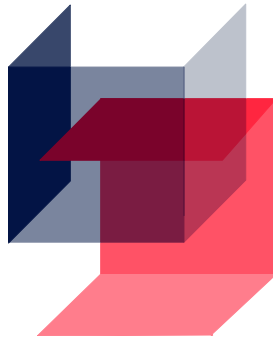


NATIONAL  
AGENCY  
FOR THE  
PREVENTION  
OF  
TORTURE

# ANNUAL REPORT 2015

**Period under review:**  
1 January – 31 December 2015





NATIONAL  
AGENCY  
FOR THE  
PREVENTION  
OF  
TORTURE

# ANNUAL REPORT 2015

of the Federal Agency and of the Joint Commission

**Period under review:**  
1 January – 31 December 2015

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## FOREWORD

The National Agency for the Prevention of Torture is the body responsible in Germany for ensuring humane conditions of detention and treatment in places where people are deprived of their liberty. It presents an annual activity report to the Federal Government, the German Bundestag, the *Land* governments and the *Land* parliaments. The Annual Report 2015 covers the period from 1 January to 31 December 2015.

The number of members of the Joint Commission was doubled at the beginning of 2015. This represented a significant step for the Commission, as it signalled the go-ahead for visits in areas of its remit which it had previously not been able to visit, or only infrequently, most especially residential care homes and nursing homes for the elderly, psychiatric clinics and youth welfare facilities. Unlike those facilities it has visited in the past, some of the facilities in the aforementioned areas are privately run. The legal prerequisites for publishing the reports of the Joint

Commission's visits to privately-run facilities citing their name are still being examined at present.

The findings and recommendations made by the National Agency in the course of its visits are summarised in this Annual Report. The detailed reports of all its visits and the responses of the supervisory authorities are available on the National Agency's website.

The National Agency takes positive stock overall of its visits and activities in 2015: Many of the recommendations made by the Federal Agency and the Joint Commission have already been implemented. Nevertheless, in many cases these recommendations are still only being implemented in the facilities visited and not at regional or national level. In the coming year the National Agency will, therefore, again step up its efforts to publish and disseminate its recommendations to achieve the long-term objective of the most extensive nationwide implementation possible.

## LIST OF ABBREVIATIONS

CCTV	closed-circuit television
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
EU	European Union
OPCAT	Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
SPT	UN Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
UN	United Nations







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

## I – BACKGROUND

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

### I.1 – INSTITUTIONAL FRAMEWORK

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

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

The members of the Federal Agency are appointed by the Federal Ministry of Justice and Consumer Protection, the members of the Joint Commission by the Conference of Ministers of Justice of the *Länder*. Members are subject to no technical or legal supervision and are independent in the exercise of their functions. They act on an honorary basis and may resign their office at any time. They may only be removed before the end of their term in office subject to the strict conditions set out in sections 21 and 24 of the German Judiciary Act. The National Agency has a Secretariat staffed with full-time employees and is based in the Centre for Criminology (KrimZ) in Wiesbaden.

The Federal Agency and the Joint Commission work closely when it comes to planning and carrying

out their activities, and are supported in this by the Secretariat. They hold regular joint working sessions to that end.

### I.2 – TASKS

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

At the federal level this definition encompasses all of the approx. 280 detention facilities operated by the Federal Armed Forces, Federal Police and customs authorities. The Federal Agency is also responsible for monitoring forced returns being accompanied by the Federal Police. The overwhelming majority of places of detention, however, fall within the remit of the Joint Commission. As of December 2015 these comprised 184 organisationally independent prisons, approx. 1,270 *Land* police stations, all courts with holding cells, seven facilities enforcing custody pending deportation, approx. 550 psychiatric units in specialist clinics and general hospitals, 28 child and youth welfare facilities with closed units, and closed homes for people with disabilities. The around 10,900 residential care homes and nursing homes for the elderly where measures depriving people of their liberty are or can be enforced are also classed as places of detention under the above definition.

As well as conducting its visits, the National Agency is also tasked with making suggestions and observations regarding both existing and draft legislation.

### I.3 – POWERS

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

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

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

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

## 2 – THE NATIONAL AGENCY IN THE INTERNATIONAL CONTEXT

The National Agency is Germany's national preventive mechanism pursuant to Article 3 of the OPCAT. Each State Party to the OPCAT is required to establish such a mechanism, which may comprise one or several facilities. The National Agency engages in a regular exchange with numerous other preventive mechanisms.

### 2.1 – WORLDWIDE TORTURE PREVENTION

As at the end of 2015, the OPCAT had 98 signatory states and had been ratified by 80 states.

Of these 80 States Parties, 63 have already designated a national preventive mechanism based on one of three models: Under one model, the remits of existing ombuds institutions were extended to include the prevention of torture (e.g. in Sweden, Austria and Spain); secondly, various existing monitoring mechanisms were combined to create a national preventive mechanism (e.g. in the United Kingdom); a third group of states, including France, Switzerland and Germany, established new national preventive mechanisms.

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

The SPT may visit the States Parties for two reasons: First, like the European Committee for the Prevention of Torture (CPT), it can visit places of detention in the States Parties with the aim of making

recommendations in respect of protecting people deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment. To this end it essentially has the same powers as the national preventive mechanisms. Second, it may also conduct visits to support the States Parties in setting up their national preventive mechanisms and to offer them training and technical assistance.

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

Representatives of the National Agency were again involved in various international activities in the period under review. For instance, the National Agency was represented at an event to mark the 25th anniversary of the CPT. Also, members of the Secretariat took part in conferences in Vienna on issues connected with the implementation of recommendations made (see 4.1 below), in Istanbul on setting up Turkey's national preventive mechanism and in Bristol on the "Bangkok Rules" (the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders).

