 September 2010	Official inauguration of the Joint Commission by the Ministry of Justice of Hesse in Wiesbaden
10 June 2013	Appointment of a Deputy Director to the Federal Agency
6 November 2014	Appointment of four additional honorary members to the Joint Commission at the 85th Conference of the Ministers of Justice of the <i>Länder</i>
1 January 2015	The new members of the Joint Commission take up their work

The legal basis for the work of the National Agency can be found at: www.nationale-stelle.de.

3 – MEMBERS OF THE FEDERAL AGENCY

<i>Name</i>	<i>Official title</i>	<i>Since</i>	<i>Function</i>
Klaus Lange-Lehngut	<i>Ltd. Regierungsdirektor a.D.</i>	Dec. 2008	Director
Ralph-Günther Adam	<i>Ltd. Sozialdirektor a.D.</i>	June 2013	Deputy Director

4 – MEMBERS OF THE JOINT COMMISSION

<i>Name</i>	<i>Official title/occupation</i>	<i>Since</i>	<i>Function</i>
Rainer Dopp	State Secretary (retd)	Sept. 2012	Chair
Petra Heß	Commissioner for Foreign Affairs of the Free State of Thuringia	Sept. 2012	Member
Dr Helmut Roos	<i>Ministerialdirigent a.D.</i>	July 2013	Member
Michael Thewalt	<i>Ltd. Regierungsdirektor a.D.</i>	July 2013	Member
<i>Dr Monika Deuerlein</i>	<i>Dipl.-Psychologin (certified psychologist)</i>	<i>Jan. 2015</i>	<i>Member</i>
<i>Prof Dr Dirk Lorenzen</i>	<i>Psychological psychotherapist</i>	<i>Jan. 2015</i>	<i>Member</i>
<i>Margret Suzuko Osterfeld</i>	<i>Psychiatrist, psychotherapist (retd)</i>	<i>Jan. 2015</i>	<i>Member</i>
<i>Hartmut Seltmann</i>	<i>Director of Police (retd)</i>	<i>Jan. 2015</i>	<i>Member</i>

5 – ACTIVITIES IN THE PERIOD UNDER REVIEW

<i>When</i>	<i>Where</i>	<i>Who</i>	<i>What</i>
14 Jan. 2014	Hanover	National Agency	Final presentation of the National Agency's new corporate design at Hanover University of Applied Sciences and Arts
13/14 Feb. 2014	Trier	Joint Commission	Seminar on "Conditions Relating to Detention" at the Academy of European Law in Trier
19 March 2014	Berlin	Federal Agency	Reception for non-governmental organisations given by the Working Group on Human Rights and Humanitarian Aid, CDU/CSU Parliamentary Group in the German Bundestag
1 April 2014	Berlin	Federal Agency	Book launch for "Remembering Totalitarianism in Europe" organised by the Foundation for Memorial Sites in Saxony and hosted by the Representation of the Free State of Saxony to the Federation
2–4 April 2014	Berlin	National Agency	First meeting of the national preventive mechanisms of Austria, Switzerland and Germany to discuss their experiences
4 April 2014	Berlin	National Agency	Annual Report 2013 delivered to the Federal Ministry of Justice and Consumer Protection
9 April 2014	Berlin	Federal Agency	Annual reception of the Association of German Expellees
18–20 May 2014	Vienna	Joint Commission	Conference of the heads of prison training colleges and training institutions in Austria, Switzerland and Germany
3 July 2014	Berlin	Federal Agency	Discussion Group on Human Rights, SPD Parliamentary Group in the German Bundestag
5 Aug. 2014	Wiesbaden	Joint Commission	Meeting with the State Secretary for Social Affairs and Integration of Hesse
18 Sept. 2014	Mainz	Joint Commission	Meeting with the Director-General, Social Affairs and Demographics, Ministry for Social Affairs, Labour, Health and Demographics of Rhineland-Palatinate
6/7 Oct. 2014	Vienna	Secretariat	Workshop organised by the Ludwig Boltzmann Institute of Human Rights on "Strengthening the Effective Implementation and Follow-up of Recommendations by Torture Monitoring Bodies"
16/17 Oct. 2014	Wiesbaden	National Agency	Joint international specialist conference on "Violence Behind Bars" organised by the Centre for Criminology and the National Agency
2 Nov. 2014	Berlin	National Agency	Meeting with the chair of the SPT, Prof Evans, and a member of the SPT, Ms Amos

<i>When</i>	<i>Where</i>	<i>Who</i>	<i>What</i>
3 Nov. 2014	Berlin	Joint Commission	Event on “Effective Torture Prevention Worldwide” organised by Amnesty International and the German Institute for Human Rights
5 Nov. 2014	Berlin	Federal Agency	Dinner with the Chair of the British Justice Committee, Sir Alan Beith, five of its members and Mr Ruben Schuster, Personal Secretary to Berlin Senator for Justice Thomas Heilmann
6 Nov. 2014	Bad Kreuznach	Joint Commission	“Stop Torture”, Amnesty International, Bad Kreuznach Group
13/14 Nov. 2014	Lviv, Ukraine	Secretariat	Fifth East European Conference on National Preventive Mechanisms
24 Nov. 2014	Berlin	Federal Agency	Meeting with the enforcement unit of the Bundeswehr Territorial Tasks Command
25–27 Nov. 2014	Wiesbaden	National Agency	Visit by a delegation from the Turkish Ministry of the Interior
9 Dec. 2014	Mainz	Joint Commission	Reception given by the Minister of Justice and Consumer Protection to mark Human Rights Day