



NATIONAL
AGENCY
FOR THE
PREVENTION
OF
TORTURE

ANNUAL REPORT 2023

Period under review
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FOREWORD

The National Agency for the Prevention of Torture is the body responsible in Germany for ensuring humane detention conditions and treatment of prisoners. The Agency hereby presents an annual report of its activities to the Federal Government, the German *Bundestag*, the *Land* governments and the *Land* parliaments. The report covers the period from 1 January to 31 December 2023.

In this period, the National Agency visited a total of 66 facilities and monitored six deportation procedures. In the course of these activities, it once again observed breaches of the human rights of people in detention and violations of human dignity, which is protected by Article 1(1) of Germany's Basic Law (*Grundgesetz*, GG).

The National Agency takes an extremely critical view of the fact that despite how the Federal Constitutional Court has ruled and contrary to repeated recommendations issued by the Agency since 2017, cells without separate toilets are still being used for double occupancy. What is more, by the end of 2023 – in other words five years after the Federal Constitutional Court judgment of 24 July 2018 on physical restraint – Berlin, Lower Saxony and Saarland had still not brought their *Land* provisions on physical restraint in psychiatric facilities into line with minimum standards under constitutional law.

Once again, the focus of the National Agency's activities was on visits to forensic psychiatric detention facilities; at the time of writing this report, the Agency has visited all forensic psychiatry clinics in Germany and is thus the only institution to have a full national overview of the situation. The National Agency also compared approaches in the prison sector with those in forensic psychiatric detention. In the prison sector, the potential risks associated with certain meas-

ures are commonly assessed as significant by the competent supervisory authorities. The situation is different in the field of forensic psychiatric detention: here, the very same measures – for example pixelating the toilet area when CCTV monitoring is in operation and providing seating in specially secured cells – are largely considered unproblematic.

Another National Agency focus was on observing deportation measures. A key issue raised by the Agency in this area was the failure to take sufficient account of the best interests of children and of the particular vulnerabilities of deportees (for example illness and disabilities).

When one considers both the large number of places of detention in Germany (around 13,000) and the limited staff and financial resources available to the National Agency, it is clear that the response to the central objective of the prevention of torture in general within the meaning of the OPCAT is still not sufficient. With its team of ten honorary members, the National Agency has only limited means to undertake the core tasks that the Federal Republic of Germany has committed to fulfil under international law. With such a large number of facilities to visit, it is clear that the National Agency can, at most, conduct spot inspections.

This makes proactive implementation of the National Agency's standards and recommendations all the more important. Alongside visits, the Agency's involvement in legislative processes and its dialogue with the competent supervisory authorities are key to driving nationwide implementation of its recommendations. Whilst some *Länder* routinely bring the National Agency on board, others are less proactive or indeed reject a consultative approach.

Increases in payroll costs and in rent – over which the National Agency had no control – meant that the Agency no longer had the necessary financial resources to carry out its visits after the end of April 2024. Only after extensive representations by the National Agency did the Spring Conference of Justice Ministers of the *Länder* (5/6 June

2024) ultimately move to support the provision of an additional 60,000 euros for 2024, and to request approval for this budget increase from the Budget Committee of the *Länder* and if necessary the Conference of Finance Ministers of the *Länder*.



Rainer Dopp
State Secretary (ret'd)
Chair of the Joint Commission



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

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LIST OF ABBREVIATIONS

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

I

Current issues

1 – National Agency insufficiently resourced

Faced with rising costs, the National Agency did not have sufficient financial resources in the first six months of 2024 to exercise its mandate in line with the Federal Republic of Germany's obligations under international law and was forced to suspend its visits.

Not until 5/6 June 2024 at the Spring Conference of Justice Ministers of the *Länder* was a decision taken to provide an additional 60,000 euros for 2024 and to request the necessary approval for this budget increase from the Budget Committee of the *Länder* and, if necessary, the Conference of Finance Ministers of the *Länder*. The National Agency will need this additional 60,000 euros in order to resume its visits in full.

2 – Especially problematic findings

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

Deportation despite a court order

One deportee was handed over to authorities in Nigeria despite the escort leader having been notified in time of a court order requiring the individual's immediate return to Germany.

Individuals cuffed during outdoor exercise

In Langenfeld forensic psychiatry facility (North Rhine-Westphalia), all individuals subject to more restrictive detention conditions who were housed in block 59 had to wear metal handcuffs for the duration of their recreation break in, and on the way to, the garden.

Legislation on physical restraint in forensic psychiatric detention

Six years after the Federal Constitutional Court judgment of 24 July 2018,¹ the rules on physical restraint in the Land legislation governing forensic

psychiatric detention in **Berlin** and **Saarland** are still not compatible with the minimum requirements set out in that ruling (for example requirement for a judicial decision, and one-on-one supervision by therapeutic or care staff).

Legislation on physical restraint in prisons

The requirement for constant, in-person, one-on-one supervision by therapeutic or care staff is still not enshrined in the Prison Acts of **any of the *Länder***. The reason for that requirement is the particular risks to health² associated with each and every use of physical restraint. The **Mecklenburg-Western Pomerania** Prison Act does not enshrine in law any of the minimum standards under constitutional law. What is more, a number of justice ministries argued that the Federal Constitutional Court judgment was not applicable in prisons (**Berlin** and **North Rhine-Westphalia**) or that in-person supervision by care staff could not be provided in prisons because of a lack of care staff (**Hesse**); this is, in the National Agency's view, particularly problematic.

Failure to consider the best interests of children

A woman and her two children aged four and five were included alongside men travelling on their own in a collective removal operation that was clearly expected to happen under considerable resistance. The family was collected in the middle of the night, and the children were separated from their mother for the entire duration of the transfer from **Thuringia** to Duesseldorf Airport.

Night lock-up and isolation in crisis intervention rooms with no toilets

Individuals in forensic psychiatry facilities in **Baden-Württemberg**, **Bavaria**, **Lower Saxony** and **North Rhine Westphalia** were placed for months (with night lock-up/in isolation) in crisis intervention rooms that had no toilet. They had to use urine bottles or basins. In two of the facilities, there was full CCTV monitoring of the individuals affected even when they were relieving themselves.³

¹ Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15.

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

³ Marsberg youth forensic psychiatry facility (North Rhine-Westphalia) and Bad Schussenried forensic psychiatry facility (Baden-Württemberg).

Unsuitable custody facilities

A number of custody cells in Hanover district police station (**Lower Saxony**) were only 1.29 m wide, making them completely unsuitable.

Unlawful physical restraint in police custody

Each year, around 100 individuals taken into custody at Hanover district police station (**Lower Saxony**) are restrained by being secured to metal poles anchored in the tiled floor. In some cases, restraints were only attached to the individuals' arms and/or legs. This practice significantly increases the risk of serious harm and should cease immediately. Moreover, procedures are in no way compliant with minimum standards under constitutional law. Since 2015, the National Agency has recommended avoiding the use of physical restraints in police custody altogether.

Disproportionately long periods of segregation

At a large number of the forensic psychiatry facilities visited, individuals were segregated from others in crisis intervention rooms for periods of several weeks or even months. In the clinics in Eltville (**Hesse**) and Herne (**North Rhine-Westphalia**), the National Agency even found cases of segregation lasting several years, with the individuals in question being held on their own in crisis intervention rooms for up to 24 hours a day.

Insufficient staffing levels

Dozens of written notifications of dangerous and unsustainable workplace pressures (*Gefährdungsanzeigen*) were submitted by employees at the forensic psychiatry facility in Essen (**North Rhine-Westphalia**) in the course of just one year. The staff shortages highlighted in those notifications were causing specific, practical problems for detainees: the facility was not meeting its duty of supervision in full; detainees were being confined to their cells for longer than usual; and duties such as cleaning/hygiene measures and providing supervision for short leave under escort were being postponed.

Unconstitutional use of cells without separate toilets for multiple occupancy

Despite a ruling by the Federal Constitutional Court⁴ and repeated recommendations from the National Agency, **Baden-Württemberg** still has double occupancy of cells with no separate toilet. In Freiburg Prison, there was double occupancy of 35 cells with a floorspace of just 8.66 m². The double-occupancy cells did not have a separate toilet with separate ventilation; the only partition was a curtain. These circumstances are degrading for the affected prisoners, and constitute inhumane detention conditions.⁵ Immediate improvements must be implemented to ensure humane detention conditions.

In Bad Schussenried and Emmendingen forensic psychiatry facilities (**Baden-Württemberg**), the National Agency found cases of multiple occupancy of patient rooms in which there was no partition around the toilet at all, or only a curtain.

⁴ Federal Constitutional Court, order of 22 February 2011, file no.: 1 BvR 409/09.

⁵ Elsewhere in Baden-Württemberg, a comparable situation was found for example on repeated occasions on visits to Karlsruhe Prison in 2017 and 2020.

II

General information about the work of the National Agency

The National Agency for the Prevention of Torture is Germany's designated National Preventive Mechanism. By establishing the Agency, the Federal Republic of Germany fulfilled its obligations under international law following from the OPCAT. The National Agency is responsible for places where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence. The following pages provide an overview of the National Agency's special status, as well as background information regarding its structure.

1 – Institutional framework

The objective of preventing torture and abuse is laid down in the OPCAT, which adds a preventive approach to the UN Convention against Torture of 1984. At the start of 2024, the OPCAT had 104 signatory states and had been ratified by 91 states.⁶

Article 3 of the OPCAT requires that the States Parties set up a national preventive mechanism (NPM). These independent national mechanisms engage in preventive measures and assess whether places of detention ensure humane treatment and detention conditions. To date, 78 States Parties are in compliance with this requirement.⁷

Germany's National Preventive Mechanism comprises the Federal Agency for the Prevention of Torture, which is responsible for facilities run at federal level, and the Joint Commission of the Länder for the Prevention of Torture, which is responsible for facilities at federal-state level. The Federal Agency and the Joint Commission work together as a National Agency for the Prevention of Torture, and closely coordinate their activities.

Under Article 18 of the OPCAT, the States Parties are obliged to guarantee the functional independence of the preventive mechanisms as well as the independence of their personnel, and to make the necessary financial resources available.

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

Commission are appointed by the Conference of Ministers of Justice of the *Länder*.⁸ Members are not subject to supervisory control or legal oversight, and are independent in the exercise of their functions. They act in an honorary capacity. Strict conditions apply for the removal of members before the end of their term in office, as set out in sections 21 and 24 of the German Judiciary Act (*Deutsches Richtergesetz*). The full-time secretariat is based in Wiesbaden and is affiliated with the organisational structure of the Centre for Criminology (*Kriminologische Zentralstelle e.V.*).

2 – Tasks

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

At the federal level, this definition encompasses all detention facilities operated by the Federal Armed Forces, Federal Police and customs authorities. In addition, the Federal Agency is also responsible for monitoring forced deportations. In 2023, a total of 13,477 persons were deported from Germany by air.⁹

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

⁶ URL: <https://indicators.ohchr.org/> (accessed 27 May 2024).

⁷ URL: <https://www.apt.ch/knowledge-hub/opcat> (accessed 27 May 2024).

⁸ Organisational decree of the Federal Ministry of Justice dated 20 November 2008 (Federal Gazette no. 182, p. 4277); State Treaty on the establishment of a national mechanism of all *Länder* pursuant to Article 3 of the Optional Protocol dated 18 December 2002 to the Convention of the United Nations against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 25 June 2009 (published e.g. in the *Land Law Gazette* of Baden-Württemberg dated 7 December 2009, p. 681).

⁹ Statistical survey by the Federal Police.

nursing homes where measures depriving people of their liberty are or can be enforced are also classified as places of detention under the above definition.

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

3 – Powers

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

- + Access to all information concerning the number of persons deprived of their liberty in places of detention as defined in Article 4 of the OPCAT, as well as the number of such places and their location;
- + Access to all information concerning the treatment of those persons as well as their conditions of detention;
- + Access to all places of detention and their installations and facilities;
- + The opportunity to conduct private interviews with the persons deprived of their liberty without witnesses, either personally or with an interpreter if deemed necessary, as well as with any other person who the National Agency believes may supply relevant information;
- + The liberty to choose the places it wishes to visit and the persons it wishes to interview;
- + The right to have contact with the UN Subcommittee on Prevention of Torture (SPT), to send it information and to meet with it.

In accordance with Article 21(1) of the OPCAT, persons who communicate information to the National Agency are not to be sanctioned or otherwise prejudiced in any way. The members and employees of the Agency are obligated to maintain confidentiality with regard to information disclosed to them in the course of their duties. This obligation is to be maintained even beyond the term of their office.

4 – Enquiries by individuals

Between 1 January and 31 December 2023, 97 enquiries were made to the National Agency by individuals. All of those enquiries related to facilities within the remit of the Joint Commission. Enquiries related to conditions of detention and to medical care and were for the most part submitted by prison inmates, followed by patients in forensic psychiatric detention. However, alongside those enquiries, the National Agency also received submissions from prison doctors, from counselling staff and from relatives of detainees on conditions in the various facilities and clinics.

Individual enquiries are also occasionally received from persons who are not being held in facilities where measures involving deprivation of liberty are enforced.

As the National Agency does not operate as the office of an ombudsperson, it is not authorised to directly investigate complaints by individuals or to remedy them. However, it may provide the addresses of relevant contact points or complaints bodies to individuals who send enquiries.

Where an enquiry contains information regarding serious shortcomings in a facility, the National Agency will, with the consent of the individual in question, contact the competent supervisory authorities. If an enquiry provides an indication that a person poses an acute risk to themselves or others, the National Agency will immediately contact the competent supervisory authority.

Tips from individual enquiries are of considerable relevance for the National Agency's work, as they can direct attention to specific problem areas. Concrete information and tips can also have an influence on which facilities are visited.

5 – Personnel and financial resources

5.1 – Current financial position

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

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

Cost increases and a fixed budget, in particular for payroll and rent, meant that the National Agency was unable to exercise its mandate to the usual extent with its allocated funding for 2024.

Not until 5/6 June 2024 did the Spring Conference of Justice Ministers of the *Länder* move to provide an additional 60,000 euros for 2024 to keep the National Agency operational, and to request the necessary approval for this budget increase from the Budget Committee of the *Länder* and, if necessary, the Conference of Finance Ministers of the *Länder*.¹⁰ Until such time as the additional funding is released, the National Agency has been forced to reduce its visits to an absolute minimum, as measures including savings have not been sufficient to address increased financial pressures.

In 2022, the National Agency had already warned repeatedly of foreseeable budgetary difficulties and had raised the issue in detail, for example at Federation-*Länder* talks in January 2024.

Once again, the National Agency would remind all parties that the Federal Republic of Germany has an obligation under Article 18(3) of the OPCAT to provide the resources required for the work of its National Preventive Mechanism.

Rapid implementation of the resolution passed by the Conference of Justice Ministers is essential if the National Agency is to be able to fulfil its mandate in line with Germany's obligations under international law in the second six months of 2024.

Alongside an increase for 2024, that resolution also provides for an increase in the National Agency's annual budget to 720,000 euros with effect from 2025, and a simplified procedure for budgetary adjustments in the event of future cost increases.

5.2 – Personnel

The mandate of the National Agency for the Prevention of Torture is carried out by ten members acting in an honorary capacity. They are supported by a secretariat, which has 4.5 full-time equivalent research posts and 1.5 full-time equivalent administration posts.

Eva Moll-Vogel, former President of Braunschweig Regional Court, was appointed to the Joint Commission with effect from 1 January 2023, and the psychiatrist and neurologist Dr Michael Brune with effect from May 2023. Margret Osterfeld, psychiatrist and psychotherapist (retired), stood down with effect from 31 March 2023.

A research assistant joined the Agency for the period from October 2023 to February 2024 under a fellowship programme run by the Stiftung Mercator foundation. He primarily worked with the Federal Agency on deportation observation and on visits to custody facilities.

¹⁰ <https://www.mj.niedersachsen.de/JuMiKo/beschluesse/beschluesse-228116.html>

6 – Torture prevention worldwide

6.1 – CPT ad hoc visit to Germany

On 4 April 2024, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published its report on a return operation by charter flight from Germany to Pakistan via Cyprus that it observed on 5 September 2023. The CPT issued recommendations covering issues including: strip-searches; the use of means of restraint; the apprehension of returnees during scheduled immigration office appointments (“*Tischfestnahme*”); medical assistance – in particular the independence of doctors; access to lawyers; and the use of private security personnel on deportation flights.

The CPT also addressed in some detail the role of the National Agency and its mandate as regards deportation monitoring. The CPT encouraged the National Agency to cooperate actively with other National Preventive Mechanisms in countries of return that have such a mechanism regarding the monitoring of removal operations by air (paragraph 100). In its response, the National Agency stated that it was striving to increase its monitoring efforts (in particular regarding the collection phase) and – as recommended by the CPT – to intensify its cooperation with other National Preventive Mechanisms. In addition to the necessary exchange of information on the treatment of individuals who have been returned, the National Agency considers it essential that collecting return operations are monitored jointly with the NPM of the country of destination in question so as to ensure continuous independent monitoring of the entire operation.

The CPT also once again stressed the importance of establishing an effective national forced return monitoring system. On this point, the CPT noted that the National Agency currently only has the capacity to observe some four to five return flights per year because of its limited resources.

The National Agency picked up on this point following the publication of the CPT report and once again highlighted the need for an increase in its staff and financial resources. Such an increase is essential if the National Agency is to be able to carry out its mandate effectively and work with other National Preventive Mechanisms.

6.2 – Dialogue with other NPMs

The National Agency took part in the regular annual exchange of German-speaking NPMs alongside representatives of the Austrian Ombudsman Board and the Swiss National Commission for the Prevention of Torture in Bern (Switzerland) on 2 and 3 November 2023. Attendees shared and compared approaches, for example methods used to observe forced returns by air, and the standards developed in this area. There were also in-depth discussions on the situation in each country in the residential and nursing care sector and in psychiatric care for prisoners.

The issue of mental health in prison was also explored in detail at the regional meeting for NPMs in Copenhagen (9-11 November 2023) organised by the ODIHR and the APT.

III

Focus:

**forensic psychiatric
detention**

I – Introduction

Forensic psychiatric detention had already been the focus of National Agency visits in 2021 and 2022. In 2023, the National Agency once again focused on forensic psychiatry to meet its objective of visiting all forensic psychiatry facilities in Germany. National Agency visits to forensic psychiatry facilities in both 2021 and 2022¹¹ had found many critical issues, some of which constituted serious violations of human dignity.¹² In 2023, the Agency therefore decided to review the conditions of detention at those forensic psychiatry facilities in the country that it had yet to visit. To this end, the National Agency visited 36 forensic psychiatry facilities in seven different *Länder* in 2023.¹³ Three remaining forensic psychiatry facilities were then visited in 2024,¹⁴ and the National Agency met the stated objective.

The Agency's findings from the previous three years¹⁵ together with the 2016 to 2020 reports¹⁶ offer a comprehensive picture of the current problems and challenges facing forensic psychiatry in Germany as regards human rights and human dignity.

The National Agency repeatedly issues recommendations regarding stricter conditions for the use of physical restraint, in particular given the serious nature of this measure. The Federal Constitutional Court reinforced those conditions in its judgment of 24 July 2018.

Despite this, the National Agency once again found statutory provisions that did not meet

the minimum requirements under constitutional law in 2023. It is extremely problematic that provisions on physical restraint in *Land* acts on forensic psychiatric detention in *Berlin*, *Lower Saxony*¹⁷ and *Saarland* are still not in line with constitutional requirements more than five years after the Federal Constitutional Court ruling.

A number of the findings set out in this chapter are confirmed by a survey conducted by the German Association for Psychiatry, Psychotherapy and Psychosomatics (DGPPN).¹⁸ That survey indicated “conditions that in many cases are at the least unsatisfactory, if not downright intolerable”¹⁹ : significant overcrowding; staff shortages; a lack of space; and ever longer periods of committal.

At the same time, however, the National Agency also noted welcome developments both on the ground and in the legal framework that should also be mentioned here.

Over recent years, a number of *Länder* have adopted important legislative changes that have in most cases resulted in more humane detention conditions in forensic psychiatry facilities.

¹¹ The National Agency visited 12 facilities in 2021 and 24 facilities in 2022.

¹² For example: crisis intervention rooms with no toilet in Baden-Württemberg and Brandenburg; five patients to a room in Baden-Württemberg; and the use of restraints during outdoor exercise in Hesse.

¹³ Baden-Württemberg, Bavaria, Hesse, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate and Saxony. The National Agency visited forensic psychiatry facilities in the nine other *Länder* in 2021 and 2022. Since the National Agency started its work, it has visited each of Germany's forensic psychiatry facilities at least once.

¹⁴ Forensic psychiatry facilities in Königsutter and Osna-brück (Lower Saxony) and in Deerth (North Rhine-Westphalia).

¹⁵ A detailed description of the individual facilities and positive examples, findings and recommendations in each case can be found in the individual visit reports, which are available (in German) on the website of the National Agency for the Prevention of Torture (<https://www.nationale-stelle.de/besuche/laenderkommission/2023.html>).

¹⁶ One facility in 2016; four facilities in 2017; three facilities in 2018; 11 facilities in 2019; and one facility in 2020.

¹⁷ The Parliament of Lower Saxony adopted an Act Amending the Lower Saxony Act on Forensic Psychiatric Detention (*Gesetz zur Änderung des Niedersächsischen Maßregelvollzugsgesetzes*) on 15 May 2024 (Paper 19/2843 / Paper 19/4235) to meet constitutional requirements on physical restraint. The National Agency was involved in the legislative process and welcomes the fact that its recommendations were largely implemented.

¹⁸ Results of a survey conducted in the autumn of 2022 of 78 forensic psychiatry clinics in Germany, of which 60% responded. Zeidler, R., Dudeck, M., Frank, U. et al., *Die Situation des deutschen Maßregelvollzugs – Ergebnisse einer Umfrage der DGPPN*. Der Nervenarzt (2023). <https://doi.org/10.1007/s00115-023-01564-7> (accessed 27 May 2024).

¹⁹ <https://www.fr.de/politik/massregelvollzug-hinterdicken-mauern-herrschen-zustaende-die-untragbar-sind-92044461.html> (accessed 27 May 2024).

+ Alongside statutory amendments to meet constitutional requirements governing physical restraint,²⁰ various *Land* parliaments have adopted other recommendations from the National Agency:²¹

+ **Bremen** has enshrined in law²² the requirement for body searches involving the removal of clothing to be conducted in two stages to ensure the process is as respectful as possible;

+ In **North Rhine-Westphalia**, all forms of segregation must be approved by the courts (requirement for a judicial decision).²³

Further changes to applicable law are also pending, and the National Agency has been consulted and has submitted statements in a number of ongoing legislative processes.²⁴

2 – Findings and recommendations

In the period between September 2016 and March 2024, the National Agency visited all forensic psychiatry facilities in Germany. This provided the Agency with a full picture of the situation across the country and allowed it make comparisons between *Länder*. The Agency was also able to identify challenges and problems in the area of forensic psychiatry, and examples of best practice that could be shared to improve detention conditions.

In the course of its visits, the National Agency observed developments that reveal different approaches in different places to exactly the same issues. The Agency is at a loss to understand why its recommendations are so often not being

implemented consistently within one and the same *Land*. For example, pixelating the toilet area in crisis intervention rooms is standard practice in a number of facilities in **Bavaria** and **North Rhine-Westphalia**, while other facilities in those same *Länder* refuse to adopt this measure.

The National Agency rated the following aspects particularly positively:

+ A growing number of forensic psychiatry clinics are fitting their crisis intervention rooms with large windows, vandalism-proof furniture and clocks, which can help to defuse what is a distressing situation.

+ A significant number of facilities pixelate the toilet area or exclude it from CCTV monitoring entirely in order to give patients greater privacy. A number of the clinics visited have opted not to use CCTV monitoring at all for their crisis intervention rooms.

+ The National Agency found that in most cases, strip-searches were carried out in two stages so that only the top or the bottom half of the individual's body was exposed at any one time.

Despite the positive developments, the National Agency still found ongoing structural problems, which it set out in its visit reports.

The main issues relating to detention conditions identified by the National Agency on its visits to forensic psychiatry facilities are as follows:

2.1 – Occupancy

2.1.1 – Overcrowding

As in previous years,²⁵ the National Agency conducted a nationwide survey on occupancy in forensic psychiatry clinics.²⁶ The data obtained on capacity and occupancy levels²⁷ clearly showed that occupancy levels were approaching or exceeding full capacity in 14 *Länder* (excepting **Mecklenburg-Western Pomerania** and **Saxony**).

²⁰ Requirements set out in the judgment of the Federal Constitutional Court of 24 July 2018, file no.: 2 BvR 309/15.