Further, the exchange between the national preventive mechanisms of Austria, Switzerland and of Germany which was launched in 2014 continued at the invitation of the Austrian Ombudsman Board. The Ombudsman Board invited representatives of the Swiss National Commission on the Prevention of Torture and the National Agency to Vienna for a meeting from 28 to 30 October 2015. The meeting focused on the conduct of visits to care homes and nursing homes for the elderly in which measures de-

prising people of their liberty are enforced. Now that the number of members of the National Agency has been increased, it will also be devoting more attention to the issue of care homes and nursing homes for the elderly. To gain insights into practical aspects of such visits, representatives of the National Agency accompanied the Austrian Ombudsman Board, which has been conducting such visits for many years, on visits to Austrian care homes and nursing homes for the elderly. In addition, some of the members of the National Agency dealt with the issue of respect for

human rights in policing during a meeting with the Austrian Ministry of the Interior.

A further meeting of German-speaking preventive mechanisms is planned for 2016 at the invitation of the Swiss National Commission on the Prevention of Torture.

During their trip to Vienna members and staff of the National Agency took part in a seminar organised by the Ludwig Boltzmann Institute of Human Rights on interviewing people in places of detention.

## 3 – STANDARDS

The National Agency has a preventive remit. Its recommendations are not only supposed to be implemented in the facilities it visits but in all the relevant facilities across Germany. That is why the supervisory authorities are called to translate any recommendations made in regard to a specific facility to other comparable facilities within their area of responsibility. The National Agency has also standardised its recommendations concerning recurring complaints. In the period under review it focussed on police custody facilities and developed standards in regard to these facilities. These are set out in section III.4.

### 3.1 – PROTECTION OF PRIVACY

#### 3.1.1 – Video surveillance

Privacy must be protected in all places where people are deprived of their liberty. Where video surveillance (CCTV monitoring) is in operation, this can be done, for instance, by pixelating images of the sanitary facilities. If need be, it may be conceivable, in carefully considered, substantiated and documented individual cases, to permit unrestricted monitoring of a detention room or cell where there is an acute danger of self-harm or suicide. The person concerned must at any rate be informed of the fact that optical surveillance is in operation. The surveillance must be apparent or at least perceptible to the person concerned; covert CCTV monitoring is not permissible.<sup>1</sup>

#### 3.1.2 – Peepholes

Many prisons do not make use of available peepholes. The National Agency therefore raises the question of whether they could be done away with entirely. In those cases where doors are still fitted with peepholes, these should not be used without giving advance

warning by means of knocking on the door or giving some other prompt. This especially applies where a toilet is in full view of the person looking through the peephole. Detainees must be informed of this fact.

#### 3.1.3 – Clothing worn in specially secured rooms

When placed in a specially secured room containing no dangerous objects detainees should be given at least a pair of paper underpants and a paper shirt to wear.<sup>2</sup>

#### 3.1.4 – Communal showers

Those deprived of their liberty should be given the opportunity to shower alone if they wish to do so. Irrespective of this, at least one shower in each communal shower room should be partitioned off.<sup>3</sup>

### 3.2 – PHYSICAL RESTRAINT

The use of physical restraints should be ordered only as a measure of last resort and on the basis of clear and precisely defined conditions, and they should be applied only for the shortest possible period of time. Physical restraints should be applied in as careful a manner as possible, which is why the use of systems of belts or bandages is recommended. The use of metal devices should be avoided on principle due to the high risk of injury. Out of respect for a person's sense of shame, it should be examined on a case-by-case basis whether the person concerned can change all or some of their clothing to ensure they are wearing something suitable or provided specifically for this purpose. Those under physical restraint should at least be given a pair of paper underpants and a paper shirt to wear. Along with being kept under continuous, direct ob-

<sup>2</sup> See *National Agency, Annual Report 2013*, p. 83

<sup>3</sup> See *National Agency, Annual Report 2014*, p. 42

<sup>1</sup> *National Agency, Annual Report 2013*, p. 27 et seq.

## SPECIFIC ISSUES

servation by a member of staff (known as “*Sitzwache*”), those who are placed under physical restraint must be checked on regularly by a doctor. Comprehensible and comprehensive written documentation of the entire procedure must be provided each time a person is placed under physical restraint.

In view of the possible risk of injury and to ensure full respect for human dignity in a prison context, physical restraint is to be applied in a medical setting wherever possible. This guarantees that medical care can be delivered to the person placed under physical restraint.<sup>4</sup>

### 3.3 – SOLITARY CONFINEMENT

To mitigate the negative consequences of solitary confinement on the mental and physical health of the person concerned, sufficient opportunity for appropriate human contact (e.g. extended visiting times) and to engage in purposeful activity is to be provided. Those placed in solitary confinement are also to be regularly visited by a psychiatrist/psychologist. These meetings should be conducted in an appropriate and confidential environment.<sup>5</sup>

### 3.4 – FURNISHINGS AND FITTINGS IN PRISON CELLS

Prisoners should have access to natural, unfiltered light in their cells. Their view out of the window should not be obstructed by opaque plexiglass panes, for instance.<sup>6</sup>

Multiple-occupancy cells must have a separate toilet with separate ventilation. The minimum required floor space of a multiple-occupancy cell is dependent on the individual circumstances. Account must, for example, be taken of the amount of time prisoners are allowed to spend outside the cell and whether they are able to look out of the window.<sup>7</sup>

### 3.5 – FURNISHINGS AND FITTINGS IN CUSTODY CELLS

Custody cells used by the police, the customs authorities and the military police should be equipped with fire detectors so as to guarantee the safety of those kept in custody in the event of fire. The custody cells should also have night lighting so that, for example, the emergency call button can be easily located

without the source of light then preventing the detained person from sleeping. Likewise, custody cells should have an intercom, especially when they are located in remote parts of the building. A sufficient number of washable, flame-resistant mattresses should be kept in stock. When new custody facilities are built, it should be ensured that natural light is available in the rooms. Facilities which do not have access to daylight are not suitable for detaining people for any significant length of time.<sup>8</sup>

### 3.6 – DOCUMENTING SHORT-TERM CUSTODY

Police officers must make a record in the custody record book whenever they check on those detained in custody. In addition to the exact time of the check, the name and signature of the officer checking on the person in the custody cell must always be included. It should be possible to read and understand the custody record book without having to consult other documents. It should also be possible to verify whether checks have been carried out without first having to consult an occupancy sheet which is located elsewhere. The custody record book should therefore always be kept in the vicinity of the custody cells.