²¹ See Chapter IV.2. Legislation in the 2022 Annual Report for details of changes to statutory regulations in the area of forensic psychiatric detention, including the Thuringian Mental Health Act (*Thüringer Gesetz zur Hilfe und Unterbringung psychisch kranker Menschen*, ThürPsychKG), the North Rhine-Westphalia Act on Criminal Law-related Committal (*Strafbezogenes Unterbringungsgesetz NRW*, StrUG NRW) and the Bremen Mental Health Act (*Bremisches Gesetz über Hilfen und Schutzmaßnahmen bei psychischen Krankheiten*, Brem-PsychKG).

²² “Body searches should only require patients to partially undress at any one time” (section 70(2) of the Bremen Mental Health Act of 13 December 2022).

²³ Section 32(3) of the North Rhine-Westphalia Act on Criminal Law-related Committal of 17 December 2021.

²⁴ See Chapter VI of this Annual Report.

²⁵ The National Agency had already found overcrowding or zero capacity to be a systemic problem in 2021 and 2022.

²⁶ Survey of 11 January 2024 of all 16 of the competent ministries on occupancy as at 30 November 2023.

²⁷ The National Agency urges the competent ministry in Lower Saxony systematically to record the number of patients between the ages of 14 and 17 and between the ages of 18 and 21.

The visits undertaken confirmed this finding. The National Agency found overcrowding and the problems associated with it in 20 of the total of 36 facilities visited in 2023 (**in all *Länder* visited**).²⁸

The National Agency always recommends taking all necessary measures to address overcrowding.

The ministries in question largely share the National Agency's assessment and concerns.²⁹ For example, the Ministry of Labour, Health and Social Affairs of the *Land of North Rhine-Westphalia* confirmed the significance of this nationwide problem, writing that the "challenges associated with overcrowding at psychiatric clinics and institutions for withdrawal treatment are a central concern".³⁰ The facilities and the supervisory authorities are facing particular challenges in this area. One example given by the **Baden-Württemberg** Ministry for Social Affairs, Health and Integration³¹ was that the number of court orders and thus also of committals had risen sharply since 2018. As a result, clinics had reportedly had to increase occupancy levels in order to accommodate all patients allocated by the courts; in some clinics, this had only been possible with multiple occupancy of individual rooms as the buildings were not suitable for extension or redesign.

In response to the high occupancy rates, section 64 of the German Criminal Code (*Strafgesetzbuch*, StGB) was amended. The amended provision entered into force on 1 October 2023.³² In order to reduce the number of persons admitted on the grounds of an addiction, "addiction" to alcoholic beverages or other intoxicating substances has

now been defined more narrowly.

One result of the amendment is that the individuals concerned are in future more likely to be placed in prison. This could make the provision of support and treatment for inmates more difficult in future. Observations and discussions during the National Agency's visits indicated that alongside individuals suffering from untreated addictions,³³ the prison population probably also includes a considerable number of individuals with mental illnesses for whom the requisite support and treatment is not necessarily available.³⁴

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

The issues arising from the systemic problem of overcrowding at forensic psychiatry facilities are being compounded by low staffing levels.

Each facility must have sufficient, qualified staff in all areas.

As in previous years, staffing was an issue **in all *Länder* visited** in 2023 (with the exception of **Rhineland-Palatinate**).

The staffing situation at clinics – together with high occupancy rates – was having a significant impact on patients' situation. Low staffing levels can, moreover, pose a safety risk both for patients and for staff. Understaffing generally results in the remaining staff being overworked. Multiple notifications of unsustainable workplace pressure were submitted by staff at two facilities in **North Rhine-Westphalia** (Essen and Langenfeld).

At one facility in **Bavaria** (Günzburg), 20% of care posts for 2023 were vacant. There were also significant levels of staff absence due to illness, making it even more difficult to maintain sufficient staffing levels with qualified staff. This considerably limited both available activities and treatment options for patients. Serious overcrowding in the clinic compounded the problem further.

²⁸ Baden-Württemberg, Bavaria, Hesse, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate and Saxony.

²⁹ All statements cited are available (in German) on the National Agency website: <https://www.nationale-stelle.de/besuche/laenderkommission/2023.html>

³⁰ Statement in response to the National Agency's report on its visit to LWL-Therapiezentrum forensic psychiatry clinic in Marsberg on 30 June 2023.

³¹ Statement in response to the National Agency's report on its visit to the forensic psychiatry clinic in Weinsberg on 13 April 2023.

³² Federal Law Gazette Part I, 2 August 2023, No. 203: Act Reforming Sentencing Law – Default Imprisonment, Sentencing, Conditions and Directions, and Placement in Addiction Treatment Facilities (*Gesetz zur Überarbeitung des Sanktionenrechts – Ersatzfreiheitsstrafe, Strafzumessung, Auflagen und Weisungen sowie Unterbringung in einer Entziehungsanstalt*) of 26 July 2023.

³³ Federal Constitutional Court, order of 5 December 2023, file no.: 2 BvR 1661/23; ECHR, judgment of 1 September 2016, Wenner v. Germany, Application no. 62303/13 – Violation of Article 3 of the Convention.

³⁴ On this point, see for example *Justizministerium Baden-Württemberg (2015): Umgang mit psychisch auffälligen Gefangenen. Abschlussbericht der Expertenkommission* (Mental health issues in prison. Final report from the investigating commission), Stuttgart.

In response to the National Agency's visit report, the **Bavarian** Ministry for Family, Labour and Social Affairs wrote that the skills shortage, which was being felt particularly acutely in the health sector, was affecting the ability of Bavarian forensic psychiatry facilities to hire new personnel. The Ministry added that the bodies responsible for running forensic psychiatry facilities had already launched numerous targeted human resource development initiatives in the area of psychiatry.³⁵

The practical impact of overcrowding is extremely serious and the situation must be addressed.

2.1.2 – Multiple occupancy

The National Agency considers the principle of single occupancy, which is set out in statute for the prison system,³⁶ to be indispensable. In cases where double occupancy is unavoidable, steps must be taken to ensure that it in no way hinders treatment, and that the occupants' privacy is protected. Allocating three or more individuals to a room should be avoided.

Placing three or more individuals suffering from mental illness or addiction in one room is problematic, even if the room is large enough. The resulting lack of privacy can trigger aggressive behaviour and provoke incidents. It can lead to conflicts between occupants, besides significantly complicating medical and therapeutic treatment and delaying the treatment's intended outcome.

Yet high patient numbers mean that multiple occupancy is nonetheless common. The National Agency observed instances of overcrowding – double occupancy of single patient rooms and three people in twin rooms – and of three or more individuals sharing.

+ In line with the National Agency's recommendation, one of the forensic psychiatry clinics

in **North Rhine-Westphalia** (Hörstel) provided single rooms for all of its patients. Patients were also able to lock their rooms to protect their privacy.

Lower Saxony's Ministry of Social Affairs, Labour, Health and Equality informed the National Agency³⁷ that all rooms in a planned extension to the forensic psychiatry facility in Bad Rehburg were to be single rooms, each with its own bathroom. In its response to the visit report on the forensic psychiatry and psychotherapy clinic in Günzburg, the **Bavarian** Ministry for Family, Labour and Social Affairs stated that new building projects were to include a higher proportion of single rooms.³⁸

2.1.3 – Multiple occupancy of rooms without a separate toilet

Multiple occupancy of a room without a separate toilet constitutes a violation of human dignity and is therefore unacceptable.

The Federal Constitutional Court has ruled on an identical situation in the prison system:³⁹ holding multiple prisoners in a single cell without a separate toilet with separate ventilation represents a violation of human dignity. Whether or not the individuals in question have agreed to be detained together is irrelevant, as the fundamental right to human dignity is a protected legal interest that cannot simply be waived.⁴⁰

Not just prisons but also forensic psychiatry clinics are facilities in which people are deprived of their liberty. The above judgment is therefore applicable to forensic psychiatry facilities. Like prison inmates, individuals in those facilities are otherwise forced to use the toilet in the presence of other people, and odours spread and noises can be heard throughout the room.

³⁵ Statement from the Bavarian Ministry for Family, Labour and Social Affairs in response to the National Agency's report on its visit to the forensic psychiatry and psychotherapy clinic in Günzburg on 15 March 2023.

³⁶ Section 18(1) sentence 1 of the German Prison Act (*Strafvollzugsgesetz*, StVollzG), Accommodation at Night: "During the night the prisoners shall be lodged alone in their cells." Similar wording can be found in many of the Prison Acts of the *Länder*.

³⁷ Statement in response to the National Agency's report on its visit to the hospital in Bad Rehburg on 16 March 2023.

³⁸ In response to the National Agency's report on its visit to the forensic psychiatry and psychotherapy clinic in Günzburg on 15 March 2023.

³⁹ Cf. Federal Constitutional Court, order of 22 February 2011, file no.: 1 BvR 409/09; Lübbe-Wolff (2016) "*Die Rechtsprechung des Bundesverfassungsgerichts zum Strafvollzug und Untersuchungshaftvollzug*", p. 269; ECHR, judgment of 25 April 2013, *Canali v. France*, Application no. 40119/09; Karlsruhe Higher Regional Court, judgment of 19 July 2005, 12 U 300/04.

⁴⁰ Federal Administrative Court, judgment of 17 October 2000, file no.: 2 WD 12/00; See: Arloth, StVollzG, 3. Aufl., § 18, margin no. 2.

At the time of the National Agency's visit, a secure room in Bad Schussenried (**Baden-Württemberg**) in which the sanitary facilities (toilet and shower) were not partitioned off was occupied by three people; this was unacceptable. In Emmendingen (**Baden-Württemberg**), the toilet in a patient room with double occupancy was merely screened by a curtain.

2.1.4 – Use of crisis intervention rooms

Patients who are not subject to any special security measures may only be held in standard rooms. Crisis intervention rooms should not be used as standard accommodation. If overcrowding means that the use of crisis intervention rooms is unavoidable, they should be adapted (furnishings and fittings) so that they resemble standard patient rooms.

The use of crisis intervention rooms for the permanent accommodation of individuals who are ill can have a negative impact on their mental health and seriously affect treatment outcomes. Crisis intervention rooms should only be used for periods of crisis. For example, under Article 25(2) no. 8 of the Bavarian Act on Forensic Psychiatric Detention (*Maßregelvollzugsgesetz*) and section 32(1) sentence 1 no. 6 of the **North Rhine-Westphalia** Act on Criminal Law-related Committal, accommodation in such rooms is only permitted as a special security measure. Where crisis intervention rooms are permanently occupied, this also poses a safety and security risk as the rooms are unavailable for their actual purpose.

In 2023 as in previous years, the National Agency found crisis intervention rooms being used as standard accommodation in facilities it visited – in **Bavaria**, **Hesse**, **Lower Saxony**, **North Rhine-Westphalia** and **Saxony**. As a result of overcrowding, patients were regularly housed in crisis intervention rooms, and that for periods of several weeks and in some cases even several months. Even where used as standard accommodation, the rooms were very sparsely furnished.

2.2 – Segregation

2.2.1 – Duration

The principle of proportionality requires that any form of isolation only be imposed on the basis of an individual risk assessment and for the shortest possible period.⁴¹

The National Agency is aware that many of the clinics visited face particular challenges. In this regard, the Agency would like to highlight the multidisciplinary approaches being taken and efforts being made to ensure, as far as possible, that patients can benefit from human contact, meaningful activities and outdoor exercise.

Nevertheless, it is a matter of some doubt whether isolation over a period of weeks or months can ever be proportionate.

The National Agency found problematic rates of prolonged segregation in facilities **in all of the Länder visited in 2023**. Periods of segregation lasting longer than 15 days were found in a total of 23 forensic psychiatry facilities visited.⁴²

The National Agency was particularly concerned by the situation of one patient in **North Rhine-Westphalia** (Herne), who has been isolated in his room for 24 hours a day for more than 10 years. The individual in question reportedly has the option of spending time in the facility courtyard once a day but has chosen not to, according to the facility's head of therapy.

The National Agency also viewed as extremely problematic the total of 115 cases⁴³ of segregation affecting 47 different patients at the facility in Werneck (**Bavaria**) in 2022 and 2023.⁴⁴ Nine of the individuals in question were segregated for more than 14 days, and of those nine individuals, one was segregated for more than 240 days (in total over six periods) between May 2022 and May 2023. The brief breaks in isolation recorded by the facility cannot sufficiently alleviate the damaging

⁴¹ By way of analogy, reference is made to the United Nations Standard Minimum Rules for the Treatment of Prisoners (General Assembly resolution 70/175, annex, adopted on 17 December 2015, also known as the Nelson Mandela Rules). These rules prohibit isolating prisoners for more than 15 consecutive days for at least 22 hours a day without meaningful human contact (Rule 44).

⁴² At three facilities in 2021, nine in 2022 and 14 in 2023.

⁴³ A number of patients were segregated multiple times.

⁴⁴ Segregation within the meaning of placement in a specially secured room under Article 25(2) no. 8 of the Bavarian Act on Forensic Psychiatric Detention.

impact of such long periods of segregation.⁴⁵

At the juvenile forensic psychiatry facility in Marsberg (**North Rhine-Westphalia**), young patients who are subject to 24-hour isolation in a crisis intervention room only have one hour of outside exercise a day.⁴⁶ This means that they spend 23 hours each day in the crisis intervention room.

Insufficient social interaction and a lack of regular activities can have a negative impact on individuals' mental health.

Steps must be taken to ensure that individuals have structured and regular human contact and receive sufficient support from a psychologist or indeed a doctor.

2.2.2 – Judicial authorisation

Statutory regulations must not create incentives to choose certain measures that are also restrictive and that are not necessarily less severe.

It is concerning that the legal thresholds for isolation are significantly lower than those for physical restraint. The position of the Federal Constitutional Court is that the effects of isolation “can be of equivalent intensity to those of five-point or seven-point restraints”, given that in the absence of sufficient monitoring, “isolation entails a risk of considerable damage to the health of the person concerned”.⁴⁷

Most of the relevant *Land* legislation does not require judicial authorisation either for segregation or for separation from other patients. In **Bavaria**, placement in a specially secured room empty of dangerous objects (a crisis intervention room) does require authorisation from the court where it is foreseeable that the measure is going to last longer than 48 hours. A similar rule applies under the **Berlin** Mental Health Act (*Gesetz über Hilfen und Schutzmaßnahmen bei psychischen Krankheiten*, PsychKG): comparable segregation for more than 18 hours is only permitted with judicial authorisation.⁴⁸ However, the requirement

for prior authorisation by the competent court does not apply to separation from other patients by placement in a single room.

The National Agency urges the *Länder* to introduce a requirement for judicial authorisation for all forms of segregation, as is already the case in **North Rhine-Westphalia**.⁴⁹

2.2.3 – Reporting

Considering the severity of the measure, there must be a requirement to report segregation to the supervisory authority without delay so that effective scrutiny is possible.

Each and every instance of segregation should be reported. In **North Rhine-Westphalia**, reporting is mandatory for all forms of segregation lasting more than 48 hours;⁵⁰ in **Rhineland-Palatinate**, it is mandatory for segregation for more than one day in a specially secured room.⁵¹ In **Lower Saxony**, segregation is not reported until it has been ongoing for more than a month. There is no reporting obligation in the remaining *Länder*.

2.3 – Crisis intervention rooms

The term “crisis intervention room” refers to a room in which patients are placed to avert an acute risk of harm to themselves or others.⁵² Placement in crisis intervention rooms constitutes a serious form of deprivation of liberty, making it a constant focus of the National Agency's visits.

The findings and recommendations from the National Agency in this area are as follows:

⁴⁵ See for example: ECHR, decision of 20 November 2023, Schmidt and Šmigol v. Estonia, Application nos. 3501/20 and others: Violation of Article 3 of the Convention.

⁴⁶ This information is based on the documentation provided by the juvenile forensic psychiatry facility.

⁴⁷ Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15, margin no. 83.

⁴⁸ Section 39(5) sentence 2.

⁴⁹ Section 32(3) of the North Rhine-Westphalia Act on Criminal Law-related Committal.

⁵⁰ Section 32(3) of the North Rhine-Westphalia Act on Criminal Law-related Committal.

⁵¹ Section 29(3) of the Rhineland-Palatinate Act on Forensic Psychiatric Detention (*Maßregelvollzugsgesetz*, MVollzG).

⁵² Different facilities, sometimes within one in the same *Land*, have different names for these rooms. For example “*Isolationszimmer*” (“isolation room”) (Lohr am Main, Bavaria); “*Isolierraum*” (“isolation room”) (Ravensburg, Baden-Württemberg); “*Krisenraum*” (“crisis room”) (Weinsberg, Baden-Württemberg); “*besonders gesicherte Einzelzimmer ohne gefährliche Gegenstände*” (“specially secured single room free from dangerous objects”) (Bad-Emstal, Hesse).

2.3.1 – Inhumane conditions

The National Agency once again⁵³ found an unacceptable situation in **Baden-Württemberg**, where a number of crisis intervention rooms had no toilet.⁵⁴ The patients in those rooms were forced to relieve themselves using basins in the middle of the room, with the entire room monitored by CCTV camera with no pixelation. Each use of the basin was visible on the screen. The individuals concerned were in some cases held in isolation in those conditions for periods of several months. Such a practice can trigger feelings of inferiority and be humiliating and degrading.⁵⁵

The rooms in question must not be used for the segregation of patients.⁵⁶

The National Agency also found crisis intervention rooms with no sanitary facilities at facilities in **Bavaria** (Bayreuth), **Lower Saxony** (Wunstorf) and **North Rhine-Westphalia** (Marsberg – juvenile facility). On its visit to the clinic in question in **North Rhine-Westphalia**, the National Agency observed full urine bottles. The situation at the facility in **Lower Saxony** was compounded by the fact that individuals in the crisis intervention rooms were not given enough privacy: segregated individuals were observed through a window between the nursing prep room and the crisis intervention room. Patients in the corridor could look through the door or window of the nursing prep room straight into the window onto the crisis intervention room.

2.3.2 – Furnishings and fittings

The furnishings in crisis intervention rooms must be such as to respect the dignity of those held there. Each room should have a mattress, a blanket and a pillow. It should be possible for the occupants to sit in a normal position.

In 24 of the facilities visited,⁵⁷ the crisis intervention rooms only had a mattress on the floor. There was no seating at normal seating height. Where an individual is held in the room for a period of several hours or days, it is inhumane to force them to stand or sit on the floor. On its visits, the National Agency observed the use of foam seating or challenging furniture, which is strong and durable and has no sharp edges or corners. This is a way of providing a regular seating option even when an individual poses a risk to themselves or others.

There was also a failure to meet the other minimum standards for humane detention: the National Agency found cases of inadequate clothing; inadequate or harsh lighting; a lack of bedclothes; and windows that could not be covered.

This was, for example, still the case in **North Rhine-Westphalia** (Düsseldorf, Essen and Viersen), despite the fact that the Ministry of Labour, Health and Social Affairs had responded to the recommendation from the National Agency back in 2020 and announced its intention to change the furnishings and fittings in crisis intervention rooms.⁵⁸

⁵³ See the National Agency's reports on its visits to the forensic psychiatry facilities in Reichenau (8 June 2022) and Ravensburg (16 November 2022).

⁵⁴ Visit to Zfp forensic psychiatry and psychotherapy clinic in Bad Schussenried on 19 April 2023.

⁵⁵ The response from the Baden-Württemberg Ministry for Social Affairs, Health and Integration was that "after the National Agency's visit, the practice of using basins in isolation rooms without toilets was immediately stopped. Patients in those rooms are now accompanied to the toilet by two members of staff, with the patients secured where necessary."

⁵⁶ On the day of its visit, the National Agency was informed that both crisis intervention rooms were to be converted – that the planning stage was already complete but financial feasibility still being assessed.

⁵⁷ Four facilities in 2021, 12 in 2022 and eight in 2023.

⁵⁸ Statement in response to the National Agency's report on its follow-up visit to the LWL-ZFP forensic psychiatry facility in Lippstadt on 15 January 2019.

+ There has, however, been a positive trend over recent years. All competent authorities and the majority of facilities have looked at the issue and announced their intention to meet the above minimum standards – in some cases purchasing the requisite new fittings – in their new builds and renovation and refurbishment projects.

+ A number of clinics fit out their crisis intervention rooms with furniture providing both seating and storage surfaces. Occupants are also able to see a clock, and this can help to reduce the stress of the situation. In Marsberg (**North Rhine-Westphalia**), for example, the crisis intervention rooms have large windows so that individuals can see outside.

+ Facilities in **Baden-Württemberg** (Weinsberg 2023 and Wiesloch 2022), **Brandenburg** (Eberswalde 2022), **Hesse** (Eltville 2023 and Riedstadt 2022) and **North Rhine-Westphalia** (Bedburg-Hau 2023) had media walls in their crisis intervention rooms.

2.3.3 – CCTV monitoring

2.3.3.1 – Camera visibility

The person concerned must be made aware that CCTV monitoring is taking place. The mere fact that the camera is visible is not sufficient. It should be possible for the individual to discern whether the camera is running.

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

2.3.3.2 – Visibility of toilets

CCTV cameras must be fitted in such a way that the toilet area is either not visible on the monitor at all or, alternatively, is taped over or pixelated. Only where there is an acute risk of self-harm or suicide might a decision to allow temporarily unrestricted monitoring of a crisis intervention room potentially be acceptable; such a decision would have to be carefully considered in the individual case. The reasons for such a decision must be clearly documented.

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

In 37 of the facilities visited, CCTV monitoring in crisis intervention rooms covered the toilet area, which was either fully visible or insufficiently pixelated on the monitor.⁵⁹

According to facilities that do use pixelation for the toilet area, the approach does not raise any safety or security concerns. The National Agency therefore fails to understand why a number of the competent authorities are still refusing to implement or are postponing implementation of this method. For example, **Hesse's** Ministry of Social Affairs and Integration gave an assurance back in 2020 that it would look into pixelating CCTV footage,⁶⁰ but the facilities in Bad Emstal and Eltville visited in 2023 did not use any pixelation at all.

+ One innovative development is the ban on CCTV monitoring in crisis intervention rooms under section 75(2) of the **Bremen** Mental Health Act (BremPsychKG). Under this provision, “video surveillance is not permitted in sleeping, recreational or living areas, crisis intervention rooms, bathrooms or toilets.” This prohibition is complemented and reinforced by section 39(3) for “placement in a specially secured room”: during such measures, continuous monitoring by qualified care staff and the necessary degree of medical supervision must be ensured. Optical-electronic surveillance or surveillance by other technological means is prohibited.

+ Similarly, there is no CCTV monitoring anywhere in the facility in Marsberg or in the crisis intervention rooms in **Düren (North Rhine-Westphalia)**, and neither facility has expressed safety or security concerns or reported any related incidents. This approach goes beyond the statutory minimum standards⁶¹ and is welcomed by the National Agency.

⁵⁹ Four facilities in 2021, 18 in 2022 and 15 in 2023.

⁶⁰ Statement in response to the National Agency's report on its visit to the Vitos forensic psychiatry clinic in Hadamar on 29 July 2019.

⁶¹ Under section 44(5) of the North Rhine-Westphalia Act on Criminal Law-related Committal, video surveillance of individuals in crisis intervention rooms, recreational and living areas, bedrooms and rooms in which medical examinations are conducted is permitted, on a case-by-case basis and for a limited period, provided it is proportionate and necessary to avert an imminent and serious risk of the individual harming themselves.

2.3.4 – Protection of privacy

As well as continuous CCTV monitoring, fitting a viewing hatch, a viewing window or a peephole in the door of a room also constitutes an invasion of the occupant's privacy. In 2023, the National Agency found such fittings in use in **Bavaria** (Ansbach and Haar), **Hesse** (Bad Emstal), **Lower Saxony** (Bad-Rehburg), **North Rhine-Westphalia** (Viersen) and **Saxony** (Altscherbitz). There is a further invasion of privacy where it is possible to see the toilet through the fitting in the door, as was the case in **Düren** (**North Rhine-Westphalia**).

To protect a patient's privacy as far as possible, people on the other side of the door should not have a complete and unobstructed view of their entire room. Where an individual is being monitored, steps must be taken to ensure that only the members of staff who are responsible for monitoring can see into the room. Where a room with viewing windows is being used as standard accommodation, steps should be taken to prevent third parties from seeing in.

The **Bavarian** Ministry for Family, Labour and Social Affairs informed the National Agency that a contract had been awarded to fit additional mechanisms over the viewing hatches so that they were covered when not required.⁶²

2.4 – Physical restraint

2.4.1 – Duration

Physical restraint is a serious measure and is therefore only to be ordered as a last resort, on the basis of clear and precisely defined criteria, and for the shortest possible period of time.

Physical restraint was used at all facilities visited, for example 17 times in **Werneck** (**Bavaria**) over the course of 2022 and up to the time of the visit in 2023, and seven times in **Ansbach** (**North Rhine-Westphalia**) between the start of 2023 and the time of the visit.