### 3.7 – INSTRUCTION ABOUT RIGHTS

Each and every person taken into police custody must immediately be instructed about their rights. Forms containing all the relevant information should therefore be available in various languages. They are at the very least to include information about the fact that anyone who is taken into police custody has the right to be examined by a doctor, to consult a lawyer, to notify a trusted third party and, where applicable, their home country’s consulate. As regards access to a legal adviser, it is not sufficient to simply instruct those taken into police custody about their right to contact a “trusted third party”. Rather, it must be made clear that access to legal advice constitutes a separate right. It should be documented in the police custody record book that the person taken into custody has been instructed about their rights so that it is clear following a shift change-over whenever the relevant information was not provided for specific reasons.<sup>9</sup> If a person was not instructed about their rights when they were brought in, this must be done at a later point in time.

<sup>4</sup> See *National Agency, Annual Report 2012*, p. 21

<sup>5</sup> *National Agency, Annual Report 2010/2011*, p. 19

<sup>6</sup> *National Agency, Annual Report 2013*, p. 82

<sup>7</sup> *National Agency, Annual Report 2013*, p. 82

<sup>8</sup> *National Agency, Annual Report 2013*, p. 75

<sup>9</sup> See *National Agency, Annual Report 2013*, p. 72, p. 76

## 4 – SPECIFIC ISSUES

### 4.1 – IMPLEMENTATION OF RECOMMENDATIONS (FOLLOW-UP PROCESS)

In 2014 the Ludwig Boltzmann Institute of Human Rights in Vienna and the Human Rights Implementation Centre at the University of Bristol, in cooperation with the national preventive mechanisms, launched a study on the effective implementation of recommendations made in the context of inspection visits. Two workshops on this issue were held in Vienna and Bristol in the autumn of 2014.

The study, published in May 2015, contains an evaluation of the national preventive mechanisms' previous practice and makes recommendations as regards a successful follow-up strategy.<sup>10</sup> According to the study, responsibility for implementing the national preventive mechanisms' recommendations lies with each State Party, which has to take legislative measures or otherwise take account of recommendations, including in court rulings. In contrast, the follow-up process serves to give the national preventive mechanisms an overview of the extent to which their recommendations have been implemented in each State Party. Article 22 of the OPCAT provides for a dialogue between the national preventive mechanisms and the competent national authorities regarding possible implementing measures and the respective level of implementation. The study lists the following as the building blocks of an effective follow-up strategy:

- + Situation analysis
- + Visualising desired change
- + Reflecting about how change happens and clarifying assumptions
- + Stakeholder analysis
- + Reflecting on availability and suitability of tools for follow-up action
- + Strategic networking, including relations with the media
- + Developing pathways of change

<sup>10</sup> Birk, Moritz; Zach, Gerrit; Long, Debra et al., *Enhancing Impact of National Preventive Mechanisms*, Ludwig Boltzmann Institute of Human Rights: Vienna, 2015. Retrievable at: [http://bim.lbg.ac.at/sites/files/bim/attachments/enhancing\\_impact\\_of\\_national\\_preventive\\_mechanisms\\_o.pdf](http://bim.lbg.ac.at/sites/files/bim/attachments/enhancing_impact_of_national_preventive_mechanisms_o.pdf)

- + Monitoring of implementation
- + Evaluation
- + Learning

The study also recommends more systematically incorporating EU institutions into the follow-up process. Recommendations should ideally be implemented at EU level and EU standards in safeguarding humane conditions of detention and treatment should be developed.

The follow-up strategy which the National Agency has developed in recent years largely already incorporates these building blocks. During its visits the National Agency evaluates the extent to which those recommendations have been implemented which it or another mechanism has made in the past to the competent supervisory authority. It also uses a data management system which now also records the level of implementation of each recommendation. Meetings to discuss implementation of previously made recommendations, among other matters, are held with the competent supervisory authority as and when required.

The National Agency also continuously works to expand its public relations work.

### 4.2 – THE POLICE

In 2015 the National Agency focused in particular on the means for preventing police misconduct, in the context of which it also established contact with independent appeal bodies.

#### 4.2.1 – Preventing police misconduct

The National Agency exchanged information and experience regarding the prevention of police misconduct with the Federal Police Academy. A survey of the ministries of the interior of the *Länder* revealed that the *Land* police forces address this issue in the context of their training and development programmes. According to the *Länder*, various modules are available, for example intercultural skills training, organisational psychology, the fundamental rights and values enshrined in the Constitution, professional ethics and police crisis management. Attention is also paid during the recruitment process to ensuring that applicants have the necessary skills and abilities.



Most of the *Länder* also informed the National Agency that they operate internal complaints systems for investigating police misconduct and that these also handle administrative and technical supervisory tasks. These complaints systems ensure that police misconduct is rigorously pursued at the disciplinary and criminal prosecution level, the National Agency was informed. Some *Länder* reported that complaints are addressed and discussed in the context of staff and leadership meetings. In North Rhine-Westphalia these reports are also passed on to the *Land* parliament.

The National Agency also looked into the issue of CCTV monitoring of police stations in terms of better clearing up police assaults. According to the *Länder*, introducing CCTV monitoring in police stations has not yet been considered as an option, apart from in the context of protecting police premises. CCTV monitoring is, nevertheless, already being conducted in some custody suites and individual custody and interrogation rooms. Rhineland-Palatinate informed the National Agency that its police force had introduced body cams in July 2015 and that police vehicles are now fitted with CCTV cameras.

#### 4.2.2 – Independent complaints and investigation offices

In the period under review the National Agency looked into the use of force by police officers when taking people into custody and how this can be prevented. In the first instance, the National Agency was primarily interested in whether there are any independent bodies which accept and process complaints regarding such incidents.

In the National Agency's view, the existence of an independent complaints and investigation office has an important role to play when it comes to preventing police officers using force against those being taken into custody. Victims of police assaults will only place their trust in such offices if they are perceived as being independent. They should also give police officers who witness the use of force by colleagues a means of reporting incidents which avoids the official channels.

In spring 2015 there were reports of ill-treatment in one Federal Police District Office, whereupon the Federal Police set up an "integrity line" which is directly subordinate to the Federal Police President and is responsible for handling complaints and information supplied by Federal Police officers.

Complaints and investigation offices have already been set up in Bavaria, Bremen, Hamburg, Lower Saxony, Rhineland-Palatinate and Saxony-Anhalt. A central police complaints office opened in Saxony in early 2016. The *Land* parliament in North Rhine-Westphalia is currently examining whether to intro-

duce an independent complaints office; the coalition agreements in Thuringia and Schleswig-Holstein specify that such offices are to be set up.

The Joint Commission contacted these offices in the aforementioned *Länder* and requested information about their mandate and working method. It also held personal meetings with Department 13 (Internal Investigations) in Bavaria and with the Rhineland-Palatinate Police Commissioner.

The above-mentioned *Länder* have adopted very different approaches. Rhineland-Palatinate has expanded the remit of its ombudsperson to include the tasks of the Police Commissioner, in which capacity the ombudsperson accepts complaints and aims at out-of-court conflict resolution. Lower Saxony and Saxony-Anhalt have also created complaints offices to which both citizens and police employees can turn.

Bavaria chose a different model when it set up its Department 13 (Internal Investigations) in 2013. The Department is attached to the Bavarian *Land* Criminal Police Office and is responsible for conducting criminal investigations against employees of the Bavarian police in the case of offences committed while an officer was on duty. Individual cases may also be assigned to the Department, for instance offences committed while an officer was off duty. Department 13, a criminal police investigation office, has all the requisite investigatory powers and is subject to the principle of mandatory prosecution (*Legalitätsprinzip*). Further, the Department is the point of contact for citizens (telephone hotline) as well as for employees of the Bavarian police (intranet). As well as processing those cases which are assigned to it, Department 13 also regards police officer training and development as key. That is why those employed in the Department take part in the police training programme. In addition, there are plans to incorporate the relevant content into the training programmes of all the career tracks in the Bavarian police force. The aim is to provide employees with information about all aspects of internal investigations (conduct, external effects and consequences) and to raise their awareness so as, ultimately, to have a general preventive impact when it comes to the incidence of police assaults.

Finally, the Office of Internal Investigations in Bremen and the Department of Internal Investigations (D.I.E.) in Hamburg operate under a similar mandate. The latter, though, does not process complaints.

Based on the insights gained and given its preventive remit, the National Agency feels that it is important that each *Land* has an office to which the victims of police assaults can turn and that such an office is also established at federal level. Police officers should also be able to turn to these offices to report any miscon-

duct on the part of colleagues. This view is shared by international institutions, for instance by the CPT and the United Nations Human Rights Committee.<sup>11</sup>

#### 4.3 – DRAFT LEGISLATION

In the period under review the National Agency was asked to comment on draft legislation drawn up by various *Länder* and by the Federal Government concerning the treatment of people deprived of their liberty. Most of the draft legislation was drawn up by the *Land* ministries of justice, and some by the *Land* ministries of the interior and by the Federal Ministry of Justice and Consumer Protection. The drafts concerned the execution of prison sentences, youth detention, pre-deportation detention and measures of reform and prevention. As well as submitting written comments, representatives of the National Agency also took part in hearings in the Hesse and the Saarland *Land* parliament.

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<sup>11</sup> CPT (2006), CPT Standards, margin no. 41; CCPR/C/DEU/CO/6, 12.II.2012, margin no. 10

#### 4.4 – ENQUIRIES BY INDIVIDUALS

In the period under review the National Agency received individual enquiries regarding 35 separate cases which all referred to facilities within the Joint Commission's remit.

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

Where an enquiry contains information regarding serious shortcomings, the National Agency will, with the consent of the person submitting the enquiry, contact the competent authority. Where an enquiry indicates that there is a risk of suicide or that someone is a danger to others, the National Agency will also immediately contact the head of the facility concerned.





**II**  
**VISITS BY THE**  
**FEDERAL AGENCY**

## I – FEDERAL POLICE

<i>Recommendation:</i>	<i>Custody record book</i>	<i>Use of peepholes in sanitary facilities</i>	<i>Instruction about rights</i>	<i>Structural conditions</i>	<i>Smoke detectors</i>	<i>Holding stocks of mattresses</i>	<i>Lighting</i>
<b>Bremerhaven Federal Police Station</b>							
<b>Cuxhaven Federal Police Station</b>	X						
<b>Freiburg Federal Police Station</b>		X	X				
<b>Freiburg Railway Station Duty Room</b>			X				
<b>Friedrichshafen Federal Police Station</b>		X					
<b>Freyung Federal Police District Office</b>							
<b>Hof Federal Police Station</b>				X			X
<b>Konstanz Federal Police District Office</b>							
<b>Münster Federal Police District Office</b>	X	X					
<b>Neumünster Federal Police Station</b>	X				X		
<b>Offenburg Federal Police District Office</b>							
<b>Passau Federal Police Station</b>				X			
<b>Singen Federal Police Station</b>	X	X				X	
<b>Waldshut-Tiengen Federal Police Station</b>	X			X			
<b>Weil am Rhein Duty Room</b>		X					
<b>Zwiesel Federal Police Station</b>					X		X

In the period under review the Federal Agency visited 16 Federal Police stations and monitored one forced return by air.