The number of cases of physical restraint at the facility in **Langenfeld** (**North Rhine-Westphalia**) was remarkably high compared to other

facilities. The facility's records showed that by the end of the third quarter of 2023, there had been a total of 21 instances of physical restraint lasting longer than 30 minutes. Since 1 January 2022, there had been six cases of physical restraint lasting longer than five days. The longest case of physical restraint was for more than 40 days, with a risk of the individual harming themselves and others and a safety risk for the unit being given as the grounds.

It is a matter of some doubt whether physical restraint lasting several days or even weeks can ever be proportionate.

⁶² Statement from the Bavarian Ministry for Family, Labour and Social Affairs in response to the National Agency's report on its visit to the kbo forensic psychiatry and psychotherapy clinic in Haar on 29 March 2023.

2.4.2 – Statutory regulations on physical restraint

Physical restraint may only be used in compliance with the constitutional requirements set out by the Federal Constitutional Court on 24 July 2018.⁶³ Land legislation must be adapted in order to meet the requirements of constitutional law.⁶⁴

The above-mentioned *Länder* **Berlin**, **Lower Saxony**⁶⁵ and **Saarland** have yet to amend their legislation in this area; **Bavaria** and **Saxony-Anhalt** have still to implement the requirements in full: one-on-one supervision by therapeutic or care staff is not yet enshrined in state law.

One-on-one supervision should be provided by therapeutic or care staff in the immediate vicinity of the individual restrained because the use of physical restraint can pose particular health risks⁶⁶ requiring an immediate response from qualified personnel. Therapeutic or care staff can also exert a de-escalating influence and thus reduce the period for which restraint is required.

The **Bavarian** Act on Forensic Psychiatric Detention only specifies that the continuous and in-person observation of individuals who are being physically restrained must be by “suitable members of staff” who have “received medical instruction on the performance of such tasks”.⁶⁷ **Saxony-Anhalt’s** Act on Forensic Psychiatric Detention provides for such tasks to be undertaken by “trained members of staff”; what is more, this piece of legislation also allows optical-electronic instead of one-on-one in-person monitoring in certain situations.⁶⁸ This approach does not meet the requirements set out in the Federal Constitutional Court judgment of 24 July 2018.⁶⁹

⁶³ Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15.

⁶⁴ Cf. Chapter VI of this Annual Report for details of other shortcomings in the statutes in other *Länder*.

⁶⁵ The Parliament of Lower Saxony implemented the constitutional requirements governing physical restraint with an amendment to the law adopted on 15 May 2024, shortly before this Annual Report went to press – see Paper 19/2843 / Paper 19/4235.

⁶⁶ Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15, margin no. 83.

⁶⁷ Article 25(3) sentences 2 and 3 of the Bavarian Act on Forensic Psychiatric Detention.

⁶⁸ Section 20a(4) of the Saxony-Anhalt Act on Forensic Psychiatric Detention.

⁶⁹ Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15.

2.4.3 – Contingency court orders

Judicial authorisations issued as a precaution for use in unspecified future circumstances are not lawful.

At a number of facilities in **Baden-Württemberg** and **North Rhine-Westphalia**, the National Agency found cases in which court orders had been issued that authorised the repeated use of special security measures over periods of several weeks or even months (contingency court orders or “*Vorratsbeschlüsse*”). For example, the juvenile forensic psychiatry facility in Marsberg (**North Rhine-Westphalia**) had judicial authorisations allowing the clinic to use isolation and physical restraint repeatedly over a period of up to seven weeks.⁷⁰

This approach runs counter to the purpose of the constitutional requirement for a judicial decision, which is to ensure prior scrutiny by an independent, neutral body of every measure involving the deprivation of liberty. “Contingency court orders” authorise future measures without scrutiny of the specific circumstances in future cases.

Judicial authorisations must meet a strict standard of proportionality, including with regard to the length of the measure in question, and be limited to what is absolutely necessary.⁷¹

Court orders permitting the use of special security measures for a disproportionately long period of time, for example to avoid repeated requests to the competent courts, are not acceptable.

2.5 – Shackling

Shackling should not be used in secure areas.

On a comparable situation in the prison system, the Federal Constitutional Court has ruled that “there can be no justification for routinely shackling an inmate in a secure setting”.⁷² This judgment also applies to forensic psychiatry facilities. It is questionable whether the practice

⁷⁰ Court orders authorising special security measures issued for a period of several weeks or months were also recorded in other facilities, namely in Düren, Herne, Langenfeld and Viersen (North Rhine-Westphalia).

⁷¹ Federal Constitutional Court, order of 19 March 2019, file no.: 2 BvR 2638/18, margin no. 30.

⁷² Federal Constitutional Court, order of 19 January 2023, file no.: 2 BvR 1719/21, margin no. 27.

of using handcuffs or ankle cuffs to restrain forensic psychiatry patients who are suffering from a mental disorder whilst they are in secure areas can be considered proportionate.

On its visits in 2023, the National Agency found that 14 facilities in the following *Länder* were using the practice of shackling during outdoor exercise: **Baden-Württemberg** (Weinsberg), **Bavaria** (Ansbach and Lohr am Main), **Hesse** (Bad Emstal and Eltville), **Lower Saxony** (Moringen), **North Rhine-Westphalia** (Bedburg-Hau, Düren, Essen, Herne, Langenfeld, Marsberg (juvenile facility) and Viersen) and **Saxony** (Altscherbitz).

The CPT advises against the practice.⁷³

The National Agency was concerned by the practice used in block 59 at Langenfeld forensic psychiatry facility (**North Rhine-Westphalia**), where all individuals subject to more restrictive detention conditions who wished to take their allocated recreation break had to wear metal handcuffs for the duration of their time in the patient garden and on their way there.

Metal cuffs pose a high risk of injury for the individual concerned. Their use can result in haematomas and compressed nerves.

Where shackling is absolutely necessary, adjustable textile restraints should be used.⁷⁴

2.6 – Night lock-up

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

A number of facilities in all *Länder* visited have a general practice of night lock-up; patients are, as a rule, unable to leave their rooms between the hours of 10 p.m. and 7 a.m., even in cases of multiple occupancy. The layout of the building and/or what are often low staffing levels are grounds commonly cited to justify this measure.

However, those facilities represent only a small proportion of the total number of forensic

psychiatry facilities visited in 2023; the practice would therefore appear to be used by only a minority of facilities. The National Agency recognises the efforts being made by supervisory authorities and clinics across the country to ensure the safety of patients at night whilst also bringing the practice of night lock-up to an end in the medium-term.

The Agency advises avoiding blanket night lock-up completely whilst safeguarding patient safety as effectively as possible.⁷⁵

2.7 – Systematic recording of special security measures

All special security measures should be clearly and comprehensively documented. From a preventive perspective, the National Agency encourages detailed statistical recording and regular evaluation of the measures deployed.⁷⁶

The separate documentation of security measures, including the less severe measures that were tried and failed, serves not only to improve recollection of the incidents and the frequency with which they occurred, but also to prevent special security measures from being applied disproportionately. Such documentation also provides transparency regarding measures that are often perceived as arbitrary by the persons concerned.

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

At six facilities visited (in **Baden-Württemberg**, **Bavaria**, **Hesse**, **Lower Saxony** and **Saarland**), the National Agency criticised

⁷³ CPT/Inf (2022) 18, paragraph 146, <https://rm.coe.int/t1680a80c61> (accessed 27 May 2024).

⁷⁴ For example Segufix or Bonowi restraints.

⁷⁵ One possible solution is allowing patients to lock their own rooms and thus prevent other patients from entering. The National Agency observed this approach in practice in facilities in Baden-Württemberg (Emmendingen, 2023 and Ravensburg, 2022), Bavaria (Lohr am Main, 2023) and North Rhine-Westphalia (Duisburg, 2023 and Deerth, 2024).

⁷⁶ This recommendation from the National Agency was echoed by the DGPPN as one of the requirements to be met “so that forensic psychiatry facilities can fulfil their statutory task effectively and professionally in the long term” <https://www.dgppn.de/aktuelles/news/ueberbelegt-und-unterversorgt-ergebnisse-der-dgppn-umfrage-zum-massregelvollzug.html> (accessed 27 May 2024).

the absence of statistical records of special security measures.⁷⁷ The lack of documentation meant that the National Agency was unable to access data on the frequency with which those facilities resorted to physical restraint, placement in crisis intervention rooms or segregation or for how long.

The record of special security measures in Weinsberg (**Baden-Württemberg**) presented to the National Agency did not, for example, provide a statistical breakdown of long periods of isolation (more than 14 days) or of physical restraint (more than 30 minutes).

Furthermore, the documentation of physical restraint overall was incomplete. Under section 25(7) of **Baden-Württemberg's** Mental Health Act (*Psychisch-Kranken-Hilfe-Gesetz*), the subsequent discussion of a physical restraint procedure with the individual concerned, including their notification of their right to request a court review of the procedure's lawfulness, is to be documented. It was not clear from the many records examined whether such a discussion had taken place, nor was it sufficiently clear whether and to what extent other constitutional requirements had been met. **Baden-Württemberg's** Ministry for Social Affairs, Health and Integration informed the National Agency in its statement that the clinic had changed its documentation system after the National Agency's visit.⁷⁸

2.8 – Full strip-searches

According to the Federal Constitutional Court, strip-searches involving a visual examination of a person's genital area represent a serious infringement of that individual's general right of personality.⁷⁹ They must not be carried out routinely or in the absence of any specific grounds for suspicion.⁸⁰

⁷⁷ Three facilities in 2022 and three in 2023.

⁷⁸ Statement from the Baden-Württemberg Ministry for Social Affairs, Health and Integration in response to the National Agency's report on its visit to Weinsberg forensic psychiatry and psychotherapy clinic on 13 April 2023.

⁷⁹ Federal Constitutional Court, order of 5 March 2015, file no.: 2 BvR 746/13, margin no. 33; order of 23 September 2020, file no.: 2 BvR 1810/19, margin no. 21.

⁸⁰ Federal Constitutional Court, order of 10 July 2013, file no.: 2 BvR 2815/11, margin no. 16; Federal Constitutional Court, order of 23 September 2020, file no.: 2 BvR 1810/19, margin no. 22. Cf. ECHR, judgment of 22 October 2020, Roth v. Germany, Application nos. 6780/18 and 30776/18, §§ 69, 72 – Violation of Article 3 of the Convention.

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

Full strip-searches of all new arrivals were conducted at some of the facilities visited in 2023, for example in **Baden-Württemberg** (Calw and Weinsberg), **Bavaria** (Haar), **North Rhine-Westphalia** (Marsberg) and **Saxony** (Altscherbitz).

However, the National Agency found over the course of its visits that other forensic psychiatry facilities in those same *Länder* only carried out full strip-searches on a case-by-case basis.

If it is indeed necessary that the person concerned undress fully, then the search should be conducted respectfully, for example in two stages with the individual keeping on their clothing above the waist while they are searched below the waist and vice versa.⁸¹

While some facilities considered that the more respectful approach to strip-searches was not feasible, other clinics were already implementing the National Agency recommendation.

+ Facilities in **Bavaria** (Ansbach and Werneck) conducted strip-searches in two stages.

Following the National Agency's visit to Weinsberg, the **Baden-Württemberg** Ministry for Social Affairs, Health and Integration announced that strip-searches could in future be carried out in two stages: an individual would be covered by a towel or a piece of clothing above the waist while they were searched below the waist, and vice versa.⁸²

⁸¹ Cf. section 70(2) of Bremen's Mental Health Act, which is applicable to forensic psychiatry facilities: "Body searches should only require patients to partially undress at any one time [...]."

⁸² Statement in response to the National Agency's report on its visit on 13 April 2023.

2.9 – Information on rights

2.9.1 – Information on the facility

The house rules should be provided in the languages spoken in the clinic and be easy to understand.⁸³

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

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

In 33 of the facilities visited **across all Länder visited**, the house rules contained extremely technical and legalistic language.⁸⁴ Despite changes in the ethnic and cultural make-up of the patient population and the language barriers that have therefore emerged – a large number of patients had only very limited German – the house rules were only available in German.

2.9.2 – Complaints management

There should be a channel for the anonymous submission of complaints. Moreover, complaints should be recorded centrally and evaluated on a regular basis so that any recurring issues can be identified and necessary counter-measures taken.

Patients at facilities in **Baden-Württemberg** (Emmendingen), **Hesse** (Bad Emstal), **Lower Saxony** (Bad-Rehburg and Moringen), **North Rhine-Westphalia** (Düsseldorf and Viersen) and **Saxony** (Altscherbitz and Rodewisch) have no way to lodge a complaint anonymously.

Management should support the appointment of a patient advocate who represents other patients and facilitate their work.

Contacting a complaints body can represent a hurdle that individuals suffering from mental illness find difficult to overcome. A patient advocate can act as an intermediary in such situations.

On the wards at the sites in Moringen and Göttingen in **Lower Saxony**, the management did not consider the position of patient advocate to be necessary, despite the fact that patients were spending an average of nine years there.

In its statement, however, the **Lower Saxony** Ministry of Social Affairs, Labour, Health and Equality did inform the National Agency that the facility was considering options for allowing anonymous complaints and the role of a patient advocate.⁸⁵

+ At Alzey clinic (**Rhineland-Palatinate**), the heads of the medical and care teams met with the patient advocates for all three wards each month to discuss patient concerns. This communicative approach facilitates information-sharing and helps to improve the clinic environment. The unit also conducts a patient survey once a year to obtain a clear and comprehensive picture of conditions. There are boxes for submitting anonymous complaints on all the wards.

A patient advocate can act as an intermediary and help patients to overcome the difficulties they may experience in contacting a complaints body.

The supervisory authority and/or the clinic management should support the appointment of a patient advocate and facilitate their work.

In Rodewisch (**Saxony**), the facility informed the National Agency that the patient advocate had not been active in the forensic psychiatry unit for several years: a patient had reportedly recently contacted her, but she had not responded to the invitation to visit the unit. The National Agency encountered a similar situation at Marburg juvenile forensic psychiatry facility (**Hesse**) in 2022.⁸⁶

⁸³ See for example the “*Von Patienten für Patienten*” (“By Patients for Patients”) information leaflet available at the forensic psychiatry clinic in Münster (North Rhine-Westphalia); report on the National Agency’s visit on 17 August 2022.

⁸⁴ Six facilities in 2021, 11 in 2022 and 16 in 2023.

⁸⁵ Statement in response to the National Agency’s report on its visit to the Lower Saxony forensic psychiatry centre in Moringen and site in Göttingen on 26 and 27 April 2023.

⁸⁶ See the National Agency’s report on its visit to the juvenile forensic psychiatry facility in Marburg (Hesse) on 29 April 2022.

It is hard to see how patients' wishes and complaints are to be communicated without the opportunity for confidential discussions.

Ultimately, the supervisory authorities and the facility itself have a responsibility to take a proactive role in ensuring that patients can exercise their rights.

2.10 – Supervised urine screening

To respect individuals' human dignity, they should be offered an alternative to supervised urine sample provision for drug testing so that they can choose the method they find to be the least intrusive.

In July 2022, the Federal Constitutional Court made it clear that the provision of urine samples under observation "involving the removal of clothing" constitutes "a serious infringement of the subject's general right of personality".⁸⁷ The Court went on to note that there were now alternative forms of testing available that were less intrusive and provided similarly accurate results.

Facilities in all *Länder* visited used supervised urine screening;⁸⁸ in most cases, this was the only method offered for drug testing. The National Agency is also routinely told that alternative methods are not effective, or would involve external laboratories and thus higher costs and delays in obtaining results.

However, a number of facilities offered other methods of drug screening. For example, a clinic in **North Rhine-Westphalia** (Langenfeld) routinely offered both blood tests and saliva tests. Following two visits by the National Agency, the **Rhineland-Palatinate** Ministry of Science and Health also announced⁸⁹ its intention to offer patients an alternative in future.

2.11 – Access to the outdoors

It should be possible to use the courtyard as frequently as possible, provided it is adequately secured to prevent both escapes and the risk of self-harm.

Individuals held in forensic psychiatric detention are generally suffering from long-term mental health impairments.⁹⁰ Under Article 3 (a) of the United Nations Convention on the Rights of Persons with Disabilities, the principle of individual autonomy is to be respected. Outdoor exercise has unique health benefits that cannot be replicated by any other measure.⁹¹

At a number of facilities in **Hesse**, **Lower Saxony** and **North Rhine-Westphalia**, the National Agency criticised the fact that the courtyard was closed more often than necessary for no obvious reason, and this despite the fact that the freedom to spend regular time outdoors can be beneficial for both patients and staff.⁹²

⁸⁷ Margin no. 27, file no.: 2 BvR 1630/21.

⁸⁸ Two facilities in 2021, nine in 2022 and 16 in 2023.

⁸⁹ Statement in response to the report on a visit to Klinikmünster forensic psychiatry facility on 17 March 2022 and statements in response to the report on a visit to Klinik Nette-Gut forensic psychiatry clinic in Weißenthurm on 19 October 2022.

⁹⁰ The United Nations Convention on the Rights of Persons with Disabilities, which was adopted in 2006 and entered into force in 2008, therefore applies.

⁹¹ Cf. Arloth/Krä, StVollzG Kommentar, 4. Auflage, § 64 StVollzG, margin no. 1.

⁹² For example in block 26 of the general psychiatry facility in Düsseldorf (North Rhine-Westphalia), where the courtyards are freely accessible during the day.

IV

Focus: deportations and border controls

I – Deportations

I.1 – Introduction

In the current environment – “more, faster returns” – the National Agency once again focused in particular on the observation of deportation procedures in 2023.

The Agency monitored deportations in its role as the National Preventive Mechanism: the National Agency’s mandate covers the entire deportation process from the point at which deportees are collected to handover in the country of destination.

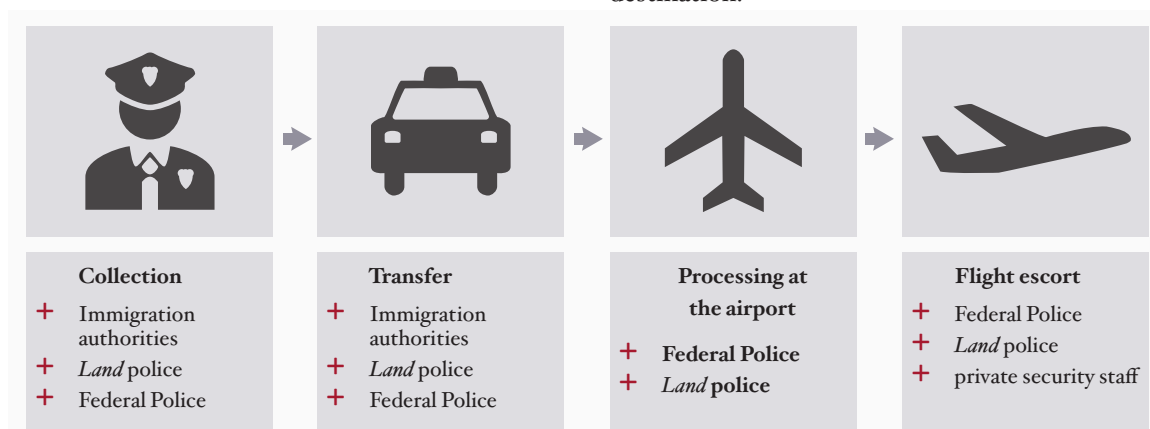


Figure 1

However, the National Agency’s limited personnel and wide range of duties (visits to all places of detention as defined in the OPCAT) mean that it is only able to observe a small number of procedures. In 2023, the Agency observed five out of a total of 198 charter flights organised by Germany⁹³ and two individual deportations on standard scheduled flights; the procedures observed involved 157 of the total of 16,430 individuals who were deported over the course of 2023. Under an agreement reached through the working group on integrated return management (*Arbeitsgruppe Integriertes Rückkehrmanagement*), collections can be observed by the National Agency/Federal Agency. In 2023, however, the Agency was only able to observe one collection procedure.

This small number is, in the National Agency’s view, extremely problematic, as collection is key to the deportation procedure as a whole⁹⁴ and is not monitored by any other mechanism. Whilst there are other mechanisms – run by staff from the welfare organisations Diakonisches Werk and Caritas – that monitor procedures at Frankfurt

am Main, Hamburg, Leipzig/Halle and Berlin airports and airports in North Rhine-Westphalia, those bodies only observe how deportees are processed at the airport. Beyond that, the areas of competence of deportation monitoring bodies are governed by agreements that differ from Land to Land. There is no standard national legal basis. At other airports including Munich, Hanover and Stuttgart, there are no such observation bodies.

Current developments in law at both national level (Act to Facilitate Repatriation (*Rückführungsverbesserungsgesetz*)) and European level (EU Screening Regulation) and the resulting increase in the number of places of detention is set to exacerbate the capacity issue and make it even harder for the National Agency to fulfil its mandate in full.

To ensure that measures involving deprivation of liberty are proportionate and that deportees are treated humanely, an effective, independent national deportation monitoring system as required under Article 8(6) of the Return Directive must be provided.

The National Agency requires a significant increase in staffing levels and financial resources if it is to exercise its mandate properly.

⁹³ Including 57 transfers under the Dublin procedure.

⁹⁴ For example as regards information about the procedure and packing the necessary documents and essential personal belongings.

A further challenge is posed by the wide variety of actors involved in deportation procedures (cf. Figure 1). Deportees are generally picked up by the immigration authorities and/or *Land* police and taken to the airport. Generally the preserve of the Federal Police, the processing of individuals at the airport in **Bavaria** and **Baden-Württemberg** is now also undertaken by the *Land* police on their own. Usually, it is the Federal Police that escort deportees during their flight and until they are handed over in the country of destination; in both these *Länder*, however, this role is in some cases carried out by private security staff from the airline Air Bulgaria.

The variety of actors involved means a complex system, not all parts of which are monitored. This makes uniform implementation of the National Agency's recommendations and standards more difficult.

Procedures such as avoiding collection at night, transferring persons together with their luggage, applying the principle of proportionality to the use of coercive measures, and issuing a cash lump sum should be implemented in the same way throughout Germany in line with the standards set by the National Agency.

In 2023, the National Agency once again held its annual exchange with the Federal Ministry of the Interior and Community to work towards nationwide implementation of its recommendations and to discuss potential areas of disagreement. Alongside the effective exercise of the National Agency's mandate, a particular focus was on constantly recurring findings and recommendations relating to dealing with children; collection at night; a lack of means; and medical care for deportees. The National Agency was also in dialogue with deportation monitors from church organisations at German airports; with the CPT; and with the FRONTEX Fundamental Rights Office regarding observations, findings and recommendations.

Certain aspects of the standards for deportation procedures developed by the National Agency are not being satisfactorily implemented.

Child welfare was a key focus of the National Agency's work.

Despite emphatic recommendations, the National Agency once again found that the best

interests of the child are in many cases not taken into sufficient consideration in connection with deportation procedures.

Unaccompanied minors and families with children, including infants and small children, are regularly deported from Germany. In 2023, a total of 2863 minors were deported, including children in particularly vulnerable situations.

The National Agency observed three procedures (from Hanover Airport to Albania and Kosovo; from Hamburg Airport to Armenia; and from Düsseldorf Airport to Nigeria and Ghana), in which a total of 33 minors were deported (Figure 2).

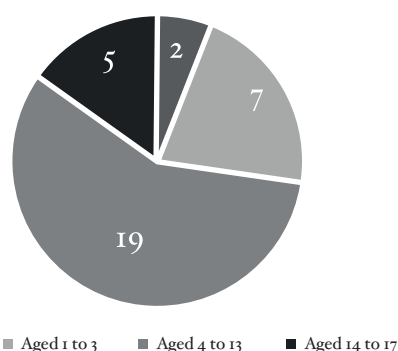


Figure 2

The Agency regularly found that children were collected at night, and also observed families being separated. A particularly problematic procedure was the charter flight from Düsseldorf Airport to Nigeria and Ghana, on which a mother with two children aged four and five was deported together with men travelling on their own. The family was collected at night. What is more, the two children were separated from their mother for the entire duration of the transfer from Thuringia to Düsseldorf Airport. Even before the procedure, the Federal Police had reason to expect that it would meet with resistance. The collective removal operation involved 35 deportees; cuffs and in some cases spit hoods were used on eight of those individuals.

Article 3(1) of the United Nations Convention on the Rights of the Child⁹⁵ states that the best interests of the child are to be a primary consideration in all actions concerning children. This means that children are to be protected from just such situations.

In line with this requirement, the National

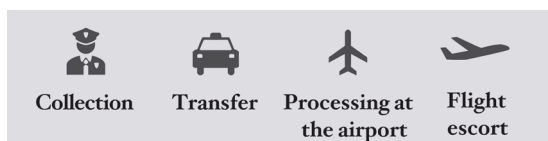
⁹⁵ 1989 Convention on the Rights of the Child.

Agency has issued minimum standards on avoiding: collecting children at night, separating children from their families, and restraining children or restraining others in front of children.

It is the National Agency's view that the routine presence of an individual whose sole responsibility is to protect the child's best interests throughout the procedure is absolutely essential.