### I.1 – FEDERAL POLICE STATIONS

Of all the police stations which the Federal Agency visited it was those belonging to Freyung Federal Police District Office which especially stood out. The District Office's area of responsibility includes a section of the border with Austria across which the majority of refugees entered Germany in 2015. Responsi-

bility for processing those claiming asylum and for dealing with people smuggling crimes thus principally fell to Passau Federal Police Station. This meant that the whole of Freyung Federal Police District Office was severely overstretched both in terms of staffing and facilities. Despite the huge amount of work which needed to be done in this field, however, the Federal Agency noted the officers' positive and constructive attitude. This was also in evidence in Neumünster Federal Police Station (which was significantly less overstretched), where the Federal Agency met one officer who had, at his own initiative, purchased trans-

lation software for his mobile phone so as to be able to communicate more easily with refugees.

Nonetheless, Passau Federal Police Station was insufficiently equipped either to cope with the number of refugees needing to be registered or to take persons suspected of being involved in illegal people smuggling into custody. Although at the time of the visit in June 2015 refugees were being registered in a function hall and the conditions there were adequate, upon the delegation's arrival several people were being accommodated in two rooms in the station which were unsuitable. There was no means of providing the refugees with drinks, only a washbasin was available in each room. The rooms also did not have an intercom, which is why those being detained there had to knock or call out to draw attention to themselves. In addition, one of the rooms had no chairs, only four mattresses on the floor. The room was not suited to providing decent accommodation for ten people over a period of several hours in some cases.

Equally, the Federal Agency deemed the custody conditions in Passau Federal Police Station of those arrested on suspicion of an offence not to be consistent with human dignity. Not only did the custody room have an open toilet – at the top end of the plank bed – which was visible through the lattice door to the room. The visiting delegation also found that two people were being accommodated in what was supposed to be a single-occupancy room and that they had been detained there overnight. A mattress had

simply been placed next to the plank bed for the second person to sleep on. This meant there was no room for these two people to stand up or move around. It must be emphasised that the officers were aware that the situation was inadequate, and that they allowed the detainees to use a toilet outside of the custody room. According to the Federal Ministry of the Interior, Passau Federal Police Station has since moved into new premises.

The Federal Agency found that some of the other stations it visited still do not have smoke detectors or dimmable lighting. Further, officers still do not always knock before using the peepholes in the doors to those custody rooms which have a visible toilet. Equally, some did not keep the custody record books up to date and did not instruct those taken into custody about their rights as they are required to do.

### **1.2 – FORCED RETURN FROM LEIPZIG TO BELGRADE**

On 16 December 2015 the Federal Agency monitored a forced return by air carried out by the Federal Police on behalf of Thuringia, during which 106 people were flown from Leipzig/Halle Airport to Belgrade. The Federal Agency saw no occasion to make any recommendations, though it must be noted that the measure had not yet been completed at the time of this Annual Report going to press.

## **2 – FEDERAL ARMED FORCES AND CUSTOMS**

The Federal Agency visited the detention suite in the “Am Goldenen Steig” Barracks in Freyung and the customs boat “Helgoland”, which is part of Itzehoe Main Customs Office.

### **2.1 – “AM GOLDENEN STEIG” BARRACKS, FREYUNG**

As is the case on other Federal Armed Forces bases, detention has been enforced only rarely in the “Am Goldenen Steig” Barracks since compulsory military service was abolished. The last recorded case was in 2014, and before that in 2010. The conditions of detention were nevertheless good, which is why the Federal Agency had no recommendations to make in this regard. However, it maintains that detainees in the Federal Armed Forces must also be able to regulate the level of lighting in their detention rooms

themselves. The Federal Ministry of Defence informed the Federal Agency that on account of the provisions applicable to detention in the Federal Armed Forces and the fact that no final decision has yet been taken on which bases where detention is enforced are to be closed in the course of the reform of the Federal Armed Forces, detainees cannot be given the possibility of regulating the lighting in their detention rooms themselves. However, it also informed the Federal Agency that it is considering whether night lighting can be fitted in order to reduce the danger of injury at night.

### **2.2 – CUSTOMS BOAT “HELGOLAND”**

No detention has been enforced on the customs boat “Helgoland” since it was taken into service in 2009. The detention suite should nevertheless be

furnished so as to ensure that detainees' privacy is protected, either by removing the toilet from the camera's field of view (it is currently still fully visible via CCTV camera), or by pixelating the images on the monitoring screen.<sup>12</sup> Further, the Federal Agency

found that the fittings and furnishings in the custody room makes it unsuitable for detaining suicidal individuals. Should a person be at risk of self-harm or suicide, they must be monitored very closely.

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<sup>12</sup> See *National Agency, Annual Report 2014*, p. 15







**III  
VISITS BY  
THE JOINT  
COMMISSION**

## I – SPOTLIGHT ON THE EXECUTION OF YOUTH IMPRISONMENT

	<i>Recommendation:</i>	<i>Specially secured room</i>	<i>Communal showers</i>	<i>Communicating with foreign language speakers</i>	<i>House rules</i>	<i>Knocking before entering</i>	<i>Strip-searches</i>	<i>Precautions</i>	<i>Staff qualifications</i>
Adelsheim Prison			X	X	X			X	X
Berlin Juvenile Penal Institution (2011, 2012)			X		X			X	
Ebrach Prison	X	X	X			X	X		
Neustrelitz Juvenile Institution (2014)									
Hahnöfersand Juvenile Penal Institution (2014)	X				X			X	
Hamel Juvenile Institution	X							X	
Laufen-Lebenau Prison	X	X	X			X	X	X	
Ottweiler Prison			X			X		X	
Raßnitz Juvenile Institution (2014)	X								X
Regis-Breitingen Juvenile Penal Institution (2014)			X		X				
Rockenberg Prison			X	X				X	
Schifferstadt Juvenile Penal Institution	X			X	X				
Wittlich Juvenile Penal Institution						X	X		
Wriezen Prison (2014)	X				X				
Wuppertal-Ronsdorf Prison	X			X		X	X		

After focusing its attention on the execution of youth detention in 2014, this year the Joint Commission put the spotlight on the execution of youth imprisonment. As well as visiting Berlin Juvenile Penal Institution in 2011 und 2012, the Joint Commission had visited and reported on four juvenile penal institutions in 2014. In the course of 2015 it then made inspection visits to another nine juvenile penal institutions, which means that it has now visited institutions in 12 of the *Länder*.