1.2 – Visits

In 2023, the National Agency observed six deportation procedures.



14 April: Collective removal operation: Hanover to Tirana (Albania) and Pristina (Kosovo) ✈

27 July: Collective removal operation under the Dublin procedure: Munich to Sofia (Bulgaria) ✈

16 August: Collective removal operation: Hamburg to Yerevan (Armenia) ✈

22 August: Individual deportations: Berlin to Istanbul (Turkey) ✈

21 November: Collective removal operation: Munich to Banjul (The Gambia) 🚔🚗✈

28 November: Collective removal operation: Düsseldorf to Lagos (Nigeria) and Accra (Ghana) ✈

Aspects of those procedures rated positively by the National Agency include the following:

+ During collection and transfer from Munich Airport's combined facility for transit and custody pending deportation, observed as part of the collective removal operation from Munich to The Gambia, the officers involved displayed a high degree of professionalism and empathy. The treatment of deportees throughout the process was in line with National Agency standards.

+ Thanks to good communication and officers' calm approach, it was possible to completely avoid the direct use of force in operations from Hanover to Albania and Kosovo, from Munich to Sofia, and from Hamburg to Yerevan.

+ At Hamburg Airport, three interpreters were

on hand for an operation involving 24 returnees. This ensured an appropriate response to the needs of different deportees in different places at the same time.

+ The documentation of returns at Munich Airport is to be highlighted as a positive example of good practice. Searches and coercive measures were recorded in full: the names of the officers carrying out the search, the level of invasiveness and the reasons for the measure were clearly documented.

The National Agency's recommendations mainly concerned the following areas:

1.2.1 – Collection and transfer

1.2.1.1 – Collection at night

In 2023 once again, a large number of deportees were collected at night. This was, for example, the case in the deportations from Hanover Airport to Albania and Kosovo, from Hamburg Airport to Armenia and from Düsseldorf Airport to Nigeria and Ghana, in which the deportees included families with children, including infants and small children.

On this point, the extended powers to enter and search a home at night provided for by the Act to Facilitate Repatriation are particularly problematic. Collection at night should be avoided in order to minimise the strain on deportees, especially families with children.

Collection at night constitutes an infringement of deportees' fundamental rights, and one that is all the more serious given that collection and transfer to the airport alone create a particularly stressful situation for the individuals concerned. For young children in particular, besides causing a severe disruption of their normal sleep pattern, being picked up at night can result in trauma when processing the events experienced.

Collections at night should be avoided, and must never be used when children are being deported.

1.2.1.2 – Use of coercive measures

The records reviewed by the National Agency show that in 2023 as in previous years, a large number of deportees were transferred to the airport in cuffs. Given that coercive measures were in some cases taken for largely preventive reasons, the National Agency once again stresses that restraint should be used no more than is absolutely necessary.

The use of cuffs, and in particular of body cuffs, is solely a last resort that may only be used if less severe measures are not sufficient.

1.2.1.3 – Lack of means

The National Agency repeatedly observed cases in which deportees do not have sufficient financial means to pay for onward travel from the airport in the destination country to their final destination, or for meals they need during that journey. Whilst the required cash lump sums were paid out at the airport by the lead agency in the procedures observed, this was an extremely inefficient solution.

Considerable administrative costs could be avoided if all *Länder* were reminded of their obligation to issue a reasonable sum of cash.

All deportees must have sufficient financial means to pay for the journey from the airport to their final destination, as well as for meals needed during this journey.

In the event that a deportee without the necessary means is handed over to the Federal Police, they should be given a sufficient, set amount of cash within the framework of a binding regulation.

The National Agency considers it extremely problematic that no cash lump sum is issued in the case of transfers under the Dublin procedure. During its observation of a transfer under the Dublin procedure from Munich to Bulgaria, the Agency noted that a number of individuals were transferred with little to no cash.

The National Agency recognises that the principle of mutual trust is of fundamental importance in EU law. However, this does not release the Federal Republic of Germany from its responsibility to ensure that procedures are implemented humanely. One aspect of humane implementation

is ensuring that individuals are not returned with no financial means, in particular in cases in which there are reasonable indications that they are going to be at risk of serious financial hardship after their return.⁹⁶

The Federal Ministry of the Interior and Community should therefore work to ensure that individuals are no longer transferred without means in any operations, including those under the Dublin procedure.

1.2.1.4 – Apprehension during scheduled appointments

During its monitoring activities at Berlin Airport, the National Agency noted that one individual had been apprehended during a scheduled appointment with the immigration authorities.

The National Agency takes a critical view of this approach. If an individual is detained during a scheduled appointment, they will not have sufficient time to make reasonable preparations for their deportation. Furthermore, there is a risk that – as in the case observed – the individual has no opportunity to pack their personal belongings. The individual in question at Berlin Airport was deported to Istanbul without any luggage at all.

Deportees should only be apprehended at a scheduled appointment where this is absolutely necessary. The agency responsible must clearly detail that, and why, other possible and appropriate less severe measures have no prospect of success and that such measures have already been attempted and have failed.

A solution is to be found that ensures that deportees are able to take their luggage, their personal belongings, their identification documents and, if applicable, necessary medicine and medical aids (for example glasses) with them when they are deported.

1.2.2 – Processing at the airport

1.2.2.1 – Strip-searches

At Hamburg Airport, the cubicles in which strip-searches are carried out are located just behind airport security and are screened only by a

⁹⁶ Cologne Administrative Court, order of 31 January 2023, file no.: 5 L 65/23.A; Ansbach Administrative Court, order of 31 October 2022, file no.: AN 14 S 22.50126.

curtain. During the procedure observed, airport staff, officers of the Federal Police and other deportees were all standing right in front of the cubicles during the strip-search.

The area for strip-searches should be screened more effectively to protect the privacy of the individuals being searched.

During the deportation procedure from Düsseldorf Airport to Nigeria and Ghana, a large number of deportees underwent strip-searches that included a visual examination of their genital area. At least five officers were present during those searches. The deportees in question had to stand naked in front of the staff for several minutes while their clothing was scanned. The situation was compounded by low outside temperatures and insufficient heating.

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

Steps must be taken to ensure that the room in which searches are carried out is warm enough.

The National Agency found the case-by-case documentation of strip-searches at Hamburg Airport and Düsseldorf Airport to be incomplete. All that was recorded was that a police search had been carried out and at what time. Neither the invasiveness of the searches nor the reasons for the measure were detailed on the escort sheets. In some cases, the names of the officers carrying out the search were not even recorded either.

Given the extent to which strip-searches infringe fundamental rights, the grounds for strip-searches must be documented clearly and in full so that it is possible to verify whether such measures were necessary and proportionate. The grounds provided should be based on up-to-date information indicating an imminent threat.

1.2.2.2 – Shackling

In 2023, the National Agency once again observed the use of harnesses with metal cuffs for the wrists and in some cases ankles, in some cases used together with plastic cuffs for the legs.

Where shackling is absolutely necessary, it is the responsibility of the police to avoid injuring the persons concerned and to protect their right to physical integrity. To safeguard that right, the National Agency would reiterate that any shackling during deportation measures should be carried out using adjustable textile hand restraint belts, which should be available at all times.⁹⁷

1.2.2.3 – Protective headgear

While observing a deportation procedure, the delegation was shown the protective headgear that the Federal Police would use if required. The headgear is similar to a motorbike helmet and is made of a hard material.

The National Agency does not consider this to be a suitable model as it presents an increased risk of injury both for the deportee and for the escorting officers.

The National Agency learned from the Federal Police that the Bavarian Land police have a foam model.

1.2.2.4 – Medical care

Medical assessment of fitness to travel

The deportees being returned individually on scheduled flights from Berlin Airport did not have “fit to fly” certificates. The National Agency was informed that a medical examination was not automatically carried out in every case.

To avoid incidents, it is important to check before the flight that each deportee is fit to travel at the time of their departure.

There should be an up-to-date record of fitness to travel for each deportee, and deportees should therefore be examined by a doctor before their deportation.

Respectful treatment of deportees

One of the individuals awaiting deportation at Düsseldorf Airport was sick repeatedly. The individual in question was carried into the search area by staff and lay there on the floor, retching. The doctor commissioned for the procedure initially held a sick bag to the individual’s mouth, but after a few seconds shouted “hold onto it, I don’t

⁹⁷ One example is the model used by FRONTEX on deportation flights.

want to deal with this shit any more” (*“Halt das Ding jetzt mal fest, ich habe keinen Bock mehr auf die Scheiße”*). The doctor then turned to the officers on duty and assured them that it would be possible to deport the individual, but that the individual would have to be restrained if their passive resistance continued.

Such an attitude and such behaviour are not acceptable.

Deportees are to be treated with respect. The National Agency reiterates the need for written guidance for both police officers and doctors that sets out all parties’ rights and obligations in deportation procedures.

Privacy for medical consultations

At Munich Airport, deportees undergo medical examinations in an area separated by portable partitions. The National Agency observed that in one procedure, staff were within eyeshot and earshot; during another procedure, the doctors frequently asked the flight escort staff to enter the enclosed area, meaning that conversations with deportees were not private. The National Agency recognises that a doctor may, in a specific case, have good reason to wish a member of security staff to be present during the examination for safety reasons; as a rule, however, examinations should be conducted out of sight and out of earshot of police officers.

Conversations with doctors should be private.

1.2.2.5 – Food and drink

During its observation of individual deportations on scheduled flights from Berlin Airport, the National Agency noted that there was no provision of food or drink for deportees while they waited at the Federal Police facilities. It cannot be assumed that deportees have had enough to eat and drink during the transfer process. It is the view of the National Agency that the Federal Police are responsible for the humane enforcement of a deportation procedure from the moment they take charge of the deportees at the airport.

Sufficient food and drink must be available throughout the deportation procedure, as is standard practice in the case of charter flights.

1.2.3 – Flight escort

Court orders after a flight has departed

The Federal Police received an order from Gelsenkirchen Administrative Court halting the deportation of a Nigerian national after the charter flight from Düsseldorf to Nigeria and Ghana that he was on had already left. The individual in question should have been returned to Germany immediately. Despite the fact that the escort leader was informed of the order in time, the individual was still handed over to the local authorities in Lagos (Nigeria) for questioning. Allegedly, it was established during that interview that the man did not wish to return to Germany. Officers of the Federal Police were not present during questioning. The National Agency requested a transcript of the interview but none was forthcoming.

This is not acceptable. According to two rulings by North Rhine-Westphalia Higher Administrative Court, deportation by air is not complete until the deportee has left the transit zone at the airport and has entered the territory of the country of destination.⁹⁸ Up until that point, responsibility for ensuring the due and proper implementation of the deportation procedure lies with the enforcing authorities. That means that it is the enforcing authorities that are responsible for halting a deportation – even if the aircraft has already taken off – if a court order requires them to do so. In such cases, the individual in question must not be handed over to the authorities in the country of destination. Both the National Agency and the CPT strongly advocate the “last call procedure”, under which the escort leader on a deportation flight must remain fully informed of the status of court proceedings relating to returnees at all times right up to the point of handover,⁹⁹ but this procedure only makes sense if any court rulings are actually respected and implemented. Communication with the escort leader must be possible at all times.

In response to an enquiry from the National Agency, the Federal Police reported that all

⁹⁸ Order of 15 August 2018, file no.: 17 B 1029/18 and of 12 January 2017, file no.: 18 B 1157/16.

⁹⁹ Cf. Report to the German government on the visit to Germany carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in 2018 (pp.10f): <https://rm.coe.int/1680945a2d>

available options in the case in question had been exhausted and that it had nonetheless not been possible to implement the court order. The Federal Police added that they were bound by statutory regulations in states of origin and transit countries and could on no account disregard instructions given by the border authorities on the ground; this applied even if the state in question demanded that one of their nationals remain in their territory contrary to a court order in Germany, in other words if that state demanded the handover of the individual in question. The Federal Police also made the case that sole responsibility rested with the authority responsible for terminating the right of residence; that the court order applied to that authority; and that that authority would have had to launch a request for administrative assistance for the removal procedure to have been cancelled.

The National Agency recognises that the Federal Police are in a difficult position in such situations, particularly in non-European states. That is why the Agency both corresponded with and met with the Federal Police to develop procedures that could ensure compliance with German law. During this process, the National Agency recommended putting measures in place to ensure rapid communication between the courts, the immigration authorities and the Federal Police as soon as a court ruling is handed down. It is the National Agency's view that the German embassy must also be notified immediately in such cases so that it can conduct the necessary meetings and take the necessary measures on the ground.

From the moment they take charge of the deportees at the airport, the Federal Police are responsible for the humane enforcement of a deportation procedure. The ability to implement any court rulings during an ongoing procedure is part of that humane enforcement responsibility.

The National Agency is planning to commission an independent report from a research institution to obtain a comprehensive picture of the issues and achieve legal certainty for similar situations in the future.

1.3 – Outlook

The National Agency is seeking to step up its monitoring work, in particular its observation of collections. The independent observation of return operations makes it possible to achieve

greater transparency on how they are implemented and to avoid potential human rights violations. Regular dialogue with the competent authorities is central to ensuring compliance with and development of the National Agency's standards and recommendations in the long term.

In 2024, the National Agency will focus in particular on medical care during deportation procedures and continue its dialogue with experts in the field that it began in 2023. One of the areas that the Agency will look at particularly closely is the question of forced medical treatment during deportations.¹⁰⁰ Under Article 8(5) of the Return Directive, the forcible administration of medication during deportation procedures is permitted only if it is necessary to ensure flight security and not if its sole purpose is to facilitate removal. The objective is to avoid "removal at all costs".

Following the recommendations from the CPT, the National Agency is planning to step up its cooperation with other NPMs.¹⁰¹ The National Agency shares the view that independent monitoring from the point of arrival in the country of destination is an important aspect in assessing whether there is a risk of a violation of Article 3 of the ECHR – for example due to ill-treatment, insufficient medical care or to unaccompanied minors not being met in the country of destination. In addition to the necessary exchange of information, the National Agency considers it essential that collecting return operations (operations in which the flight is accompanied by security staff of the country of destination) are monitored jointly with the NPM of the country of destination in question so as to ensure continuous independent monitoring of the operation.

The National Agency is also planning to monitor deportation procedures from Germany, Switzerland and France together with the Swiss NPM (*Nationale Kommission zur Verhütung von Folter*) and the French NPM (*Contrôleur Général des Lieux de Privation de Liberté*); the aim is for the three NPMs to compare methods and work together on developing and improving the impact of their standards.

¹⁰⁰ Wissenschaftliche Dienste des Deutschen Bundestags: Ausarbeitung - Medizinische (Zwangs-)Behandlungen bei Abschiebungen, WD 3 – 3000 – 309/18.

¹⁰¹ CPT/Inf (2024) 14, paragraph 100, <https://rm.coe.int/t/1680af2741>.

2 – Fixed border controls

2.1 – Introduction

On 16 October 2023, the Federal Ministry of the Interior and Community notified the EU Commission that temporary internal border controls were to be reintroduced at Germany's borders with Poland, Czechia and Switzerland. Similar internal border controls have been in place at the border with Austria since 2015. Under Articles 25 et seqq. of the Schengen Borders Code,¹⁰² notifications must be renewed at regular intervals if controls are to remain in place beyond the period for which they were originally announced.

The temporary reintroduction of border control allows checks on individuals crossing internal borders. The Federal Police carries out those checks in line with the specific situation and police requirements in a given border area. The scope, extent, location and duration of border controls depend on a number of factors, including how the situation in a given place develops and the transport infrastructure on the ground, and can therefore change rapidly and vary from region to region.

Prior to 16 October 2023, the focus at Germany's borders with Poland, Czechia and Switzerland was primarily on non-incident related checks, with mobile controls within a 30 km radius of the border on the German side. Flexible, targeted checks were also carried out in various locations, and joint patrols with Polish and Czech border police were conducted on their respective territories. A joint action plan was agreed to provide a basis for cross-border cooperation with the Swiss border police. Similar arrangements are to be continued in consultation with Germany's other neighbours.

In light of the migration and security situation, a decision was taken on the basis of Article 28 of the Schengen Borders Code to prolong temporary border controls at the borders with Poland, Czechia and Switzerland beyond 15 December 2023 for the period up to and including 15 December 2024. Controls were originally reintroduced on 16 October 2023 and had already been renewed.

Measures involving deprivation of liberty were regularly implemented as part of these border controls. The treatment of the individuals concerned – and in particular of vulnerable groups – and their conditions of detention must comply with national and international standards. Officers must respect and protect human rights and fundamental rights in the exercise of their duties.

Regular independent monitoring is essential to ensuring that such measures are proportionate and that detention conditions are humane. The National Agency requires a significant increase in staffing levels and financial resources if it is to exercise its mandate properly.

2.2 – Stationary border controls: the National Agency's mandate

As border controls can result in measures involving the deprivation of liberty, this aspect of border policing comes under the mandate of the National Agency: that mandate applies wherever there is even a possibility of the deprivation of liberty. The National Agency therefore began visiting border control posts as soon as their establishment was announced.

The role of the National Agency is first and foremost preventive, and part of its work is thus providing advice prior to and on the planning and construction of places of detention, and by issuing standards governing measures involving the deprivation of liberty.

National Agency recommendations should therefore be followed in the operation, establishment and/or expansion of border control posts.

Measures involving the deprivation of liberty can have implications for vulnerable groups, which is why the National Agency focuses in particular on how those groups are treated. The Agency scrutinises refoulement and pushback processes, and systems for asylum applications at or near the border. As some of the migrants who reach or cross the German border have been smuggled by migrant smugglers, another Agency focus is on the treatment of victims of human trafficking.

Alongside visits to the border, access to documentation is key to the National Agency's work in this area: documents such as records of interviews with those seeking asylum or protection after

¹⁰² Regulation EU 2016/399.

they cross the border are an important source of information on which the National Agency can base recommendations on dealing with vulnerable individuals. The National Agency was told that whenever it was not clear whether an individual wished to submit an application for asylum or protection, they were given a questionnaire to complete; the Federal Police then made an initial assessment and decided how to proceed on the basis of the information from the questionnaire.

So far, the National Agency has not been able to obtain an insight into individual processes in practice as it has not examined documentation on site at the control posts visited. The documentation submitted to the National Agency to date has been primarily statistical, and has not enabled the Agency to examine specific cases for an evaluation of procedures in practice.

On future visits, the National Agency will also scrutinise case-specific documentation.

2.3 – Visits

On 24 October 2023, the National Agency visited the border control posts at Selb and Schirnding at the border with Czechia. On 9 January 2024, the Agency also visited two border control posts in Görlitz at the border with Poland. This report covers all four border control posts visited to date, providing an overview of the situation and allowing a comparison between the various sites.

2.3.1 – Schirnding border control post

The border control post operated by the Federal Police (Selb district) on federal road (*Bundesstraße*) B-303 appeared well-organised. It uses infrastructure remaining from old border posts, combined with portable facilities (portable cabins, heating, lighting and toilets). Individuals are taken to the nearest Selb Federal Police station – 20 minutes away – for further processing, or for custody or detention. A portable cabin at the border control post itself serves as a provisional waiting room, short-term custody cell, and separate room for strip-searches. The portable cabin has lighting and a window and can be heated and air-conditioned, and the window can be covered to prevent people from seeing in. Given that this portable building is only being used provisionally and in exceptional cases for the measures indicated, the National Agency recognises that the Agency's standards for custody cells cannot be

fully implemented. The delegation viewed the fact that such a cabin was available as a positive, as it allows individuals' privacy to be protected as best possible.

Immigration processing happens at the police station, not at the border control post. For example, the question of whether or not an individual is seeking asylum is dealt with at the police station. Where required, interpreters attend the police station. In cases in which the Federal Police considers that an individual is seeking asylum, that individual is issued with a certificate indicating the competent reception facility (*Anlaufbescheinigung*) so that they can make their own way to the nearest reception centre, which is in Bamberg. Individuals who are refused entry and who are to be detained for the purposes of removal are generally housed in the holding centre for immigration detainees in Hof. According to the Federal Police, a warrant of arrest can be applied for even before the authorities have established the country to which an individual is to be returned.

According to the documentation submitted subsequent to the National Agency's visit, a total of 56 individuals were taken into custody between 16 October (introduction of border controls) and 24 October 2023 (date of visit) in operations run by Selb Federal Police district office. Of those 56 cases, 51 were preventive and five for the purposes of criminal investigation or prosecution. Over the same period, two suspected people smugglers were detained and seven smuggled persons identified at Schirnding border control post. Thirty-three smuggled people were also found within the 30 km border area. According to the documentation provided, thirty-two individuals requested asylum in the Selb Federal Police district. Selb Federal Police were responsible for refusing entry for a total of five individuals. There were no applications for detention pending exit from the federal territory (*Zurückweisungshaft*) during the period in question.

As well as operating the border control posts, the Selb district Federal Police continue to conduct mobile, non-incident related random checks near the border. The Federal Police are also in regular contact with the Czech border police.

2.3.2 – Selb border control post

The border control post on main road (*Landstraße*) 2179, operated for the Federal Police by the Bavarian border police (through the

administrative assistance system), is much smaller and more makeshift than the border control post in Schirnding. There was no existing infrastructure for the Selb border control post, so it uses portable facilities (a portable cabin for officers, a police van, a portable toilet and a light tower). At the time of the National Agency's visit, however, there was no portable cabin that could, like at the border control post in Schirnding, be used for strip-searches. Where checks lead to further processing, custody or detention, the individuals concerned are taken to the district police station of the Federal Police in Selb, which is five minutes away.

As at the date of the visit, four suspected human traffickers and three smuggled individuals had been identified at Selb border control post since the start of its operations. The Bavarian border police did not provide figures on custody, asylum applications, any refusals of entry, or detention pending exit from the federal territory, as all those procedures are the responsibility of the Federal Police. As well as operating the border control posts, the Bavarian border police also conducts mobile, random checks near the border.

2.3.3 – Görlitz border control post

The border control post on motorway (*Bundesautobahn*) BAB-4 uses both the existing infrastructure of old border posts and new portable facilities (portable cabins, heating, lighting and toilets). Individuals are taken to the registration point (*"Bearbeitungsstraße"*) for processing. Tents with camp beds have been available on the site since May 2023 to deal with the high numbers of arrivals.¹⁰³ The building that houses the registration point has a number of cubicles separated by plastic curtains. These cubicles are, for example, used for strip-searches, identification procedures and questioning. There was a storage room with clothing donations and equipment for infants and small children. A separate space had been created for individuals who were ill.

Individuals who are to be detained or taken into custody are taken to the police district headquarters, which is on the motorway right next to the registration point. Facilities at those district headquarters include two single-occupancy

custody cells and two "returns cells" with a capacity of eight people each.

The border control post on the BAB-4 motorway near Görlitz was much larger and better equipped than the two border control posts visited in Selb and Schirnding. The fact that the post is based so close to the district police headquarters simplifies procedures and means that people do not first have to be transported from the border to another location for further processing.

The National Agency also visited the border control post at Neißbrücke bridge (state road (*Staatsstraße*) 125) in the town of Görlitz, which is much smaller and more like a mobile control unit. The local Federal Police station in Görlitz is within walking distance of the control post, and individuals who are to undergo checks can therefore be searched in conditions that respect their privacy. The police station has two single-occupancy custody cells and one "returns cell" that can hold up to 10 people.

A total of 12 suspected human traffickers were identified between 16 October 2023 and 9 January 2024 by controls conducted in the Ludwigsdorf Federal Police district. Over the same period, a total of 386 individuals were identified as possibly having been smuggled. 162 people had been taken into custody under the temporary border control since these were reintroduced. A lack of identification documents or residence title were the main reasons for custody; in some cases the individuals in question were seeking to work without permission. Over this period, 551 individuals placed asylum requests with the Federal Police. A total of 427 individuals were refused entry. There were no applications for detention pending exit from the federal territory.

2.4 – Findings and recommendations

This chapter summarises the information gathered by the National Agency on its visits, and sets out the Agency's recommendations on border police work in the context of the reintroduction of control posts at internal borders.

2.4.1 – Provision of information

It cannot be assumed that individuals who are intending to request asylum or protection are fully informed of all their rights and obligations under residence law when they cross an internal border.

¹⁰³ Despite the comparatively low numbers at the time of the National Agency's visit, this infrastructure is being retained for the event that the numbers rise again in future.

To ensure that individuals have access to international protection procedures, appropriate measures must be in place to ensure that they receive, from the first officials with whom they interact at the border, multilingual information sheets setting out their rights and obligations and explaining what is about to happen and what steps they now need to take.

2.4.2 – Access to interpreters at the border

Where an interpreter is required, one is not provided until an individual arrives at the competent district Federal Police station to which they have been taken for further processing. In some cases, however, interpreting is needed at the border itself.

There should be a review of whether access to an interpreter can be provided at any time when required. Access could be by telephone or video link and need not necessarily be in person.