Overall, the situation as regards decent and humane conditions of detention in juvenile justice is good.

There was thus little occasion to make any general recommendations.

### I.1 – POSITIVE FINDINGS

In comparison to the adult penal system, the specialist services employ large numbers of staff to provide intensive supervision and treatment to young offenders. In addition, general prison service staff in most of the *Länder* now undergo special training and development in regard to the execution of juvenile imprisonment. The specialist services and the general

prison service in the majority of prisons reported that cooperation and coordination were good. Equally, the Joint Commission often noted the relaxed relationship between staff and prisoners, most especially in Hahnöfersand, Ottweiler, Schifferstadt, Regis-Breitingen, Wriezen and Wuppertal-Ronsdorf. Many of the facilities it visited, for instance Adelsheim, Ebrach, Hameln and Ottweiler, had also responded to the increase in the number of prisoners with mental health issues and had begun cooperating with psychiatrists. In some cases, as well as having the option of placing detainees in a psychiatric unit in the prison infirmary, agreements have been reached so that they can also be placed in general psychiatric hospitals or in child and youth psychiatric clinics when required.

## 1.2 – RECOMMENDATIONS

Despite the good general impression which emerged, there are still possibilities for improving some areas of the juvenile justice system across Germany to safeguard decent conditions of detention. However, most of these recommendations do not only apply specifically to the juvenile justice system but equally to the adult penal system.

### 1.2.1 – Placement in a specially secured room with no dangerous objects

The specially secured rooms in many juvenile penal institutions can be monitored by CCTV camera. Often the detainees' privacy is not sufficiently protected while CCTV monitoring is in operation or on account of their being observed through a peephole. Unrestricted CCTV monitoring should be the exception not the rule.<sup>13</sup>

Prisoners should at least be given a pair of paper underpants and a paper shirt to wear when they are placed in the specially secured room.<sup>14</sup> Where this policy was not previously applied, the National Agency's recommendations have now been adopted in practice. It is only in Hamburg that the practicability of issuing prisoners with paper shirts is still being examined.

### 1.2.2 – Communicating with prisoners who speak a foreign language

It is particularly in view of the increase in the number of unaccompanied child refugees being taken into pre-trial detention that staff are also increasingly having to deal with prisoners with whom communication is difficult or impossible on account of language barriers. It is often difficult to find interpreters for

these languages. Nevertheless, other prisoners should not be involved in meetings in which personal matters are discussed. Medical consultations in particular should not involve a member of staff acting as an interpreter. Language barriers can to a certain extent be overcome using computer-assisted translation methods, for example apps on mobile phones or tablets. Hameln has gained good experience of using these. A project in Bavaria, where interpreters take part in such meetings via video conferencing, is also promising.

### 1.2.3 – Strip-searches

Some institutions reported that prisoners are on principle strip-searched upon admission. This constitutes serious interference with prisoners' dignity. On account of the particular severity of such an invasion of prisoners' privacy and the sense of shame they feel as a result, they have a right to be treated with especial respect.<sup>15</sup> The European Court of Human Rights likewise bases its case law on the assessment that strip-searches may be justified in order to ensure prison security and to prevent disorder or crime, but that they must be conducted circumspectly and not routinely and independently of case-specific suspicions.<sup>16</sup> Especially in the juvenile justice system, therefore, each case must be weighed up before a justified, documented decision is taken.<sup>17</sup>

### 1.2.4 – Partitions in communal showers

The Joint Commission observed that in nearly all the juvenile penal institutions it visited a significant proportion of prisoners keep their underwear on when showering in the communal showers. In many prisons a few prisoners are permitted, with the staff's agreement, to shower alone. Preference should, however, be given to partitioning off at least one shower in all communal showers so that prisoners can, if they wish to do so, shower during normal hours as well without having to wear their underpants. The National Agency has received no reports from those prisons

<sup>15</sup> Cf. *re pre-trial detention: Federal Constitutional Court, order of 4 February 2009, file no. 2 BvR 455/08; order of 10 July 2013, file no. 2 BvR 2815/11. Also: UN General Assembly, UN Standard Minimum Rules for the Treatment of Prisoners (the "Mandela Rules"), A/Res/70/175, 17.12.2015, Rule 52*

<sup>16</sup> See *European Court of Human Rights, judgment of 4 February 2003, Van der Ven v. the Netherlands, Application no. 50901/99, margin no. 62; judgment of 4 February 2003, Lorsé and Others v. the Netherlands, Application no. 52750/99, margin no. 74; judgment of 12 June 2007, Frérot v. France, Application no. 70204/01, margin no. 41, 47; judgment of 27 November 2012, Savics v. Latvia, Application no. 17892/03, margin no. 133, 142 et seqq.*

<sup>17</sup> As regards youth detention, see National Agency, *Annual Report 2014*, p. 30

<sup>13</sup> See I.3.1.1 above

<sup>14</sup> See I.3.1.3 above

which have already partitioned off showers of any increase in the number of assaults.

### 1.2.5 – Translations of house rules

The house rules in juvenile penal institutions contain a list of prisoners' rights and duties. Disregarding these duties can lead to sanctions. The house rules should therefore be translated into those languages which are most commonly spoken by prisoners. The matter of the high translation costs can be mitigated by drawing up model house rules, which some *Länder* have already done.