Regarding the Selb border control post, the Bavarian Ministry of the Interior, Sport and Integration informed the National Agency that telephone interpreting could be provided wherever required.

2.4.3 – Identifying vulnerable individuals

Questioning at the border or, at the latest, at the nearest police station must identify any vulnerabilities, so that vulnerable groups can be identified at an early stage and vulnerable individuals dealt with correctly and transferred to the correct bodies. The aim should be to identify particularly vulnerable individuals and, on that basis, to launch the necessary procedures.

The National Agency recommends developing standardised processes to ensure that relevant issues are covered in questioning as a matter of course. One option could be to produce a multilingual questionnaire.

On this point, the Bavarian Ministry of the Interior, Sport and Integration informed the National Agency that the possibility of the standardised documentation of vulnerabilities was currently being examined.

2.4.4 – Visibility of area used for strip-searches

As identified at the Selb post, not every border control post has portable cabins or similar structures for carrying out strip-searches where these are required.

Every border control post should have appropriate facilities that third parties cannot see into. Where a space is separated off for searches, steps must also be taken to ensure that the individual to be searched is protected from the cold and the weather.

In its statement of 28 April 2024, the Bavarian Ministry of the Interior, Sport and Integration informed the National Agency that the border control posts now had a separate, heated portable cabin for measures such as searches, and that third parties could not see into it. The Ministry added that a supply of blankets was also available.

2.4.5 – Referral to a reception centre

Third country nationals requesting protection who are identified during controls at internal borders are generally transferred to the competent reception centre for processing under asylum law and, if applicable, for transfer to other EU Member States under the Dublin Regulation.

These individuals receive a certificate from the Federal Police indicating the competent reception facility and are then, as a rule, instructed to make their own way to the nearest reception centre using public transport.

If there are indications that organising their own travel will be too much for an individual, the Federal Police, working with the other bodies involved in the process, has a responsibility to ensure that transport to the reception centre is provided. Organising transport should in particular be considered where individuals demonstrate particular vulnerabilities.

2.5 – Outlook

In 2024, the National Agency will continue to look at border control posts as it seeks to develop standards for this aspect of border police work. Further visits are to follow to allow the Agency to issue targeted recommendations. Access to further documentation will also enable the National Agency to respond to specific processes in specific cases, for example the evaluation of the initial questioning of those seeking asylum on the basis of standard questionnaires.

V

Other visits

I – Residential care and nursing homes

The National Agency examines how residential care and nursing homes respect the human rights and protect the dignity of their residents. However, as the legalities surrounding naming privately-run facilities are still unclear, the residential care and nursing homes visited are not named in this report, and this reduces the effectiveness of the National Agency's work.

In 2023, the National Agency visited a nursing home in **Berlin** whose residents included people suffering from mental illnesses.

On 23 June 2023, the Agency also took part in a meeting of the National working group on care home law, the *Bundesweiter Facharbeitskreis Heimrecht*. The National Agency reported on its work, its findings and its recommendations for residential care for the elderly. There was then a general discussion of current challenges, with attendees sharing their perspectives and exploring possible solutions together. The aim is to continue this constructive dialogue in 2024.¹⁰⁴

The National Agency rated the following aspects particularly positively on its visit in 2023:

- + Animal-assisted therapy is available at the facility. It is provided for people with mental illnesses or dementia to boost communication and social interaction. Animal-assisted therapy can have a calming or indeed energising effect, and can help individuals to overcome fears and become more independent.
- + The facility is surrounded by extensive, fully accessible grounds in which residents can move freely.

Recommendations issued by the National Agency mainly concerned the following areas:

1.1 – Condition of the building

The facility was in urgent need of renovation. A number of areas had clear signs of wear and tear. Even in those parts of the facility that had already been refurbished, there was nothing to alleviate

the institutional feel of the place. Whilst the provision of one-room apartments is to be welcomed, those apartments appeared shabby or even in urgent need of structural repairs.

Residential care and nursing homes should be kept in a good state of repair and steps taken to ensure that they offer a cosy and welcoming environment for residents.

Another important point is that material conditions – and that includes how well-maintained the living spaces are – affect the therapeutic environment.¹⁰⁵

In its statement of 28 May 2023, Berlin's Senate Department for Higher Education and Research, Health and Long-Term Care informed the National Agency that the Berlin Building Ordinance Relating to Self-Determination and Participation in Residential Care Facilities (*Wohnenteilhabe-Bauverordnung*) did not contain any provisions on buildings' degree of wear and tear, and that a certain level of wear and tear in buildings or parts of buildings did not in itself constitute a defect within the meaning of the Building Ordinance, provided the building or parts of the building in question were still functional/fit for use.

Offering an appropriate living environment that takes account of the needs of residents is part of respecting human dignity. In light of the limited autonomy experienced in a home, it is extremely important to create a cosy environment.¹⁰⁶

It is therefore not enough to assess buildings solely on the basis of requirements under the Building Ordinance without sufficiently considering the needs of care home residents.

Whether or not refurbishment and/or renovation is needed, and interior design aimed at creating a cosy atmosphere, are to be determined in light of Article 3(a) of the UN Convention on the Rights of Persons with Disabilities and section 1(1) of Berlin's Act on Self-Determination and Participation in Residential Care Facilities (*Wohnenteilhabe-gesetz*) and the principles of human dignity enshrined therein.

¹⁰⁵ Cf. CPT/Inf (2022) 18, paragraph 111.

¹⁰⁶ Cf. *Dritter Bericht zur Lage der älteren Generation in der Bundesrepublik Deutschland*, Drucksache 14/5130, Teil 2, p. 129, <https://www.bmfsfj.de/bmfsfj/service/publikationen/3-altenbericht--95592> (accessed 27 May 2024).

¹⁰⁴ A meeting was held with Hesse's social care supervisory authority (the Office for Care Services and Social Affairs (Amt für Versorgung und Soziales) in January 2024.

In a subsequent statement, **Berlin's** Senate Department for Higher Education and Research, Health and Long-Term Care reported that a number of refurbishment and improvement projects had been undertaken since the National Agency's visit.¹⁰⁷

1.2 – Complaints management

The nursing home had its own complaints box; however, this was located in the entrance hall and was therefore hard for residents in the closed units to access.

To ensure that everyone is able to submit complaints anonymously, complaints boxes should be accessible to all residents, including those in closed units.

The Senate Department for Higher Education and Research, Health and Long-Term Care notified the National Agency in the aforementioned statement that complaints and suggestion boxes had been fitted in all parts of the home.

1.3 – Staffing

Reviewing the documents requested from the nursing home, the National Agency noted that there had been an unusually high number of notifications of unsustainable workplace pressure (*Überlastungsanzeigen*) in the final quarter of 2022. In a total of 11 of those notifications, employees reported that it was no longer possible to provide an adequate level of resident care.

To ensure that residents receive the requisite level of care, there must be enough trained, qualified personnel on duty, not least in light of residents' particular needs and wide range of medical issues and the resulting care requirements.

In its statement, the Senate Department for Higher Education and Research, Health and Long-Term Care informed the National Agency that staffing levels had been reviewed in accordance with the provisions of the Human Resource Ordinance Relating to Self-Determination and Participation in Residential Care Facilities (*Wohnteilhaber-Personalverordnung*, WTG-PersV) and of the Land Framework Agreement (*Landesrahmenvertrag*) under Book 11 of the German Social Code (*Sozialgesetzbuch*) and that this process had not identified any issues.

In the National Agency's view, what is key is that the staffing situation ensures the requisite level of care and support for residents whilst also preventing too high a workload for staff.

On this point, it is not simply the number of staff that should be scrutinised, but also their specialist qualifications and the continuity of care being provided to residents. Ultimately, the notifications submitted by employees suggest that, in a number of cases, it had at various points not been possible to provide an adequate and safe level of care. For example, staff reported that in certain units and on repeated occasions, no staff were available to provide care for residents at night; that checks and the necessary care tasks had not been conducted; and that a lack of staff or the use of insufficiently trained staff had led to falls, accidents and even medical emergencies.

Irrespective of whether or not the notifications always present an accurate picture of the situation in the facility, they demonstrate that the staff feel under considerable and unsustainable pressure.

In the National Agency's view, it is important that the supervisory body be proactive and specifically ask about and read any notifications when inspecting care facilities if such situations are to be identified and addressed before serious problems arise.

In its subsequent statement, Berlin's Senate Department for Higher Education and Research, Health and Long-Term Care stated that the recommendation to include notifications in inspections was to be applied where appropriate in a given case, and that supervisory body staff were to be made aware of this. However, the Senate Department added that the routine and proactive inspection of notifications was not being considered; instead, the process would only be launched where there were indications of shortcomings in care that suggested a failure to meet minimum statutory requirements for staffing levels or quality of care.

¹⁰⁷ 5 March 2024.

2 – Federal and Land Police

The National Agency visited seven Federal Police and *Land* police stations in 2023, including Hanover (**Lower Saxony**) and Sulzbach (**Saarland**) district police stations; the district **Federal Police stations** at Berlin-Ostbahnhof train station and Frankfurt am Main central train station; and the local **Federal Police stations** in Berlin-Lichtenberg, Göttingen and Weiden in der Oberpfalz.

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

- + The layout, design and fittings in the custody facilities in Sulzbach (**Saarland**) and Weiden in der Oberpfalz (**Federal Police**), meet National Agency standards. Level access minimises the risk of injury. The custody cells have windows that provide access to fresh air, and are fitted with dimmable lighting so that detainees are able to sleep if they wish but do not injure themselves in the dark and are able to find their way about.

- + The local **Federal Police stations** in Göttingen and Weiden in der Oberpfalz, and Sulzbach district police station (**Saarland**) have petty cash available for paying for any food and drink required for individuals in custody; this means that officers do not need to pay out of their own pocket first and then wait to be refunded.

- + Following the visit by the National Agency to Sulzbach district police station (**Saarland**), Saarland's Ministry of the Interior, Construction and Sport announced that it had ordered pillows for all police custody facilities in the *Land*.

- + At Berlin-Lichtenberg, Frankfurt central train station, Göttingen and Weiden in der Oberpfalz police stations (**Federal Police**) and at Hanover district police station (**Lower Saxony**), all information relating to custody was clearly recorded and the entries in the records were signed. Clear and comprehensive records help those involved to recollect incidents and ensure that infringements of fundamental rights can be reviewed.

- + The National Agency warmly welcomes the fact that the **Federal Police** have implemented its recommendation that all **Federal Police stations** keep a supply of basic personal hygiene and sanitary products to be provided to individuals as required. This allows anyone taken into custody to maintain a basic level of personal hygiene.

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

2.1 – Furnishing and fittings in custody cells

The custody cells in the district **Federal Police stations** at Berlin-Ostbahnhof and Frankfurt central train stations and in the local **Federal Police stations** in Berlin-Lichtenberg and Göttingen have no windows. This means no daylight and no natural ventilation.

Every custody cell, even those intended for short-term custody, should have a source of a natural light.

Anyone held in a custody cell for longer than 24 hours should have an unobstructed view of the outside. They should also be given the opportunity to take a reasonable amount of outdoor exercise.

In the custody cells at Berlin-Lichtenberg **Federal Police station**, the lights could only be switched on or off.

Custody cells should have dimmable lighting to ensure that detainees are able to sleep if they wish but do not injure themselves in the dark and are able to find their way about.

No seating at normal seating height was available in the custody cells at Sulzbach (**Saarland**) district police station, which had CCTV monitoring. The cells only had mattresses on the floor. Where a period of detention lasts for several hours, it is inhumane to force individuals to stand or sit on the floor.

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

On its visits to other facilities, the National Agency has observed the use of foam seating or challenging furniture, which is strong and durable and has no sharp edges or corners.

2.2 – Visibility of toilets

The privacy of individuals in custody must be protected. It must be ensured without exception that the individuals concerned cannot be observed when they are using the toilet.

Being aware that you could be being observed by others at any time can be a major source of stress.¹⁰⁸

At Weiden in der Oberpfalz **Federal Police station**, the toilet was not partitioned off and was fully visible through a peephole in the door. The sanitary facilities in the custody area at Berlin-Lichtenberg **Federal Police station** were also visible through a peephole.

The National Agency cannot understand the argument that the peephole is absolutely necessary for the safety of the detainee. Peepholes looking onto the toilet area have routinely been removed or not fitted during renovation and refurbishment work in other facilities,¹⁰⁹ and according to the documentation viewed by the National Agency, this has not led to safety issues.

2.3 – Physical restraint

Hanover district police station (**Lower Saxony**) has two cells in which individuals can be physically restrained. These cells have metal poles anchored in the tiled floor to which restraint belts are then attached. The individuals held there are therefore anchored to the floor, needlessly leaving them feeling helpless and defenceless. In 2022, there were nearly 100 cases of physical restraint or shackling similar to physical restraint in those cells.

Although Segufix textile restraint belts are used, they are not always used correctly: in cases of shackling similar to physical restraint (*fixierungsähnliche Fesselungen*), only an individual's arms or legs are restrained, and this using textile restraints.

This practice increases the risk of serious harm and should be stopped immediately.

There was also a failure to comply with constitutional requirements: the individuals being restrained were monitored by police officers; in only a very few cases was a doctor brought in, and in none of the cases had the measure been authorised by a court.

The reason for the constitutional requirements

is the particular risk to health¹¹⁰ associated with the use of physical restraint, and those requirements therefore apply in all places of detention. Given that it is not possible to apply the minimum standards set down in the Federal Constitutional Court judgment of 24 July 2018 in police custody – for example because the requisite personnel for ensuring one-on-one supervision by therapeutic care staff is not available – the National Agency has been recommending since 2015 that physical restraint not be used in police custody. The CPT has also repeatedly called on the Federal Republic of Germany to avoid any use of physical restraint on police premises.¹¹¹ Furthermore, such measures require judicial authorisation.

The **Federal Police** and the *Land* police in **Baden-Württemberg, Berlin, Mecklenburg-Western Pomerania, Rhineland-Palatinate, Saarland, Saxony, Saxony-Anhalt, Schleswig-Holstein and Thuringia** do not use physical restraint. Individuals who are considered by the police to require physical restraint are transferred to psychiatric clinics.

Physical restraint should not be used at all in police custody.

2.4 – Size of custody cells

A single-occupancy custody cell should have a floor space of at least 4.5 m², and there should be at least 2 m between opposite walls.

Hanover district police station (**Lower Saxony**) had a number of custody cells of varying sizes. The smallest measured just 4.57 m². It was 3.54 m long and just 1.29 m wide.

Police custody cells must be designed in such a way as to ensure humane detention conditions. Custody cells that do not comply with the aforementioned minimum requirements are not to be used.

2.5 – Long-term custody

Individuals in long-term custody should be given the opportunity to engage in meaningful

¹⁰⁸ Federal Court of Justice, judgment of 8 May 1991, file no.: 5 AR Vollz 39/90.

¹⁰⁹ For example in the district Federal Police station at Berlin-Ostbahnhof train station.

¹¹⁰ Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15, margin no. 83.

¹¹¹ Cf. CPT/Inf (2017) 13, paragraph 33, <https://rm.coe.int/t/168071803c> (accessed 27 May 2023); CPT/Inf (2022) 18, paragraph 26.

activity. They must also be allowed to exercise outdoors for at least one hour each day.

Individuals are held in long-term custody at Hanover district police station (**Lower Saxony**) – in a total of 54 cases between January 2022 and October 2023.

Section 21 of the Lower Saxony Act on the Police and Public Order Authorities (*Niedersächsisches Polizei- und Ordnungsbehördengesetz*, NPOG) allows custody for a period of up to 21 days. According to officers at Hanover district police station, the only activity available to individuals in long-term custody there was reading a Bible or Koran provided, and only 45 minutes of outdoor exercise was allowed each day. This is not acceptable.¹¹²

In its statement, Lower Saxony's Ministry of the Interior and Sport informed the National Agency that individuals in long-term custody were allowed to spend one hour outside each day, and that the actual time an individual spent outdoors would only be less than this at their own request (for example because of the weather).

2.6 – Access to custody facilities

There is an urgent need to ensure safe and secure access to custody cells.

At Hanover district police station (**Lower Saxony**), the custody cells can only be accessed by a set of stairs. There is no level access to the custody area at the **Federal Police station** in Berlin-Lichtenberg either.

This layout can pose a risk for both the individuals taken into custody and the police officers. Moving agitated individuals up or down stairs poses an increased risk of injury.

3 – Prisons

In 2023, the National Agency visited 17 prisons¹¹³ in **Baden-Württemberg**, **Berlin**, **Ham-burg**, **Hesse**, **Lower Saxony**, **North Rhine-Westphalia**, **Saarland** and **Saxony** and the prison hospitals in **Berlin** (Plötzensee) and **Saxony** (Leipzig).

¹¹² Cf. CPT/Inf (2022) 18, paragraph 25.

¹¹³ Aachen, Billwerder, Bochum, Butzbach, Dortmund, Freiburg, Hameln (juvenile facility), Heilbronn, Heimsheim, Kleve, Leipzig (including the hospital), Moabit, Plötzensee, Saarbrücken, Ulm, Wuppertal-Vohwinkel and Zwickau.

The visits to Hameln juvenile facility in **Lower Saxony**, Leipzig Prison (and hospital)¹¹⁴ (**Saxony**) and Moabit Prison (**Berlin**) were repeat/follow-up visits aimed in part at reviewing progress on the implementation of previous recommendations.

This chapter summarises the information gathered by the National Agency on visits carried out in 2023. The chapter concludes with a summary of visits to prison hospitals and outlines upcoming activities planned by the National Agency in 2024, which are to focus in particular on the provision of psychiatric care for inmates.

Findings and recommendations

In the course of its visits, the National Agency has repeatedly observed developments that make it clear that different approaches are being taken in different parts of the country to exactly the same issues. In prisons as in other facilities, more and more measures are being taken to improve respect for human dignity.

The National Agency finds it strange that positive developments in some *Länder* are repeatedly rejected by others on safety and security grounds as being wholly inconceivable. For example, while the use of challenging furniture and seating cubes is in some cases standard practice in specially secured cells in **North Rhine-Westphalia** and **Saarland**, there is a refusal on safety grounds in **Baden-Württemberg** and **Saxony** to allow detainees to sit in a normal position.

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

- + Many prisons now offer alternatives to supervised urine sampling, making drug screening less intrusive for the inmates concerned.
- + Across the country, facilities are increasingly setting cameras to pixelate the toilet area in CCTV-monitored specially secured cells. This provides greater privacy to the inmates in those cells. A number of the facilities visited do not use CCTV monitoring at all for their specially secured cells. Instead, the inmates in question are monitored in person.
- + Over the course of 2023 as in the previous year, the National Agency was informed of a number of trials underway in various different *Länder*

¹¹⁴ The same applies to the prison hospital attached to Leipzig Prison.

to test seating in specially secured cells. A number of these trials have already been successfully completed and solutions have been found that are now a standard part of specially secured cells.¹¹⁵ These allow prisoners held in specially secured cells to sit in a normal position.

In 2023 as in previous years, the National Agency encountered structural and persistent problems in many of the prisons it visited. The National Agency also found significant differences in how its standards and recommendations were being implemented; these differences are set out in more detail below.

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

3.1 – Special security measures

3.1.1 – Segregation

Segregation refers to an individual's complete isolation from all of their fellow inmates.¹¹⁶ Segregation for more than 24 hours constitutes continuous segregation (solitary confinement),¹¹⁷ which may only be imposed if it is absolutely necessary i.e. if no other less severe measure can effectively be employed instead. Alternative, less severe measures available should include appropriate psychiatric care.¹¹⁸

Continuous segregation places an extraordinary strain on the prisoners concerned.¹¹⁹ Often, prisoners in continuous segregation are only allowed outside for one hour each day and spend the remaining 23 hours confined in cells or segregation units. The CPT stresses that long periods of segregation can have a damaging effect on the mental and somatic health of the persons

concerned and can in certain circumstances constitute inhuman and degrading treatment.¹²⁰

Berlin Higher Regional Court has found that confining an individual to their cell for 23 hours a day can constitute a violation of their human dignity.¹²¹

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

On visits to a number of prisons in **Baden-Württemberg**, one prison in **North Rhine-Westphalia** (Wuppertal-Vohwinkel) and one prison in **Saarland** (Saarbrücken), the National Agency found cases in the records of continuous segregation lasting several weeks or even months.¹²²

Such long periods of segregation without significant efforts to find effective alternatives are not acceptable from a human rights perspective. To mitigate the negative impact of solitary confinement on mental and physical health, detainees should be provided with sufficient opportunities for human contact (e.g. extended visiting times) and for engaging in meaningful activities. Those placed in solitary confinement should also be seen regularly by a psychiatrist or psychologist. This should take place in a suitable and confidential environment.

3.1.2 – Inhumane detention conditions in specially secured cells

Segregation in a specially secured cell represents a particularly significant infringement of an individual's rights. The isolating nature of the measure is compounded by minimal furnishings in the cells and often also by CCTV monitoring

¹¹⁵ See also 3.1.2.

¹¹⁶ Arloth/Krä, StVollzG Kommentar, 2021, 5. Auflage, § 88 StVollzG, margin no. 6: The authors draw a distinction between temporary segregation (section 88(2) no. 3 of the German Prison Act) and solitary confinement or continuous segregation (section 89 of the German Prison Act).

¹¹⁷ Section 89(1) of the German Prison Act; Arloth/Krä, StVollzG Kommentar, 2021, 5. Auflage, § 89 StVollzG, margin no. 1.

¹¹⁸ Arloth/Krä, StVollzG Kommentar, 2021, 5. Auflage, § 89 StVollzG, margin no. 2: "Solitary confinement is only absolutely necessary if other alternative measures cannot be employed; the facility must therefore first take all other available steps to avoid or obviate the need for continuous segregation. Such steps notably include medical and psychiatric measures."

¹¹⁹ Cf. 2010/2011 Annual Report of the National Agency; see also Feest/Lesting/Lindemann, Strafvollzugsgesetze Kommentar, 8. Auflage, 2021, II § 78 29, p. 684.

¹²⁰ CPT/Inf (2022) 18, paragraph 53.

¹²¹ Cf. Berlin Higher Regional Court, judgment of 17 February 2015, file no.: 9 U 129/13, margin no. 38. "Confining an individual for 23 hours with no possibility to take part in work or training, no access to other group activities and no social contact in any form runs wholly counter to [statutory] sentencing objectives and prevents any kind of rehabilitation. A prison sentence enforced without a clear focus on the objective of rehabilitation is simply lock-up, violates the human dignity of the prisoner and reduces him to an object of State action."

¹²² The longest period of continuous segregation observed in 2023 was at Heilbronn Prison (Baden-Württemberg), and lasted for 330 days.

ordered in addition to segregation, and in some cases by a withdrawal of the inmate's right to exercise outdoors.

3.1.2.1 – Duration

It is a matter of some doubt whether segregation in a specially secured cell for a prolonged period of time can ever be proportionate. Such an approach is certainly at odds with the specified grounds for segregation: the grave state (*“akute[r] Zustand”*)¹²³ of the individual concerned and the associated risk of self-harm or suicide or violence towards others. Steps must be taken to address the prisoner's state where it remains grave; for example, the prison must seek the assistance of the psychiatric services.

Segregation in a specially secured cell for more than just a short period of time is unacceptable if the cell is furnished in a way that does not respect the human dignity of inmates.

The National Agency noted with concern that a number of prisoners were held in specially secured cells for periods of several weeks, and that for up to 24 hours a day. For example, this was the case at a prison in **North Rhine-Westphalia** (Wuppertal-Vohwinkel), where one individual was held in a specially secured cell for a period of 14 days, and at a facility in **Baden-Württemberg** (Freiburg), where segregation in a specially secured cell lasted 16 days.

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

A number of the prisons visited in 2023 have developed defined strategies to address the rising number of cases of segregation linked to mental illness. The National Agency has highlighted these positive examples in its visit reports.

One positive example is the furnishings and fittings in the suicide prevention room at Leipzig Prison and Prison Hospital (**Saxony**), which the National Agency visited in 2023 for the second time.¹²⁴ The suicide prevention room is not simply used to prevent self-harm: there is also always

a programme of treatment in place for each individual held there. Leipzig Prison has recorded a significant drop in the number of cases and the duration of segregation in specially secured cells since it started using the suicide prevention room. The total annual number of instances of the use of specially secured cells in relation to the size of the prison was also much lower than in other prisons visited in the same year.¹²⁵

3.1.2.2 – Conditions of detention

Visibility of toilets

Constant CCTV monitoring constitutes a significant infringement of constitutionally protected rights,¹²⁶ and observing an individual while they use the toilet is a serious infringement of their rights of personality.¹²⁷

CCTV monitoring should only be used in individual cases where it is essential in order to protect the individuals concerned. In such cases, the CCTV cameras must be fitted in such a way that the toilet area is either not visible on the monitor at all or, alternatively, is taped over or pixelated. Only where there is an acute risk of self-harm or suicide might a decision to allow temporarily unrestricted monitoring of a cell potentially be acceptable; such a decision would have to be carefully considered in the individual case.