### 1.2.6 – Respectful treatment

In contrast to what the Joint Commission noted in youth detention facilities, there were less frequent

reports within the juvenile justice system of staff addressing prisoners using the informal “*du*” form in German. Nevertheless, staff in those facilities which had issued instructions not to use this form of address were sometimes still doing so. This can come across to prisoners as derogatory and lacking in respect. Juvenile prisoners should thus also generally be addressed using the formal “*Sie*” in German.

It was noted that staff often do not knock on cell doors before entering. The policy of knocking before entering a room should become an integral part of staff members' respectful treatment of juvenile prisoners and should be applied consistently everywhere.<sup>18</sup>

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<sup>18</sup> *Re youth detention, see National Agency, Annual Report 2014, p. 29 et seq.*

## 2 – YOUTH DETENTION CENTRES

As an addition to its special focus in 2014, the Joint Commission visited Lebach Youth Detention Centre and carried out follow-up visits to Düsseldorf and Wetter (Ruhr) Youth Detention Centres in 2015. The reports on its visits to Arnstadt and Moltsfelde Juvenile Detention Centres, conducted in early 2015, were included in the Annual Report 2014.<sup>19</sup>

Over and above those shortcomings which the Joint Commission noted in the Annual Report 2014 as occurring relatively frequently in youth detention, it noted the poor state of repair of Lebach Juvenile Detention Centre. The detention rooms, measuring only 8m<sup>2</sup> and with a toilet which is not separated off or supplied with separate ventilation, were occupied by two people. The Federal Constitutional Court held that comparable conditions of detention constituted a violation of human dignity.<sup>20</sup> The Commission pointed out that no one can give their consent to inhuman or degrading conditions of detention.

Further, it recommended swiftly hiring a social worker to fill the currently vacant post and to provide those in detention with information about the pedagogical concept being applied in the facility.

The detention centre was in urgent need of renovation. Also, detainees were unable to look outside on account of the frosted glass screens in front of their windows. Sufficient daylight should be guaranteed in all detention rooms and detainees should always be able to look out of their windows. They should also be able themselves to switch the light in their room on and off at night.

The Joint Commission also recommended organising the detainees' admission to the facility in such a way that they can be examined by a doctor as soon as possible. The doctor currently visits the facility once a week, while detainees are admitted every of the week. As a result, detainees sometimes have to wait up to a week before they can see the doctor.<sup>21</sup>

During its follow-up visits to Düsseldorf and Wetter (Ruhr) Juvenile Detention Centres the Joint Commission found that the majority of its recommendations had not been implemented, although it had been informed by the supervisory authority that they had in part been carried out. The Joint Commission is in further contact with the competent ministry in regard to this matter.

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<sup>19</sup> *National Agency, Annual Report 2014, p. 26 et seqq.*

<sup>20</sup> *Federal Constitutional Court, file no. 1 BvR 409/09, 22 February 2011, margin no. 31 – juris*

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<sup>21</sup> *National Agency, Annual Report 2014, p. 29*

### 3 – PRISONS

The Joint Commission visited Cottbus-Dissenchen Prison and Bruchsal Prison. It also visited Garmisch-Partenkirchen Prison during the G7 Summit, when it rendered administrative assistance to the police and was being used as a police custody facility and not as a prison. There was no reason to raise any objections.

The Joint Commission rated the conditions of detention in Bruchsal Prison as incompatible with human dignity on account of two people being placed in single-occupancy cells. The cells in question measured around 9m<sup>2</sup> and had a toilet which was partitioned off from the rest of the cell only by means of a curtain. This situation does not comply with the minimum

conditions set by the Federal Constitutional Court when it comes to the multiple occupancy of prison cells.<sup>22</sup> The Joint Commission noted a comparable situation on the occasion of its visit to Konstanz Prison in 2013. So that it can fulfil its preventive remit, the Joint Commission's recommendations not only have to be implemented in the facility it visits, but also in all facilities of the same type, including those in other *Länder*.

<sup>22</sup> *Federal Constitutional Court, order of 7 Nov. 2011, file no. 1 BvR 1403/09, margin no. 39 – juris*

### 4 – THE POLICE

<i>Recommendation:</i>	<i>Physical restraint</i>	<i>Strip-searches</i>	<i>Instruction about rights</i>	<i>Custody records</i>	<i>Visibility of toilets</i>	<i>Dimmable lighting</i>	<i>Examination by a doctor</i>	<i>Provision of blankets/pilowes</i>	<i>Cleanliness, hygiene</i>
Berlin North-East Police Custody	X	X							
Bonn Police Headquarters	X	X	X		X				
Bremen Police Headquarters			X		X				
Dortmund Police Headquarters	X	X	X		X				
Erfurt North Police Station		X			X				
Frankfurt (Oder) Police Station	X	X	X	X	X	X	X		X
Central Police Detention Facility in Garmisch-Partenkirchen									
Cologne Police Custody	X	X	X		X				
Lübeck Central Detention Facility				X					
Neunkirchen (Saar) Police Station			X			X		X	X
Potsdam Police Station	X				X				
Saarbrücken St. Johann Police Station			X	X		X		X	X

The Joint Commission visited 11 police stations in Bavaria, Berlin, Brandenburg, Bremen, North Rhine-

Westphalia, Saarland, Schleswig-Holstein and Thuringia in the course of 2015. The inspection visit in

Bavaria was occasioned by the G7 Summit which was held in Garmisch-Partenkirchen. Given that a total of only two people were taken into custody during the entire summit and no one was being held in custody at the time of the visit, the Joint Commission was unable to assess the conditions of treatment. The structural conditions of detention were deemed to be appropriate and gave the Joint Commission no occasion to make any recommendations.

Since its inception the Joint Commission has visited police stations across all the *Länder*. The visits were both announced and unannounced, and were made at different times of the day and night. The reports on the visits to the police stations in Lübeck and Bremen were not available at the time of this Annual Report going to press.