+ Cameras monitoring specially secured cells in prisons visited in **Baden-Württemberg** (Heim-
sheim), **Berlin** (Moabit), **Hamburg** (Billwerder),
Hesse (Butzbach) and **Saarland** (Saarbrücken)
pixelated the toilet area. In **Berlin**,¹²⁸ **Hesse**,¹²⁹

¹²³ Feest/Lesting/Lindemann, *Strafvollzugsgesetze Kommentar*, 8. Auflage, 2021, II § 78 42, p. 688.

¹²⁴ Report by the National Agency on its visit to Leipzig Prison and Prison Hospital on 18 May 2018.

¹²⁵ As at 7 September 2023.

¹²⁶ Federal Constitutional Court, order of 18 March 2015, file no.: 2 BvR 1111/13, margin no. 32.

¹²⁷ Monitoring an individual while they use the toilet is particularly demeaning. Cf. for example Regensburg Regional Court, order of 20 January 2022, file no.: SR StVK 245/21, margin no.: 22: “According to past decisions of the Federal Constitutional Court, particular sensitivity is required on the part of prison officers if they carry out their duties while prisoners are using the toilet, for in such situations there can often be an infringement of the right to privacy protected under Article 2(1) in conjunction with Article 1(1) of the Basic Law.”

¹²⁸ Section 23(3) of the Berlin Prison Data Protection Act (*Justizvollzugsdatenschutzgesetz*).

¹²⁹ Section 37(4.5) of the Administrative Provisions Relating to the Hesse Prison Acts (*Verwaltungsvorschriften zu den Hessischen Vollzugsgesetzen*).

Mecklenburg-Western Pomerania,¹³⁰ **Lower Saxony**,¹³¹ **Rhineland-Palatinate**,¹³² **Saxony**,¹³³ **Saxony-Anhalt**,¹³⁴ **Thuringia**¹³⁵ and **Saarland**,¹³⁶ this is a statutory requirement.

No CCTV monitoring was used for the cells at all at prisons visited in Saxony and Baden-Württemberg (Heilbronn and Ulm).¹³⁷

In contrast to this approach, one prison visited in **Baden-Württemberg** (Freiburg) and all prisons visited in **North Rhine-Westphalia** in 2023 continue to use camera systems that display the toilet area in specially secured cells on the monitors without pixelation. Although the toilet area is pixelated in the CCTV monitoring systems for nearly all plain cells (*Schlichtzellen*)¹³⁸ in those same facilities, the **North Rhine-Westphalia** Ministry of Justice continues firmly to reject the use of pixelation for specially secured cells on safety and security grounds. Given the picture at the national level – and in particular the experiences of facilities that have already implemented the National Agency recommendations – the National Agency finds it hard to follow this line of argument.

Pillows and blankets

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

Prisoners held in specially secured cells at the prisons in **Baden-Württemberg**, **Berlin**, **Hamburg**, **Hesse**, **North Rhine-Westphalia**, **Saarland** and **Saxony** and the juvenile facility in **Lower Saxony** visited in 2023 were not provided with pillows. In **Saxony** (Leipzig Prison and Prison Hospital), the individuals in question were not

given a blanket either. The National Agency has yet to be given a plausible reason for this practice.

In its statement in response to the National Agency's report on its visit to Hameln juvenile facility,¹³⁹ the Ministry of Justice of **Lower Saxony** reported that there were already plans to purchase pillows for individuals held in the specially secured cell. Following the National Agency's visit to Butzbach Prison, **Hesse's** Ministry of Justice announced that the suitability of a built-in pillow in the mattress for the specially secured cell was currently being assessed. In its response to the National Agency's report on its visit to Kleve Prison, the **North Rhine-Westphalia** Ministry of Justice announced that two pillows with wipeable covers had been purchased for use in the specially secured cell, to be issued on a case-by-case basis. The Ministry also informed the National Agency that Aachen and Dortmund prisons were also assessing whether to purchase pillows. Finally, the **Hamburg** Justice and Consumer Protection Authority also announced its intention to review the possible purchase of pillows for the specially secured cell in its response to the National Agency's visit report on Billwerder Prison.

Seating

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

+ Prisons visited in **Berlin** (Moabit), **Lower Saxony** (Hameln juvenile facility), **North Rhine-Westphalia** (Aachen and Bochum)¹⁴⁰ and **Saarland** (Saarbrücken) had seating cubes for prisoners in specially secured cells.

The Ministry of Justice of **North Rhine-Westphalia** told the National Agency that foam seating cubes had been a standard feature of all specially secured cells in North Rhine-Westphalian prisons since August 2023. In its response to the National Agency's visit report on Plötzensee Prison, **Berlin's** Senate Department for Justice and Consumer Protection stated that seating

¹³⁰ Section 25(7) of the Mecklenburg-Western Pomerania Prison Data Protection Act.

¹³¹ Section 81a(2) of the Lower Saxony Prison Data Protection Act.

¹³² Section 32(4) of the Rhineland-Palatinate Prison Data Protection Act.

¹³³ Section 34(3) of the Saxony Prison Data Protection Act.

¹³⁴ Section 144(4) of the Saxony-Anhalt Prison Code (Justizvollzugsgesetzbuch).

¹³⁵ Section 33(3) of the Thuringia Prison Data Protection Act.

¹³⁶ Section 32(4) no. 1 of the Saarland Prison Data Protection Act.

¹³⁷ The National Agency would stress that close supervision of the prisoner or prisoners in question must be ensured.

¹³⁸ Cell monitored by CCTV with furniture anchored to the wall or to the floor; inmates held in plain cells are generally locked up for 23 hours a day.

¹³⁹ Visit on 17 March 2023.

¹⁴⁰ Wuppertal-Vohwinkel and Dortmund prisons, which were also visited in 2023, did not provide any seating in their specially secured cells at the time of the National Agency's visit. However, they informed the National Agency that seating had already been ordered.

had been available for the crisis intervention rooms at the facility since July 2023. The **Hamburg** Justice and Consumer Protection Authority also informed the National Agency in its response to the visit report on Billwerder Prison¹⁴¹ that seating for specially secured cells had since been purchased. **Hesse's** Ministry of Justice announced in its statement in response to the National Agency visit to Butzbach Prison¹⁴² that it intended to provide seating cubes for specially secured cells in a number of prisons in the *Land* and to trial other seating options in 2024. Other prisons in other *Länder*, including **Bavaria** (Berna), notified the National Agency that they had launched pilot projects to trial seating in specially secured cells.

The situation in **Baden-Württemberg** and **Saxony** is very different. Specially secured cells in these *Länder* only had a mattress on the floor, and in their statements, the competent ministries rejected the recommendation to provide seating at normal height. **Baden-Württemberg's** Ministry of Justice and Migration argued in its statement in response to the National Agency's visit to Ulm Prison that the mattress available could, where necessary, be folded over and used as seating, and that additional seating could not be provided as it could be misused, for example to tamper with the ceiling.

In its statement in response to the visit to Zwickau Prison,¹⁴³ the Saxon Ministry of Justice and for Democracy, Europe and Equality informed the National Agency that the potential use of a seating cube and of a cardboard stool in the specially secured cell had been assessed; the seating options tested had, however, been found not to be suitable given the "potential risk of injury" for inmates and the potential risk to officers.

The National Agency finds it hard to follow the reasoning presented by the two ministries above. The steady rise in the number of facilities – including many in high security categories – that are now using seating in specially secured cells clearly shows that the practice is feasible.

3.1.3 – Shackling

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

In order to protect their right to physical

¹⁴¹ Visit on 27 July 2023

¹⁴² Visit on 04 May 2023

¹⁴³ Visit on 02 June 2023

integrity, textile restraint belts should be used.¹⁴⁴

+ Saarbrücken Prison (**Saarland**) already has textile cuffs available in each area of the facility so that the use of steel cuffs can be avoided wherever the situation allows. The **Saxon** Ministry of Justice and for Democracy, Europe and Equality also informed the National Agency in its statement in response to the visit to Zwickau Prison that it is currently trialling the use of restraints with no metal components in specially secured cells.

The **Hesse** Ministry of Justice, the Ministry of Justice of **North Rhine-Westphalia**, the **Hamburg** Justice and Consumer Protection Authority and **Berlin's** Senate Department for Justice and Consumer Protection all rejected the use of textile cuffs in their statements. Most justified this approach with the argument that textile cuffs were much more difficult to use than metal cuffs (**Berlin**, **Hamburg** and **North Rhine-Westphalia**) and that textile cuffs posed a safety risk both to the individuals being restrained and to officers (**Berlin** and **Hesse**).

The National Agency would reiterate that it has visited both police and forensic psychiatric detention facilities that are already using textile cuffs. Those facilities did not express any of the concerns presented by the above ministries.

3.1.4 – Physical restraint

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

Continuous one-on-one supervision must be carried out by therapeutic or care staff in all cases of physical restraint. A judicial decision is also required if physical restraint is to be used for more than just a short period of time.¹⁴⁵ After the measure ends, it should be discussed with the individual concerned.¹⁴⁶ The individual should also be informed after the measure of their right to request a court review of the lawfulness of the restraint procedure.¹⁴⁷

Physical restraint is used in the majority of prisons in Germany.¹⁴⁸

¹⁴⁴ For example Segufix or Bonowi hand restraint belts.

¹⁴⁵ Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15, margin no. 69.

¹⁴⁶ DGPPN (2018): "S3-Leitlinie: Verbinderung von Zwang: Prävention und Therapie aggressiven Verhaltens bei Erwachsenen".

¹⁴⁷ Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15, margin no. 85.

¹⁴⁸ CPT/Inf (2022) 18, paragraph 91: The CPT recommends not using physical restraint in prisons at all.

+ Bochum (**North Rhine-Westphalia**) and Freiburg (**Baden-Württemberg**) prisons told the National Agency that the one-on-one supervision of inmates who are being physically restrained is always carried out by care staff, including at night. Heimsheim Prison (**Baden-Württemberg**), Zwickau Prison (**Saxony**) and Moabit Prison (**Berlin**) reported either that they did not, as a rule, use physical restraint or that there had been no instances of physical restraint in the previous two years (2022 and 2023).

However, even in 2023, the National Agency was still told by most of the competent ministries that continuous one-on-one supervision by therapeutic or care staff could not be guaranteed in prisons. Of the federal states visited, **Berlin**, **Hamburg**, **North Rhine-Westphalia**, **Saarland** and **Saxony** have not brought their *Land* law into line with the minimum requirements under constitutional law.

As the reason for the constitutional requirements is the particular risk to health¹⁴⁹ associated with the use of physical restraint, those requirements apply in all places of detention. If prisons are not able to meet the minimum standards set out in the Federal Constitutional Court judgment, they must not use physical restraint.

3.2 – Occupancy

3.2.1 – Multiple occupancy

Single occupancy should be the general rule as provided for by law. Holding multiple prisoners together is to be avoided as it can place a strain on prisoners and make crises and conflicts more likely, even when the cells are technically large enough.¹⁵⁰

+ In 2023, the National Agency observed full compliance with the statutory principle of single occupancy at Billwerder Prison (**Hamburg**) and at Hameln juvenile facility (**Lower Saxony**).

At Freiburg Prison (**Baden-Württemberg**) and Wuppertal-Vohwinkel Prison (**North Rhine-Westphalia**), shared cells were occupied by up to four prisoners.

3.2.2 – Multiple occupancy without separate, separately ventilated toilets

Holding multiple prisoners in a single cell without a separate toilet with separate ventilation represents a violation of human dignity.¹⁵¹ Whether or not prisoners have agreed to be detained together is irrelevant, as the fundamental right to human dignity is a protected legal interest that cannot simply be waived.¹⁵²

Where temporary multiple occupancy is unavoidable, the cells must have separate, and separately ventilated, toilets.

A number of cells with multiple occupancy in prisons in **Baden-Württemberg** (Ulm) and **North Rhine-Westphalia** (Dortmund) did not have a functioning ventilation system at the time of the National Agency's visit.

On its visits to Heilbronn and Freiburg prisons in **Baden-Württemberg**, the National Agency found that the toilets in some of the multiple-occupancy cells – 35 in total in Freiburg – were only separated from the rest of the cell by a 1 m-high partition or a curtain. Such conditions constitute a violation of human dignity, which is protected by Article 1(1) of Germany's Basic Law.¹⁵³

At Dortmund Prison (**North Rhine-Westphalia**), prisoners waiting at the infirmary had to use a toilet in the waiting room that was completely visible to everyone else in the room. There were often up to six people waiting at any given time. Inmates who needed to relieve themselves therefore had no privacy. This situation is, in the National Agency's view, inhumane and unacceptable. In its statement following the visit, the **North Rhine-Westphalian** Ministry of

¹⁴⁹ Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15, margin no. 83.

¹⁵⁰ Cf. Anna Schliehe, Ben Crewe, "Top bunk, bottom bunk: cellsharing in prisons" in *The British Journal of Criminology*, March 2022, Volume 62, Issue 2, pp. 484-500.

¹⁵¹ Federal Constitutional Court, order of 22 February 2011, file no.: 1 BvR 409/09, margin no. 30.

¹⁵² Federal Constitutional Court, judgment of 17 October 2000, file no.: 2 WD 12/00; See: Arloth, *StVollzG*, 3. Aufl., § 18, margin no. 2.

¹⁵³ Cf. Lübke-Wolff (2016) "Die Rechtsprechung des Bundesverfassungsgerichts zum Strafvollzug und Untersuchungshaftvollzug", p. 269; ECHR, judgment of 25 April 2013, *Canali v. France*, Application no. 40119/09; Karlsruhe Higher Regional Court, judgment of 19 July 2005, file no.: 12 U 300/04.

Justice informed the National Agency that it was reviewing the fittings and facilities in the waiting room and applying for funds to make necessary changes.

3.2.3 – Cell size for multiple occupancy

In order for detention conditions to be humane, a single-occupancy cell must have a floor space of at least 6 m²,¹⁵⁴ excluding the sanitary facilities. In cases where the sanitary facilities are not partitioned off, approximately one further square metre should be added for that area, giving a total floor space of at least 7 m². For multiple occupancy, a further 4 m² of floor space must be added to the minimum area for each additional person, excluding the area of the sanitary facilities. Whether or not prisoners have agreed to the conditions is irrelevant, as the fundamental right to human dignity is a protected legal interest that cannot simply be waived.¹⁵⁵

With a total floor space – including toilet area – of less than 9 m², a number of cells with double occupancy at Freiburg Prison (**Baden-Württemberg**) and Saarbrücken Prison (**Saarland**) fell considerably short of National Agency standards.

This was true even for 35 of the two-person cells in the main building at Freiburg Prison (**Baden-Württemberg**): not only did these not have a separate toilet with separate ventilation, they had a floor space of only 8.66 m².

These circumstances are degrading for the affected prisoners, and constitute inhumane detention conditions.¹⁵⁶ Steps must be taken immediately to ensure that the conditions of detention for inmates at Freiburg Prison (**Baden-Württemberg**) meet constitutional requirements.

¹⁵⁴ 6 m² is the absolute minimum requirement. In the National Agency's view, cells that are smaller than this violate Article 1 of the German Basic Law. Any additional legal requirements beyond this minimum standard must, of course, also be observed, and are welcomed.

¹⁵⁵ Federal Administrative Court, judgment of 17 October 2000, file no.: 2 WD 12/00; see Arloth, StVollzG, 3. Aufl., § 18, margin no. 2.

¹⁵⁶ The National Agency had already observed a similar situation in the Baden-Württemberg prison system on its visits to Karlsruhe Prison (Baden-Württemberg) in 2017 and 2020, which it criticised in its 2017 (p. 54) and 2020 (pp. 84 f.) annual reports.

3.3 – Protection of privacy

3.3.1 – Full strip-searches

According to the Federal Constitutional Court, strip-searches involving a visual examination of a person's genital area represent a serious infringement of that individual's general right of personality.¹⁵⁷ They must not be carried out routinely or in the absence of any specific grounds for suspicion.¹⁵⁸

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

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

+ Facility rules on full strip-searches at Moabit (**Berlin**), Neuruppin-Wulkow (**Brandenburg**) and Bautzen (**Saxony**) prisons allow both for case-by-case decisions on whether to use this measure, and for strip-searches to be carried out in two stages.

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

Despite the relevant decisions of the Federal Constitutional Court, the majority of the competent ministries maintained that full strip-searches for all new prisoners were essential. The **Baden-Württemberg** Ministry of Justice and Migration, **Hesse's** Ministry of Justice, and the Ministry of Justice of **North Rhine-Westphalia** also continue to explicitly reject, on security

¹⁵⁷ Federal Constitutional Court, order of 5 March 2015, file no.: 2 BvR 746/13, margin no. 33; order of 23 September 2020, file no.: 2 BvR 1810/19, margin no. 21.

¹⁵⁸ Federal Constitutional Court, order of 10 July 2013, file no.: 2 BvR 2815/11, margin no. 16; Federal Constitutional Court, order of 23 September 2020, file no.: 2 BvR 1810/19, margin no. 22. Cf. ECHR, judgment of 22 October 2020, Roth v. Germany, Application nos. 6780/18 and 30776/18, §§ 69, 72 – Violation of Article 3 of the Convention.

grounds, body searches that only require prisoners to partially undress.

In light of the positive examples from the prison system outlined above, and considering the procedures used in many forensic psychiatric detention facilities,¹⁵⁹ the position taken by the competent ministries in **Baden-Württemberg**, **Hesse** and **North Rhine-Westphalia** is difficult to comprehend. None of the facilities that use a two-stage procedure for strip-searches reported an increased security risk.

3.3.2 – Showers

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

+ In a number of the prisons visited in **North Rhine-Westphalia** (Aachen, Dortmund and Wuppertal-Vohwinkel) and **Saxony** (Leipzig Prison and Prison Hospital and Zwickau Prison), there were partitions between the showers, or one shower was partitioned off (Saarbrücken, **Saarland**). At Hameln juvenile facility (**Lower Saxony**), inmates were able to shower on their own.

The **Hamburg** Justice and Consumer Protection Authority announced in its response to the visit report on Billwerder Prison that it intended to have partitions installed in the showers in all units at the prison by the end of 2024.

Baden-Württemberg's Ministry of Justice and Migration, however, explicitly rejected the installation of partitions on security grounds in its statement in response to the visit report on Ulm Prison. The **Hesse** Ministry of Justice takes a similar position on this question, but nonetheless announced in its response to the visit report

on Butzbach Prison that the installation of partitions in the communal showers was to be considered as part of a planned major refurbishment of the facility.

The National Agency would take this opportunity to refer the ministries in question once again to the many positive examples. None of those above-mentioned facilities – including some in high security categories – have reported a rise in assaults.

3.3.3 – Supervised urine screening

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

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

+ During its visits, the National Agency observed the use of a range of drug screening methods designed to protect the privacy of the individuals concerned. These methods included oral swabs (**Berlin** and **Saxony**), the use of markers (**Saarland**), and finger-prick blood tests, which the prisoner can choose (**North Rhine-Westphalia**).

Supervised urine screening was used for all drug testing at the prisons visited in **Baden-Württemberg**,¹⁶⁰ **Hamburg** and **Hesse** and at the juvenile facility visited in **Lower Saxony**.

Citing the decision of the Federal Constitutional Court of 22 July 2022,¹⁶¹ the Ministry of Justice and Migration of **Baden-Württemberg**, **Hesse's** Ministry of Justice and the **Lower Saxony** Ministry of Justice announced the following steps: a marker system is to be introduced in the near future as an optional alternative to supervised urine screening for prisoners in **Baden-Württemberg**; the use of such a marker system is already being tested in **Hesse** at Schwalmstadt Prison; the **Lower Saxony** Justice Ministry is to assess the potential provision of alternative testing options.

¹⁵⁹ This approach is in some cases enshrined in law for forensic psychiatric detention: Section 70(2) of the Bremen Mental Health Act; in North Rhine-Westphalia, a decree issued on 15 August 2023 specified that steps are to be taken to make strip-searches less intrusive, for example a two-stage approach or only requiring individuals to partially undress.

¹⁶⁰ While Freiburg Prison and Heimsheim Prison offered another method of drug screening, supervised urine screening was the method used for all drug testing at Heilbronn Prison and Ulm Prison.

¹⁶¹ Federal Constitutional Court, order of 22 July 2022, file no.: 2 BvR 1630/21, margin nos. 37-41.

3.4 – Staffing

There must be enough general prison staff on duty at all times to fulfil the tasks at hand.

The majority of the prisons visited had vacancies in this area. Most of the members of the works councils to whom the National Agency spoke on its visits reported that the general prison staff were overworked because of staff shortages. Prisoners also repeatedly expressed their frustration with the cancellation of leisure activities and a reduction in out-of-cell time, both a result of a shortage of the necessary security personnel.

3.5 – Outlook

Prison hospitals visited in 2023

In 2023, the National Agency visited the Plötzensee (**Berlin**) and Leipzig (**Saxony**) prison hospitals.

Many of the problems the National Agency has previously raised were also found on these visits.

A particularly problematic aspect in the National Agency's view was the fact that prisoners in Plötzensee Prison Hospital (**Berlin**) were locked up in their rooms for 23 hours a day. They were only allowed outside for one hour each day, and otherwise only let out of their cells to shower.¹⁶² A number of inmates in the psychiatric ward were, moreover, segregated in crisis intervention rooms for periods of several weeks.

Psychiatric care for prisoners

The National Agency has set itself the goal of visiting all prison hospitals and all prisons with psychiatric wards over the course of 2024. This decision was taken in the light of cases of mental illness among the prison population, which are continuing to rise. In 2023, visits to all 17 facilities once again confirmed the extent of the problem.

¹⁶² In Leipzig Prison Hospital (Saxony), inmates were confined to their cells for between 16 and 18 hours a day.

VI

Statements on draft legislation

Introduction

Pursuant to Article 19 (c) of the OPCAT, the National Agency has the power to submit proposals and observations concerning existing or draft legislation.

In the 2023 reporting year, the National Agency submitted comments on six pieces of draft legislation, participating in both domestic and European legislative processes:¹⁶³

¹⁶³ The statements from the National Agency are available on its website (in German): <https://www.nationale-stelle.de/aktuelles/stellungnahmen-zu-gesetzentwurfen.html>

Date	Details
28 April	Draft act introducing a Prison data Protection Act and amending other regulations (Thuringia)
27 June	Draft act amending the Saxon Prison Acts
15 August	Draft act amending legislation including the Lower Saxony Act on Forensic Psychiatric Detention
6 December	Draft act reforming the Mental Health Act (Saxony)
18 December	Proposal for an EU Screening Regulation as part of the reform of the Common European Asylum System
29 December	Draft Act to Facilitate Repatriation (Federation)

A positive point to make is that greater efforts were made to involve the National Agency in the legislative process for the **Lower Saxony** Act on Forensic Psychiatric Detention and Saxony's Mental Health Act (*Gesetz über Hilfen und Schutzmaßnahmen für psychisch Kranke*). Several recommendations made by the Agency during the consultation process were taken on board.¹⁶⁴

However, neither the **Thuringian** Ministry for Migration, Justice and Consumer Protection nor the **Federal Ministry** of the Interior and Community consulted the National Agency on their aforementioned legislative processes. As the National Agency considered that it was in both cases essential to submit a statement, it did so on its own initiative.

To enable the National Agency to play a preventive role, it must be given the opportunity to present its position during the legislative process.

Recommendations

The National Agency's statements are based on the UN Convention against Torture and other relevant UN norms concerning the treatment of persons deprived of their liberty. The National Agency also takes account of relevant European standards and international case law, recommendations by the CPT and other bodies as well as German legislation and court decisions.

On the basis of the findings from its visits, and taking account of the national and international legal bases and other documents referred to above, the National Agency develops recommendations that should be enshrined in law in order to prevent the ill-treatment and inhumane treatment of persons deprived of their liberty.

With these aspects in mind, the National Agency made the following comments on the draft legislation in question:

¹⁶⁴ After being consulted by the Lower Saxony Ministry of Social Affairs, Labour, Health and Equality (statement of 15 August 2023), the National Agency was given another opportunity to present its position before the Committee on Social Affairs, Labour, Health and Equality (statement of 25 January 2024 and comments on 1 February 2024).

I – Respect for the mandate of the National Agency

I.1 – Access to files

As in previous years, the National Agency was once again faced with provisions under which the Agency is only permitted view documentation during its visit to a facility, and that only to the extent “absolutely necessary”¹⁶⁵ or “necessary”¹⁶⁶ for the performance of the duties of a Preventive Mechanism.

In order to perform its tasks, the National Agency must be free to decide which files and documents it wants to inspect. Facilities must not be given the impression that they are permitted to restrict the National Agency's right of access to information, as derived from the OPCAT.

The type and scope of the National Agency's mandate are set out in Article 20(b) of the OPCAT. To allow them to fulfil their statutory mandate, the members of the National Agency are to be granted access to all information concerning persons who are or may be deprived of their liberty.¹⁶⁷

Purpose limitation is ensured as the fulfilment of the Preventive Mechanism's mandate is based on it being granted access to information “referring to the treatment of those persons as well as their conditions of detention”.¹⁶⁸ The absolute necessity of access to such documents results from the National Agency's mandate to prevent torture and other cruel, inhuman and degrading treatment or punishment.

+ On this point, the explanatory memorandum to Saxony's Act Reforming the Mental Health Act offers a positive example. It states that the assessment of whether access to files is required is to be made by the “members” of the National Agency.

A highly problematic issue is, however, a statutory restriction on where files can be examined and when (“during the visit”).¹⁶⁹

Specifying a place and time for the exercise of the right to access documentation significantly impedes the effective fulfilment of the National Agency's mandate. In order to reach accurate and detailed findings on which to base its recommendations, the National Agency must be able to scrutinise documentation in detail, in particular documentation relating to detention, to other measures involving deprivation of liberty and to security measures, including the records of the necessary judicial authorisations. Under Article 19 of the OPCAT, the National Agency's mandate specifically includes the power to make recommendations on how to improve conditions of detention.

Effective and comprehensive access to files could only be obtained were a delegation from the National Agency to spend days in a given facility. Given the National Agency's current staffing levels and financial resources, spending several days at one place would have an unacceptable impact on the Agency's ability to conduct regular visits to places of detention.

I.2 – Increased scope and effective exercise of the Agency's mandate

Current developments (for example the rising number of deportations and the potential impact of EU screening processes on German soil) are increasing the scope of the National Agency's responsibilities, and this is set to exacerbate the problem of insufficient resourcing that is already undermining the National Agency's ability to exercise its mandate in full.

The National Agency needs a significant increase in staff if it is to exercise its mandate effectively.

¹⁶⁵ Section 23 of the Thuringian Prison Data Protection Act published on 30 November 2023; section 24 of the Saxon Prison Data Protection Act.

¹⁶⁶ Section 91(4) of the Draft Act Reforming the Mental Health Act.

¹⁶⁷ The National Agency's comprehensive right to access all information, i.e. including medical and care-related documents, is clearly set out in Article 20 (b) of the OPCAT.

¹⁶⁸ Article 20 (b) of the OPCAT.

¹⁶⁹ Section 23 of the Thuringian Prison Data Protection Act published on 30 November 2023; section 24 of the Saxon Prison Data Protection Act.

2 – Special security measures

2.1 – Segregation

It is concerning that the legal requirements for segregation are significantly lower than those for physical restraint. While physical restraint requires judicial authorisation where it is foreseeable that the measure is going to last for more than 30 minutes, this requirement for prior authorisation from the competent court only applies to segregation in two *Länder*. Only in **North Rhine-Westphalia**¹⁷⁰ is judicial authorisation required by law for segregation from other patients in a patient room; in **Bavaria**,¹⁷¹ judicial authorisation is required for segregation in a specially secured cell. Even a duty to notify the competent supervisory authority is only enshrined in law in a few *Länder*.¹⁷²

On its visits, the National Agency found that segregation was lasting weeks, months or even years. Insufficient social contact due to isolation can have a negative impact on mental health: in the absence of sufficient monitoring, “isolation entails a risk of considerable damage to the health of the person concerned”.¹⁷³

Statutory regulations must not create incentives to choose certain measures that are also restrictive.

The National Agency therefore strongly recommends requiring a judicial decision – and thus prior scrutiny by an independent and neutral body – for all instances of segregation.

¹⁷⁰ Section 32(3) of the North Rhine-Westphalia Act on Criminal Law-related Committal.

¹⁷¹ Section 25(8) of the Bavarian Act on Forensic Psychiatric Detention.

¹⁷² Forensic psychiatry facilities only have a reporting obligation in three *Länder*: in Rhineland-Palatinate for segregation in a specially secured cell lasting more than one day (section 29(3) of the Rhineland-Palatinate Forensic Psychiatric Detention Act), and in North Rhine-Westphalia after 48 hours (section 32(3) of the North Rhine-Westphalia Act on Criminal Law-related Committal). In Lower Saxony, segregation is not reported until it has been ongoing for more than a month (section 23(2) of the Lower Saxony Act on Forensic Psychiatric Detention).

¹⁷³ Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15, margin no. 80.

2.2 – Physical restraint

There are still provisions on physical restraint under **Land** law that do not correspond to constitutional requirements,¹⁷⁴ and this is extremely problematic. Not least in light of the significant risks to health associated with physical restraint, the National Agency consistently reminds all parties that the constitutional requirements must be implemented in full.

The National Agency strongly criticised plans in 2023 by the legislature in **Lower Saxony** to allow “attaching an individual to an object by at least their hands and feet using straps or other mechanical systems designed for this purpose” as a form of physical restraint. The Agency stressed that restraining an individual by their hands and feet only should, on safety grounds, never be permitted.

To minimise the risk of physical harm, a strap-based system should be used for restraint.

2.2.1 – Scope of statutory safeguards

Statutory provisions must ensure that the use of any permitted form of physical restraint is still subject to compliance with the strict requirements set out under constitutional law.

All forms of physical restraint deprive an individual of the freedom to move about in the place in which they are being held.¹⁷⁵ What is more, all types of physical restraint pose a serious risk of injury.¹⁷⁶

+ The National Agency supported the solution in the amended **Lower Saxony** Act on Forensic Psychiatric Detention, which was to prohibit one-point, two-point, three-point and four-point restraints.

Tying an individual to the wall or to other

¹⁷⁴ In Berlin and Saarland, this is even the case in forensic psychiatric detention. Lower Saxony only implemented the constitutional requirements on physical restraint in an amendment adopted by the state parliament on 15 May 2024 – see Paper 19/2843 / Paper 19/4235.

¹⁷⁵ Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15, margin no. 70 therefore applies.

¹⁷⁶ Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15, margin no. 71.

objects by their arm or ankle violates their human dignity and is therefore to be avoided in all situations.

It is also extremely important to avoid creating a grey area. The use of three-point restraints must be subject to conditions that are just as strict as those for other types of physical restraint.

Information obtained by the National Agency on its visit to the forensic psychiatry clinic in Bayreuth (**Bavaria**) clearly indicated the risks associated with three-point restraint. The Agency was told that three-point restraints were a “longer-term or regular restriction of movement using a mechanical system”. The statutory conditions that apply to that special security measure are much less strict than those for physical restraint.

2.2.2 – Requirement for a judicial decision

Whilst the National Agency warmly welcomes the requirement for judicial authorisation, it consistently urges the legislature to introduce provisions governing the precise form of that authorisation.

During its visits, the National Agency found court orders authorising the repeated use of physical restraint for one individual over periods of several months.

The constitutional requirement for judicial authorisation must not be undermined by the authorisation of physical restraint beyond the necessary period simply so that the court that issued the order does not have to decide on the matter again.¹⁷⁷

The wording of the relevant legislation should therefore ensure that court orders must always meet strict proportionality requirements, including as regards the duration of the measure, and be limited to what is absolutely necessary.

2.2.3 – One-on-one supervision by therapeutic or care staff

In its statements, the National Agency criticised regulations that provide for “trained prison

officers”¹⁷⁸ or “specially trained staff”¹⁷⁹ to provide one-on-one supervision during the use of physical restraint in prisons.

One-on-one supervision should be provided by therapeutic or care staff in the immediate vicinity of the individual restrained because physical restraint can pose particular health risks¹⁸⁰ requiring an immediate response from qualified personnel. Therapeutic or care staff can also exert a de-escalating influence and thus reduce the period for which restraint is required.

The risk of injury is the same irrespective of the place in which the measure is used. The requirements set out in the Federal Constitutional Court judgment should therefore be met in all places in which people are deprived of their liberty, including prisons. This is, in the National Agency’s view, absolutely necessary, not least as the Federal Constitutional Court requirements relate to a medical facility i.e. to a facility with a large number of doctors where the risks described ought therefore to be lower than in other places of detention.

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

3 – Act to Facilitate Repatriation

3.1 – Deprivation of liberty

Immigration processing should not involve deprivation of liberty when children or other particularly vulnerable individuals are involved – in particular victims of human trafficking, torture, or physical, mental or sexual violence.

The Draft Act to Facilitate Repatriation provides for a wider range of grounds for custody to secure deportation. The move to qualify

¹⁷⁷ Federal Constitutional Court, order of 19 March 2019, file no.: 2 BvR 2638/18, margin no. 30.

¹⁷⁸ Section 90 of the Draft Act Introducing a Prison Data Protection Act and Amending Other Prison Regulations (*Entwurf eines Gesetzes zur Einführung eines Justizvollzugsdatenschutzgesetzes und zur Anpassung weiterer Vorschriften des Justizvollzugs*) (Thuringia).

¹⁷⁹ Section 84(6) of the Saxon Prison Act, section 52(6) of the Saxon Act on Remand Detention (*Untersuchungshaftvollzugsgesetz*), section 74(6) of the Saxon Act on Juvenile Detention (*Jugendstrafvollzugsgesetz*) and section 89(6) of the Saxon Act on Preventive Detention (*Sicherungsverwahrungsvollzugsgesetz*).

¹⁸⁰ Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15, margin no. 83.

violations of entry and residence bans as grounds for detention in their own right irrespective of flight risk (section 62(3) sentence 1 no. 4 of the Residence Act) is particularly problematic. Simultaneously, extending to six months the period within which it should be possible to carry out deportation after taking individuals into custody (section 62(3) sentence 3 of the Residence Act) is set to place a considerable strain on those individuals.

The same applies to the planned increase in the maximum duration of custody to secure departure from 10 to 28 days (section 62b of the Residence Act). Custody to secure departure was originally intended to be used in exceptional cases only and was to last no more than four days.

These developments run counter to the principle that measures involving the deprivation of liberty are a last resort i.e. are only to be used when absolutely necessary and for as short period of time as possible.

For those cases in which deprivation of liberty is absolutely necessary, the National Agency considers the following conditions to be essential:

Principle of separation

The principle that deportees should be accommodated separately from convicted prisoners is designed to protect the welfare of deportees. Custody awaiting deportation should therefore differ significantly from prison in terms of detention conditions, the restrictions on liberty that are specific to prisons, and security measures.¹⁸¹

The National Agency has, on multiple occasions, observed disproportionate structural security measures; these have included bars on the windows and barbed razor wire, in some cases both around the perimeter of the facility and around the courtyards. Such extensive security measures are in the National Agency's view disproportionate, not least as they are tighter than the security measures in many prisons. It would therefore appear doubtful that "the constraint imposed on the third-country nationals concerned is limited to what is strictly necessary in

order to ensure an efficient removal".¹⁸²

The conditions in detention that is solely for the purpose of preparing for and ensuring deportation must differ significantly from detention conditions for individuals serving prison sentences.

Psychological and psychiatric care

Individuals in custody awaiting deportation have frequently had traumatic experiences while fleeing their country of origin, and the deportation process often causes fear and anxiety. An appropriate level of psychological and psychiatric care must therefore be ensured.

Legal advice

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

Independent monitoring is central to ensuring that measures involving the deprivation of liberty are proportionate and that detention conditions are humane.

3.2 – Collection at night

The National Agency has criticised the extension of powers to enter and search residences at night.¹⁸³ Collection at night is to be avoided in order to minimise the strain on deportees.

The National Agency also views as highly problematic the fact that organisational considerations, for example the time at which the country of destination will receive individuals at the airport, are sometimes used as justification for collection at night.

In the National Agency's view, agreements with destination countries on these matters are the responsibility of the competent authorities, which have a duty to seek arrangements that allow collection at night to be avoided.

Collection at night should only be permitted in exceptional circumstances where there would otherwise be a risk of the deportee absconding.

The National Agency has also called for particular care whenever deportation involves children or other vulnerable individuals, stressing

¹⁸¹ CJEU, judgment of 17 July 2014, file no.: C-473/13 and C-514/13; CJEU, judgment of 10 March 2022, file no.: C-519/20, paragraph 54.

¹⁸² CJEU, judgment of 10 March 2022, file no.: C-519/20, paragraph 54.

¹⁸³ Planned amendment to section 58(7) sentence 2 of the Residence Act.

that the best interests of the child must be a primary consideration (Article 3(1) of the UN Convention on the Rights of the Child). This is particularly important in the case of severe measures such as deportations.

Collection should never happen at night when there are children involved. This should be enshrined in law.

4 – EU screening

Over and above its work at national level, the National Agency also responded to the proposed EU Screening Regulation. The Screening Regulation provides for screening for individuals who enter the EU without fulfilling the entry conditions. Screening is intended to establish the procedure to which the individuals in question should be referred – asylum/protection or return.

The National Agency issued an opinion on Article 5 of the EU Screening Regulation, under which screening and the associated regulations apply not only to individuals found at the external or internal borders of the European Union but to all individuals found within the territory of a Member State who are unable to prove that they have entered the European Union in an authorised manner.

Such an approach could result in discriminatory checks.

The screening process can last up to seven days and can involve deprivation of liberty, namely *de facto* detention.

Measures involving deprivation of liberty are, at the very least, always to be avoided whenever they would affect vulnerable groups of individuals such as families with children.

Such measures may only ever be used as a last resort and subject to strict conditions in line with national and international standards.

Independent monitoring is required to ensure that measures are proportionate and that detention conditions are humane.

Article 7 of the Regulation provides for the establishment of a monitoring mechanism that is to ensure that fundamental rights are respected throughout. However, details of how the state obligation is to be implemented are still required: what institution is to carry out monitoring and at what intervals? How will it be notified of measures involving deprivation of liberty and what powers will it have?

For screening under Article 5, independent monitoring could be carried out by the National Prevention Mechanism. An NPM's mandate covers all places under the jurisdiction and/or control of the state in question in which individuals are or may be deprived of their liberty.

To ensure the effective exercise of this mandate, the human resources available to the NPMs would have to be changed and those for the National Agency significantly increased.

VII

Appendix

I – List of visits in 2023

Visits by the Federal Agency

Date	Details
13 April	Göttingen Federal Police station
14 April	Observation of deportation: charter flight from Hanover airport to Albania and Kosovo
26 July	Weiden in der Oberpfalz Federal Police station
26 July	Upper Palatinate Barracks, Pfreimd
27 July	Observation of deportation: charter flight from Munich Airport to Bulgaria
16 August	Observation of deportation: charter flight from Hamburg Airport to Armenia
22 August	Observation of deportation: individual deportations from Berlin Brandenburg Airport
5 October	Lichtenberg Federal Police station
5 October	Berlin-Ostbahnhof Federal Police station
18 October	Frankfurt am Main Federal Police station
24 October	Schirnding border control post
24 October	Selb border control post
21 November	Collection from the combined transit and custody pending deportation facility at Munich Airport
21 November	Observation of deportation: charter flight from Munich Airport to the Gambia
28 November	Observation of deportation: charter flight from Düsseldorf Airport to Nigeria and Ghana

Visits by the Joint Commission

Date	Details
11 January	Residential care and nursing home, Berlin
12 January	Plötzensee Prison Hospital, Berlin
8 March	Duisburg forensic psychiatry facility, North Rhine-Westphalia
9 March	Essen forensic psychiatry facility, North Rhine-Westphalia
15 March	Günzburg forensic psychiatry facility, Bavaria
16 March	Ulm Prison, Baden-Württemberg
16 March	Bad Rehburg forensic psychiatry facility, Lower Saxony
17 March	Hameln juvenile detention facility (follow-up visit), Lower Saxony
29 March	Haar (by Munich) forensic psychiatry facility, Bavaria
29 March	Dortmund Prison, North Rhine-Westphalia
30 March	Dortmund forensic psychiatry facility, North Rhine-Westphalia
13 April	Weinsberg forensic psychiatry facility, Baden-Württemberg
14 April	Heilbronn Prison, Baden-Württemberg
19 April	Bad Schussenried forensic psychiatry facility, Baden-Württemberg
26 April	Moringen forensic psychiatry facility, Lower Saxony
27 April	Göttingen forensic psychiatry facility, Lower Saxony
4 May	Butzbach Prison, Hesse
10 May	Bedburg-Hau forensic psychiatry facility, North Rhine-Westphalia
11 May	Kleve Prison, North Rhine-Westphalia

Date	Details
1 June	Rodewisch forensic psychiatry facility, Saxony
2 June	Zwickau Prison, Saxony
15 June	Moabit Prison, Berlin
15 June	Plötzensee Prison, Berlin
21 June	Viersen forensic psychiatry facility, North Rhine-Westphalia
22 June	Düsseldorf forensic psychiatry facility, North Rhine-Westphalia
29 June	Mainkofen forensic psychiatry facility, Bavaria
30 June	Marsberg forensic psychiatry facility ((juvenile facility), North Rhine-Westphalia
30 June	Marsberg forensic psychiatry facility, North Rhine-Westphalia
6 July	Lohr am Main forensic psychiatry facility, Bavaria
20 July	Bayreuth forensic psychiatry facility, Bavaria
26 July	Billwerder Prison, Hamburg
18 August	Stemwede forensic psychiatry facility, North Rhine-Westphalia
24 August	Düren forensic psychiatry facility, North Rhine-Westphalia
24 August	Emmendingen forensic psychiatry facility, Baden-Württemberg
25 August	Aachen Prison, North Rhine-Westphalia
25 August	Freiburg Prison, Baden-Württemberg
7 September	Leipzig Prison and Prison Hospital, Saxony
8 September	Altscherbitz forensic psychiatry facility, Saxony

Date	Details
14 September	Herne forensic psychiatry facility, North Rhine-Westphalia
15 September	Bochum Prison, North Rhine-Westphalia
20 September	Langenfeld forensic psychiatry facility, North Rhine-Westphalia
21 September	Wuppertal-Vohwinkel Prison, North Rhine-Westphalia
4 October	Saarbrücken Prison, Saarland
5 October	Sulzbach district police station, Saarland
5 October	Hanover district police station, Lower Saxony
6 October	Wunstorf forensic psychiatry facility, Lower Saxony
6 October	Alzey forensic psychiatry facility, Rhineland-Palatinate
11 October	Ansbach forensic psychiatry facility, Bavaria
13 October	Brauel forensic psychiatry facility, Lower Saxony
17 October	Eltville forensic psychiatry facility, Hesse
26 October	Heimsheim Prison, Baden-Württemberg
27 October	Calw forensic psychiatry facility, Baden-Württemberg
6 November	Bad Emstal forensic psychiatry facility, Hesse
15 November	Großschweidnitz forensic psychiatry facility, Saxony
28 November	Heidelberg forensic psychiatry facility, Baden-Württemberg
4 December	Werneck forensic psychiatry facility, Bavaria
15 December	Hörstel forensic psychiatry facility, North Rhine-Westphalia

2 – Members of the Federal Agency

Name	Title	Since	Position
Ralph-Günther Adam	Senior civil servant and prison director (retd)	June 2013	Director
Sabine Thureau	President of the Hesse <i>Land</i> Criminal Police Office (retd)	April 2021	Deputy Director

3 – Members of the Joint Commission

Name	Official title / profession	Since	Position
Rainer Dopp	State Secretary (retd)	September 2012	Chair
Petra Heß	Former Member of the German <i>Bundestag</i>	September 2012	Member
Dr Helmut Roos	Senior civil servant (retd)	July 2013	Member
Margret Osterfeld	Psychiatrist and psychotherapist (retd)	January 2015 to March 2023	Member
Petra Bertelsmeier	Senior public prosecutor (retd)	January 2019	Member
Dr Werner Päckert	Senior civil servant and prison director (retd)	January 2019	Member
Friedhelm Kirchhoff	Senior civil servant and prison director (retd)	January 2022	Member
Eva Moll-Vogel	Regional Court President (retd)	January 2023	Member
Dr Michael Brune	Psychiatrist and neurologist	May 2023	Member

4 – Secretariat staff

Name	Official title/profession	Position
Christian Illgner	Lawyer (Mag. iur.) and criminologist (M.A.)	Head of Services
Dr Sarah Teweleit	Lawyer (LL.M.)	Head of Operations
Maximilian Acosta Schultze	International social work specialist (M.A.)	Research associate
Pascal Décarpes	Criminologist (M.A., LL.M.)	Research associate
Jutta Jung-Henrich	Healthcare training specialist (M.A.)	Research associate
Elisabeth Linkenbach	Nursing training specialist (B.A.)	Research associate
Katja Simon	Public administration specialist	Administration
Judith Bene	Travel agent	Secretariat

5 – Activities in the 2023 reporting period

Date	Location	Activity
11 January	Online	Webinar: “ <i>Rolle der Polizei in der psychiatrischen Versorgung</i> ”
18 January	Online	“Justice for All” EU project: Webinar
9 February	Online	Conference: “20 years of OPCAT and 15 years of SPT”
10-11 February	Online	Participation in the DGSP (German social psychiatry association) forensics expert committee
14-15 February	Online	Webinar: “Monitoring mental health care in prisons”, Council of Europe
27 April	Bamberg	Presentation to the Prison Commission of the <i>Länder</i>
7 June	Online	Webinar: “Strengthening the role of the NPMs in the prevention of torture”, SPT

Date	Location	Activity
16 June	Berlin	Presentation of the National Agency's annual report
23 June	Mainz	Presentation on the work of the National Agency to the <i>Bundesweiter Facharbeitskreis Heimrecht</i> national working group on care home law
14 July	Mainz	Symposium: " <i>Mehr psychisch Kranke = Mehr Straftaten?</i> " Herausforderungen im Umgang mit psychisch Auffälligen aus medizinischer, kriminologischer und juristischer Sicht
22 August	Berlin	Annual meeting with the Federal Ministry of the Interior and Community
5 October	Berlin	Meeting with FRONTEX, the Federal Office for Migration and Refugees and the Federal Police
2-3 November	Bern	Meeting of German-speaking NPMs
9-10 November	Copenhagen	Regional meeting of NPMs and CSOs of the OSCE region on Mental Health in Detention, ODHIR/APT/Council of Europe
23-24 November	Online	International colloquium: "Monitoring of detention conditions of persons in vulnerable situations", Tunisian NPM
27-28 November	Berlin	2023 national conference of the <i>Bundesarbeitsgemeinschaft für Straffälligenhilfe e.V.</i> federal association for offender support: " <i>Brücken bauen</i> " - Übergangsmanagement und Nachsorge für Menschen mit seelischen Beeinträchtigungen in Haft
28 November	Berlin	"Justice for All" EU project: Final Conference
29 November	Berlin	Presentation at the <i>Kongress Menschenrechte</i> human rights conference, CDU/CSU parliamentary group
29 November - 2 December	Berlin	DGPPN conference
7-8 December	Frankfurt	Gefängnis-Medizin-Tage prison healthcare conference
11 December	Berlin	Meeting with the Alliance 90/The Greens parliamentary working group on human rights
13 December	Online	Meeting with the Fundamental Rights Office, FRONTEX

National Agency articles etc. in the reporting year

Menschenrechte in der freiheitsentziehenden Unterbringung in der Kinder- und Jugendhilfe. Forderungen aus der Arbeit der Nationalen Stelle zur Verhütung von Folter, unsere jugend 9/23

Wahrung der Menschenwürde, Forum Strafvollzug, 4/23, pp. 235-238

Isoliert im Gefängnis? / Abschiebehaft in Deutschland, Deutschlandfunk

VIII

Standards

The National Agency is tasked with preventing torture and other cruel, inhuman or degrading treatment or punishment at places of detention. This means that it has a preventive remit. For the fulfilment of this task, it is necessary that the Agency's recommendations are implemented not only in the facilities it visits but in all relevant facilities across Germany. The National Agency translates recurring recommendations into standards. These standards are developed on a continual basis and are intended to provide the supervisory authorities and facilities with benchmarks for humane detention conditions and humane treatment of persons who are deprived of their liberty in any of the facilities under their responsibility. This helps ensure humane detention conditions while also increasing the effectiveness of the National Agency's work despite the large number of facilities. The standards are also published on the website of the National Agency.

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

I – Deportations

1.1 – Time of collection

Collections at night should be avoided, and must be avoided in the case of families with children.

1.2 – Deportation from prison

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

1.3 – Deportation from educational, medical, and care facilities

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

1.4 – Respect for the best interests of children

Families should not be separated as a result of deportation measures. Children should not be shackled. Parents should not be shackled in the presence of their children. If children are

deported, there should always be one person who is tasked with ensuring the child's or children's best interests are respected during the deportation procedure. Suitable facilities to keep children occupied should be available at the airport.

1.5 – Strip-searches

Strip-searches involving a visual examination of a person's genital area represent a serious infringement of that individual's general right of personality.¹⁸⁴ It should therefore be decided on a case-by-case basis whether there are indications of a danger to public security and order that would justify a strip-search. Any such measures must adhere to the principle of proportionality.¹⁸⁵

If a strip-search is carried out, the reasons for this should be documented in a clear and comprehensible manner. Furthermore, the search should be carried out as respectfully as possible, for example in two stages with the individual keeping on their clothing above the waist while they are searched below the waist and vice versa. Staff members of the opposite sex to the individual in question must not be present during such searches.

1.6 – Further training for staff

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

1.7 – Luggage

Every person awaiting deportation must be given the opportunity to pack personal belongings. Steps must be taken to ensure that the person being deported is dressed appropriately for the procedure and for the country of destination, and that identity documents, necessary medication, provisions for children, and any necessary medical aids (e.g. glasses) are packed. One of the persons carrying out the deportation should make sure that luggage is also packed for children being deported. A supply of basic personal hygiene products and sufficient clothing should be kept at the airport and issued as necessary.

¹⁸⁴ Federal Constitutional Court, order of 5 March 2015, file no.: 2 BvR 746/13, margin no. 33

¹⁸⁵ Cologne Administrative Court, judgment of 25 November 2015, file no.: 20 K 2624/14, margin nos. 115 et seqq.

1.8 – Cash lump sum

All deportees must have sufficient financial means to pay for the journey from the airport to their final destination, as well as for meals needed during this journey.

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

For humanitarian reasons, wherever individual cases require – for example if families with children or sick persons are involved – persons required to leave the country should be informed at least a week in advance that their deportation is imminent.¹⁸⁶ A corresponding amendment to section 59(1) sentence 8 of the German Residence Act (*Aufenthaltsgesetz*) aims to ensure this.

1.10 – Information on the deportation procedure

At the time of collection, persons being deported should be provided with information on the deportation procedure. This should be done immediately, comprehensively, in writing and in a language they understand. The information should include the following details:

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

1.11 – Communication throughout the deportation procedure

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

1.12 – Contact with legal counsel

During the deportation procedure, persons awaiting deportation must be allowed to contact legal counsel. Such contact must be made possible at the beginning of the deportation procedure

so that any necessary legal measures can be taken in due time. In the event that the person concerned has so far had no contact with a lawyer, they must be given contact details for emergency legal services.

1.13 – Special consideration for children and sick persons

During deportation procedures, special consideration should be given to the needs of children and sick persons, including any particular care they require.

1.14 – Phone calls with relatives

All persons awaiting deportation should be given the opportunity to contact relatives.

1.15 – Mobile phones

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

1.16 – Food and drink

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

2 – Custody pending deportation and custody to secure departure

2.1 – Initial medical examination

Every person required to leave the country must undergo an initial medical examination upon admission into custody pending deportation (*Abschiebungshaft*) or custody to secure departure (*Ausreisegewahrsam*). It must be ensured that any indications of trauma or mental illness are diagnosed. In the event of communication difficulties, an interpreter should always be called upon to assist in initial medical examinations. For reasons of confidentiality, translations should not be performed by other detainees awaiting deportation. Moreover, if translations are performed by staff members or by other detainees awaiting

¹⁸⁶ Cf. CPT/Inf (2019) 14, in particular paragraphs 16-19, <https://rm.coe.int/1680945a2d> (accessed 20 December 2024).

deportation, there is no guarantee that technical terms and subject matter will be correctly translated into the other language.

2.2 – External contact

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

2.3 – Activities and recreation

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

2.4 – Strip-searches

Strip-searches involving a visual examination of a person's genital area represent a serious infringement of that individual's general right of personality. It should therefore be decided on a case-by-case basis whether there are indications of a danger to public security and order that would justify a strip-search. Any such measures must adhere to the principle of proportionality.

Furthermore, the search should be carried out as respectfully as possible, for example in two stages with the individual keeping on their clothing above the waist while they are searched below the waist and vice versa. If a strip-search is carried out, the reasons for this should be documented in a clear and comprehensible manner. Staff members of the opposite sex to the individual in question must not be present during such searches.

2.5 – Visibility of toilets

Staff members should indicate their presence before entering a cell, especially if the toilet is not partitioned off. The individual in question might be using the toilet and should be given the opportunity to indicate this.

CCTV cameras must be fitted in such a way that the toilet area is either not visible on the monitor at all or is pixelated. Only where there is an acute risk of self-harm or suicide might a decision to allow temporarily unrestricted monitoring of a

specially secured cell potentially be acceptable; such a decision would have to be carefully considered, reasoned and clearly documented in the individual case. If a toilet area is indeed covered by CCTV monitoring without pixelation, only persons of the same sex as the detainee should carry out the monitoring.

2.6 – Physical restraint

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

The use of physical restraint is only to be ordered as a last resort, on the basis of clear and precisely defined criteria, and for the shortest possible period of time. To minimise the risk of physical harm, a strap-based system should be used for restraint. Persons who are being physically restrained should be appropriately clothed in order to protect their sense of modesty. They must be checked on regularly by a doctor. They must also be observed continuously and in person by therapeutic or care staff in direct proximity to them (one-on-one supervision). A judicial decision is also required if physical restraint is to be used for more than just a short period of time.¹⁸⁷ After the measure ends, it should be discussed with the individual concerned.¹⁸⁸ The individual concerned should also be informed after the measure of their right to request a court review of the lawfulness of the restraint procedure.¹⁸⁹

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

2.7 – CCTV monitoring

CCTV monitoring should only be used in individual cases where this is imperative for the

¹⁸⁷ Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15, margin no. 69.

¹⁸⁸ DGPPN (2018): “S3-Leitlinie: Verbinderung von Zwang: Prävention und Therapie aggressiven Verhaltens bei Erwachsenen”.

¹⁸⁹ Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15, margin no. 85.

protection of the person concerned. The reasons for the use of CCTV monitoring should be documented. In addition, the person concerned must be made aware that monitoring is taking place. The mere fact that the camera is visible is not sufficient. It should be possible for the individual to discern whether the camera is running.

2.8 – Clothing

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

2.9 – Staff

The staff of facilities for the enforcement of custody pending deportation or custody to secure departure should be specifically selected and trained to work in this field.

2.10 – Psychological and psychiatric care

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

2.11 – Legal advice

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

2.12 – Legal basis

The detention conditions for persons in custody awaiting deportation and custody to secure departure must differ from those of sentenced prisoners.¹⁹⁰ Furthermore, any infringement of fundamental rights beyond the mere placement in such a detention facility requires its own legal basis.¹⁹¹ Consequently, a specific legal basis must be established for the enforcement of custody pending deportation and custody to secure departure.

2.13 – Respectful treatment

Detainees awaiting deportation should be treated respectfully. For example, staff members should indicate their presence in a suitable manner before entering a cell, and should, as a rule, speak to detainees using polite forms of address.

2.14 – Placement of minors

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

2.15 – Weapons in custody

In facilities for custody pending deportation or custody to secure departure, officers should remove firearms before entering a custody suite.

Due to the significant health risks involved, the use of pepper spray in confined spaces is not a proportionate measure under any circumstances. It should therefore be avoided inside detention facilities.¹⁹²

2.16 – Admission meeting

An admission meeting must be held with every newly admitted person, during which they should be informed of the reason for their detention. They should also be informed of their rights.

During these meetings, special attention should be paid to any indications of mental illness. If necessary, a psychologist should be involved.

The detention facility's staff members responsible for conducting admission meetings must receive specialised training enabling them to recognise signs of trauma or mental illness. In the event of communication difficulties, an interpreter must be called upon to assist in admission meetings.

3 – Customs and Federal and Land police

3.1 – Furnishings, fittings and conditions in custody cells

The conditions in custody cells, including furnishings and fittings, must uphold the human dignity of detainees. Every custody cell should be equipped with a smoke detector, an emergency

¹⁹⁰ Article 16(1) of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

¹⁹¹ Federal Constitutional Court, judgment of 31 May 2006, file no.: 2 BvR 1673/04.

¹⁹² ECHR, *Tali v. Estonia*, judgment of 13 February 2014, Application no. 66393/10 § 78; CPT/Inf (2008) 33, paragraph 86, <https://rm.coe.int/1680697fb3> (accessed 27 May 2024).

button, adjustable lighting, a non-flammable, wipeable mattress, a blanket and a pillow. Where a custody cell only has a low bed, it should have additional seating at standard height.

To ensure the protection of persons placed in custody in the event of a fire, all custody cells must be equipped with a smoke detector.

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

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

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

3.2 – Notification of rights

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

3.3 – Documentation

Custody documentation at police stations and customs offices should be clear and comprehensible. This serves to protect those being held in custody, as well as the staff members responsible.

The following details should be documented:

- The personal details of the individual concerned
- When the deprivation of liberty began
- The staff members responsible for taking the individual into custody and for supervising them during custody
- The individual's state of health
- Whether the individual was informed of their rights
- Whether the individual was informed of the reason for the deprivation of liberty
- Whether a judicial order was obtained
- If a strip-search was conducted, the reasons for this
- The name of the staff member conducting the strip-search;
- The times of checks, including the initials of the staff member in question
- The time and type of meals
- The confiscation and subsequent return of personal items
- The time of release
- If it was not possible to inform an individual of their rights when they were brought into custody, it should be documented whether this was done at the latest by the time they were released.

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

3.4 – Strip-searches

Strip-searches involving a visual examination of a person's genital area represent a serious infringement of that individual's general right of personality.¹⁹³ It should therefore be decided on a case-by-case basis whether there are indications of a danger to public security and order that would justify a strip-search. Any such measures must adhere to the principle of proportionality.¹⁹⁴

If a strip-search is carried out, the reasons for this should be documented in a clear and comprehensible manner. Furthermore, the search

¹⁹³ Federal Constitutional Court, order of 5 March 2015, file no.: 2 BvR 746/13, margin no. 33.

¹⁹⁴ Cologne Administrative Court, judgment of 25 November 2015, file no.: 20 K 2624/14, margin nos. 115 et seqq.

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

3.5 – Visibility of custody cells

It must not be possible for third parties to see into a custody cell.

3.6 – Visibility of toilets

It must be ensured without exception that persons taken into custody cannot be observed when they are using the toilet. For example, a screen could be installed to block the view of the toilet area.

CCTV cameras must be fitted in such a way that the toilet area is either not visible on the monitor at all or is pixelated. Unrestricted monitoring of the custody cell should only be permitted in carefully considered, reasoned and clearly documented individual cases where there is an acute danger of self-harm or suicide. If a toilet area is indeed covered by CCTV monitoring without pixelation, only persons of the same sex as the detainee should carry out the monitoring.

3.7 – Shackling

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

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

In order to protect the right to physical integrity, any shackling in custody should be carried out using textile hand restraint belts,¹⁹⁵ which should be kept on hand at all times.

3.8 – Physical restraint

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

3.9 – Size of custody cells

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

A single-occupancy custody cell must have a floor space of at least 4.5 m². Multiple-occupancy custody cells must have a floor space of at least 3.5 m² per person.

There must be a distance of at least 2 m between opposite walls, and the ceiling must be considerably higher than 2 m.

3.10 – CCTV monitoring

CCTV monitoring should only be used in police stations and customs offices in individual cases where this is imperative for the protection of the person concerned. The reasons for the use of CCTV monitoring should be documented. In addition, the person concerned must be made aware that monitoring is taking place. The mere fact that the camera is visible is not sufficient. It should be possible for the individual to discern whether the camera is running.

3.11 – Multiple occupancy of custody cells

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

3.12 – Right to medical examination

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

3.12A – Medical supervision during excretion of drug packages

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

3.13 – Respectful treatment

Persons being held in detention should be treated respectfully. For example, staff members should indicate their presence in a suitable manner before entering a custody cell, and should, as a rule, speak to detainees using polite forms of address.

3.14 – Independent complaints and investigation bodies

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

¹⁹⁵ For example Segufix hand restraint belts.

Every *Land* should therefore set up independent complaints and investigation bodies.¹⁹⁶

3.15 – Confidentiality of conversations

Persons in custody must be given the opportunity to have confidential conversations with their lawyers. Confidentiality should also be ensured for conversations with doctors or relatives.

3.16 – Weapons in custody

Officers should remove firearms before entering a custody suite.

Given the significant health risks involved, the use of pepper spray in confined spaces is not a proportionate measure under any circumstances. It should therefore be avoided inside police stations and customs offices.¹⁹⁷

4 – Child and youth welfare facilities

4.1 – Possibilities for complaint

Children and juveniles must be able to submit complaints to a suitable complaints body. In addition to contact persons within the facility, section 9a of Book 8 of the Social Code provides for the establishment in the *Länder* of offices of ombudspersons, to which young people and families can turn for advice and conflict resolution. The necessary framework for this needs to be created under *Land* law.

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

4.2 – Outdoor exercise

Every person deprived of their liberty should be offered at least one hour of outdoor exercise per day. That period should be considerably longer for children and juveniles.

4.3 – Information on rights

When they are admitted to the facility, children and juveniles must be informed in writing about their rights. This information must be provided in a manner that is appropriate to their age.

4.4 – CCTV monitoring

CCTV monitoring should only be used in child and youth welfare facilities in individual cases where this is imperative for the protection of the person concerned. Under no circumstances is CCTV monitoring a substitute for the presence of members of staff. The reasons for the use of CCTV monitoring should be documented. In addition, the persons concerned must be informed that monitoring is taking place. The mere fact that the camera is visible is not sufficient. It should be possible for the individual to discern whether the camera is running.

5 – Prisons

5.1 – Clothing worn in specially secured cells

Individuals held in specially secured cells are to be issued with appropriate clothing.

5.2 – Strip-searches

According to the Federal Constitutional Court, strip-searches involving a visual inspection of a person's genital area represent a serious infringement of that individual's general right of personality.¹⁹⁸ Strip-searches must not be conducted as a matter of routine in the absence of concrete suspicions.¹⁹⁹ To satisfy this requirement, general strip-search orders must allow for exceptions if the principle of proportionality so demands. Staff must be made aware that in individual cases it may not be necessary for the prisoner to undress fully.

If it is indeed necessary that the person concerned undress fully, then the search should be conducted respectfully, for example in two stages with the individual keeping on their clothing above the waist while they are searched below the waist and vice versa. If a strip-search is carried

¹⁹⁶ See, inter alia, ECHR, *Kummer v. the Czech Republic*, judgment of 25 July 2013, Application no. 32133/11, § 83; *Eremiášova and Pechová v. the Czech Republic*, judgment of 16 February 2012, Application no. 23944/04, § 135.

¹⁹⁷ ECHR, *Tali v. Estonia*, judgment of 13/02/2014, Application no. 66393/10 § 78; CPT/Inf(2008) 33, paragraph 86.

¹⁹⁸ Federal Constitutional Court, order of 5 March 2015, file no.: 2 BvR 746/13, margin no. 33.

¹⁹⁹ Federal Constitutional Court, order of 10 July 2013, file no.: 2 BvR 2815/11, margin no. 16.

out, the reasons for this should be documented in a clear and comprehensible manner. Staff members of the opposite sex to the individual in question must not be present during such searches.

5.3 – Showers

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

5.4 – Visibility of toilets

Staff members should indicate their presence before entering a cell, especially if the toilet is not partitioned off. The individual in question might be using the toilet and should be given the opportunity to indicate this.

CCTV cameras must be fitted in such a way that the toilet area is either not visible on the monitor at all or is pixelated. Only where there is an acute risk of self-harm or suicide might a decision to allow temporarily unrestricted monitoring of a specially secured cell potentially be acceptable; such a decision would have to be carefully considered, reasoned and clearly documented in the individual case. If a toilet area is indeed covered by CCTV monitoring without pixelation, only persons of the same sex as the detainee should carry out the monitoring.

5.5 – Solitary confinement

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

5.6 – Physical restraint

The use of physical restraint²⁰⁰ is only to be ordered as a last resort, on the basis of clear and precisely defined criteria, and for the shortest possible period of time. To minimise the risk of physical harm, a strap-based system should be used for restraint. Persons who are being physically restrained should be appropriately clothed

in order to protect their sense of modesty. They must be checked on regularly by a doctor. They must also be observed continuously and in person by therapeutic or care staff in direct proximity to them (one-on-one supervision). A judicial decision is also required if physical restraint is to be used for more than just a short period of time.²⁰¹ After the measure ends, it should be discussed with the individual concerned.²⁰² The individual concerned should also be informed after the measure of their right to request a court review of the lawfulness of the restraint procedure.²⁰³

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

5.7 – Cell size

In order for detention conditions to be humane, a single-occupancy cell must have a floor space of at least 6 m²,²⁰⁴ excluding the sanitary facilities. In cases where the sanitary facilities are not partitioned off, approximately one further square metre should be added for that area, giving a total floor space of at least 7 m². For multiple occupancy, a further 4 m² of floor space must be added to the minimum area for each additional person, excluding the area of the sanitary facilities.

5.8 – CCTV monitoring

CCTV monitoring in prisons should only be carried out in individual cases where this is imperative for the protection of the person concerned. Under no circumstances is CCTV monitoring a substitute for the presence of members of staff. The reasons for the use of CCTV monitoring should be documented. In addition, the person concerned must be made aware that monitoring is taking place. The mere fact that the camera is visible is not sufficient. It should be possible for

²⁰⁰Definition: see VIII 2.6 - Physical restraint.

²⁰¹ Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15, margin no. 69.

²⁰² DGPPN (2018): “S3-Leitlinie: Verhinderung von Zwang: Prävention und Therapie aggressiven Verhaltens bei Erwachsenen”.

²⁰³ Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15, margin no. 85.

²⁰⁴ 6 m² is the absolute minimum requirement. In the National Agency's view, cells that are smaller than this violate Article 1 of the German Basic Law. Any additional legal requirements beyond this minimum standard must, of course, also be observed, and are welcomed.

the individual to discern whether the camera is running.

5.9 – Multiple-occupancy of cells without separate toilets

According to past decisions of the Federal Constitutional Court,²⁰⁵ prison cells accommodating more than one person must have a completely separate toilet with separate ventilation. Multiple occupancy without such a separation constitutes a violation of human dignity.

5.10 – Use of segregation units

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

5.11 – Respectful treatment

Prisoners should be treated respectfully. This includes staff indicating their presence in a suitable manner before entering the prison cell, and speaking to inmates using polite forms of address.

5.12 – Peepholes and viewing windows

Except in the case of observation rooms, peepholes and viewing windows should be covered in order to protect the privacy of detainees.

5.13 – Interpretation during medical consultations

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

5.14 – Handling confidential medical information

In order to ensure medical information is handled confidentially, details concerning infectious

diseases, for example, should only be recorded in medical files and not in prisoner files. This ensures that only medical personnel are made aware of such information, and not general prison staff.

5.15 – Conditions in prison cells

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

6 – Psychiatric clinics

6.1 – Segregation

Segregation may only be carried out on the basis of an individual risk assessment, and for the shortest possible period of time. Segregation lasting for more than just a short period requires judicial authorisation.²⁰⁶

6.2 – Clothing for crisis intervention rooms

Individuals held in crisis intervention rooms are to be issued with appropriate clothing.

6.3 – Outdoor exercise

Every person deprived of their liberty should be offered at least one hour of outdoor exercise per day. That period should be considerably longer for children and juveniles.

6.4 – Documentation of coercive measures

All coercive measures should be clearly and comprehensively documented. Each measure must be documented in writing. This includes documenting which less severe measures have already been tried and an explanation of why they failed.

6.5 – Strip-searches

According to the Federal Constitutional Court, strip-searches involving a visual inspection of a person's genital area represent a serious infringement of that individual's general right of personality.²⁰⁷ Strip-searches must not be conducted as a matter of routine in the absence of concrete

²⁰⁵ Federal Constitutional Court, order of 22 February 2011, file no.: 1 BvR 409/09, margin no. 30.

²⁰⁶ Under section 32(3) of the North Rhine-Westphalia Act on Criminal Law-related Committal, all forms of segregation require a judicial decision if they last longer than 24 hours.

²⁰⁷ Federal Constitutional Court, order of 5 March 2015, file no.: 2 BvR 746/13, margin no. 33.

suspensions.²⁰⁸ To satisfy this requirement, general strip-search orders must allow for exceptions if the principle of proportionality so demands. Staff must be made aware that in individual cases it may not be necessary for the prisoner to undress fully.

If it is indeed necessary that the person concerned undress fully, then the search should be conducted respectfully, for example in two stages with the individual keeping on their clothing above the waist while they are searched below the waist and vice versa. If a strip-search is carried out, the reasons for this should be documented in a clear and comprehensible manner. Staff of the opposite sex must not be present.

6.6 – Visibility of toilets

Staff should indicate their presence before entering a patient room, especially if the toilet is not partitioned off. The patient might be using the toilet and should be given the opportunity to indicate this.

CCTV cameras must be fitted in such a way that the toilet area is either not visible on the monitor at all or is pixelated. Only where there is an acute risk of self-harm or suicide might a decision to allow temporarily unrestricted monitoring of a crisis intervention room potentially be acceptable; any such decision should be carefully considered, reasoned and clearly documented. If a toilet area is indeed covered by CCTV monitoring without pixelation, only persons of the same sex as the individual should carry out the monitoring.

6.7 – Physical restraint

The use of physical restraint²⁰⁹ is only to be ordered as a last resort, on the basis of clear and precisely defined criteria, and for the shortest possible period of time. Persons who are being physically restrained should be appropriately clothed in order to protect their sense of modesty. The individuals in question must be observed continuously and in person by therapeutic or care staff who are in direct proximity to them (one-on-one supervision). A judicial decision is also required if physical restraint is to be used for more

than just a short period of time.²¹⁰ After the measure ends, it should be discussed with the individual concerned.²¹¹ The individual concerned should also be informed after the measure of their right to request a court review of the lawfulness of the restraint procedure.²¹²

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

6.8 – Information on rights

Patients must receive written information on their rights in the psychiatric facility. Where young people are concerned, this information should be provided in an age-appropriate form.

6.9 – CCTV monitoring

CCTV monitoring of patients in psychiatric facilities should only be used where absolutely necessary in a given case. Under no circumstances is CCTV monitoring a substitute for the presence of members of staff. The reasons for the use of CCTV monitoring should be documented. In addition, the person concerned must be made aware that monitoring is taking place. The mere fact that the camera is visible is not sufficient. It should be possible for the individual to discern whether the camera is running.

6.10 – Multiple-occupancy of patient rooms without separate toilets

Rooms accommodating more than one person must have a completely separate toilet with separate ventilation. Multiple occupancy without such a separation constitutes a violation of human dignity.

6.11 – Respectful treatment

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

²⁰⁸ Federal Constitutional Court, order of 10 July 2013, file no.: 2 BvR 2815/11, margin no. 16.

²⁰⁹ Definition: see VIII 2.6 – Physical restraint.

²¹⁰ Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15, margin no. 69.

²¹¹ DGPPN (2018): “S3-Leitlinie: Verhinderung von Zwang: Prävention und Therapie aggressiven Verhaltens bei Erwachsenen”.

²¹² Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15, margin no. 85.

6.12 – Peepholes and viewing windows

Steps must be taken to ensure that third parties cannot see into patient rooms or into observation or crisis intervention rooms.²¹³

6.13 – Confidentiality of conversations

In psychiatric facilities, measures should be introduced to ensure that phone calls can be made confidentially and personal conversations can be conducted in private.

7 – Detention facilities of the Federal Armed Forces

7.1 – Furnishings, fittings and conditions in detention cells

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

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

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

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

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

7.2 – Notification of rights

Every person deprived of their liberty must be informed of their rights, immediately and without exception. To this end, forms containing all the relevant information – at the very least information about the fact that the persons concerned have the right to be examined by a doctor, to consult a lawyer and to notify a trusted third party – must be kept available.

7.3 – Specially secured detention cells

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

In addition, close supervision and medical observation of detainees must be ensured.

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

7.4 – Documentation

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

The following details should be documented:

- The personal details of the individual concerned
- When the deprivation of liberty began
- The soldiers in charge (detention enforcement officers) at the time the individual is taken to the facility
- The fitness for detention of the individual concerned
- The individual's state of health
- Whether the individual was informed of their rights
- Whether the individual was informed of the reason for the deprivation of liberty
- Whether a judicial order was obtained

²¹³ The term "crisis intervention room" refers to a room in which patients are placed to avert an acute risk of harm to themselves or others.

- The times of checks, including the initials of the soldiers in charge
- The time and type of meals
- Outdoor exercise
- The daily routine of the individual concerned (whether they leave detention to perform their duties or to engage in purposeful activities)
- The confiscation and subsequent return of personal items
- The time of release

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

7.5 – Visibility of toilets

The soldiers in charge (detention enforcement officers) should indicate their presence in an appropriate manner before entering a detention cell, especially if the toilet is not partitioned off. The detainee might be using the toilet and should be given the opportunity to indicate this.

7.6 – Size of detention cells

In order for detention conditions to be humane, a detention cell must have a floor space of at least 6 m², excluding the sanitary facilities. In cases where the sanitary facilities are not partitioned off, approximately one further square metre should be added for that area, giving a total floor space of at least 7 m².

7.7 – Respectful treatment

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

7.8 – Fitness for detention

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