Occasioned by its visits the Joint Commission essentially made the following recommendations:

#### 4.1 – PHYSICAL RESTRAINT

The Joint Commission noted that metal handcuffs are being used to physically restrain those taken into custody in police stations in Berlin, Brandenburg and North Rhine-Westphalia. Frankfurt (Oder) Police Station and Potsdam Police Station each have a call button which a person placed under physical restraint would have to use to call help if necessary, but it is located next to the door into the custody cells. Anyone placed under physical restraint will be unable to reach the call button.

At Cologne Police Headquarters the Joint Commission also noted the high number of instances in which physical restraint was applied in 2014, namely 1,150 times.

Physical restraints should as a matter of principle not be applied in police stations. Physical restraint represents a high risk to the life and limb of the person under restraint. There is a particular risk of injury when metal handcuffs and shackles are used. The *Land* police forces of other *Länder*, Baden-Württemberg and Saarland for instance, and the Federal Police do not use physical restraint at all anymore. Following its visit to Cologne Police Headquarters the CPT also recommended entirely doing without the use of physical restraints.<sup>23</sup> The National Agency regards applying physical restraint to one arm or one leg as inhuman and degrading too.

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<sup>23</sup> See CPT report on its visit to Germany in 2010, CPT/Inf (2012) 6, margin no. 29

#### 4.2 – STRIP-SEARCHES

Those taken into custody in police stations in Brandenburg, North Rhine-Westphalia and Thuringia are strip-searched as a matter of principle. No case-by-case examination is carried out.

Strip-searches represent serious interference with a person's general rights of personality. The police cited the degree of danger posed by those being taken into custody, but this is no justification for not examining each case individually. Cologne Administrative Court recently confirmed this assessment.<sup>24</sup> Where a strip-search is deemed necessary, the reasons therefore should be documented in writing.

#### 4.3 – INSTRUCTION ABOUT RIGHTS

In some facilities, for example in North Rhine-Westphalia, staff are unable to see whether a person taken into custody has been comprehensibly and comprehensively instructed about their rights, as it is the officer booking in the person who is responsible for giving such instruction. There were also cases in Neunkirchen, Saarbrücken St. Johann and Frankfurt (Oder) Police Stations where the person being taken into custody was not immediately informed about their rights. Nor was a note made of whether such instruction was subsequently given.

Regardless of the legal basis on which people are taken into custody, they must be immediately, fully and comprehensibly instructed in writing about their rights. It must be possible to establish whether this information has been provided or whether it needs to be done at a later point in time, and this must be documented in writing.

#### 4.4 – CUSTODY BOOKS

The custody books should in principle contain comprehensive information about the circumstances under which a person is taken into custody.

The practice of splitting the custody books into three, as is the case in Saarbrücken St. Johann Police Station, is questionable given this requirement. The "custody books" in Frankfurt (Oder) Police Station comprised separate "files", some of which were full of gaps.

A supervising police officer should regularly examine the custody books to see whether they are being kept properly, should address any shortcomings and document the checks performed.

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<sup>24</sup> See Cologne Administrative Court, judgment of 25 Nov. 2015, file no. 20 K 2624/14, margin no. 102 et seqq. – NRW



#### 4.5 – TOILETS

The police headquarters in Bonn, Dortmund and Cologne have custody rooms with an integrated toilet which are monitored by CCTV camera. Apart from in Dortmund Police Headquarters, the toilet is not pixelated on the CCTV monitoring screens. In these police headquarters, as well as in Erfurt North, Frankfurt (Oder) and Potsdam Police Stations, the toilets are fully visible through a peephole. The detainees' privacy is insufficiently protected in all these cases.

#### 4.6 – FURTHER RECOMMENDATIONS

To reduce the risk of injury and at the same time to ensure those taken into custody are able to sleep, the custody rooms in Neunkirchen (Saar), Saarbrücken St. Johann and Frankfurt (Oder) Police Station should be fitted with dimmable lighting.

A blanket and a pillow should be provided to those taken into police custody in Saarbrücken St. Johann Police Station. Particular attention should also be paid to ensuring the cleanliness of the sobering-up cell.

Further recommendations concerned the staffing level at Dortmund Police Headquarters and the number of people being held in the multiple-occupancy cell, as well as the need to fit fire alarms in Erfurt North Police Station.

In Frankfurt (Oder) Police Station officers are always present when detainees are examined by a doctor. This violates the person concerned's rights of personality, and safety aspects do not generally necessitate this measure. Aside from justified exceptional cases, only medical staff should be present when a detainee is examined by a doctor.

Further, the Joint Commission noted the strong smell of urine and faeces in the entire custody suite, a matter which urgently needs to be remedied.

## 5 – PRE-DEPORTATION DETENTION FACILITIES

The Joint Commission visited Eisenhüttenstadt Pre-deportation Detention Facility for a follow-up visit. The facility can accommodate up to 108 people and is responsible for enforcing custody pending deportation in Brandenburg, as well as on behalf of Berlin, Hesse, Mecklenburg-Western Pomerania, North Rhine-Westphalia, Thuringia, Saxony, Saxony-Anhalt and Schleswig-Holstein. It is also responsible for enforcing custody pending deportation as ordered by the Federal Police. The facility only had a few detainees awaiting deportation at the time of the visit.

The Joint Commission had already recommended during its original visit that visibility of the toilet in the specially secured room should be restricted on the CCTV monitoring screen. The facility immediately implemented this recommendation by affixing stickers to the monitoring screen.

Strip-searches upon admission, which is standard practice in the facility, represents a serious invasion of

the person concerned's privacy. Strip-searches may be justified in order to ensure security in the facility and to prevent disorder or crime, but they must be carried out circumspectly and neither routinely nor independently of case-specific suspicions.<sup>25</sup> Detainees awaiting deportation are not offenders, nor are they being kept in prison on suspicion of a crime. That is why the need for a strip-search must be subject to a rigorous examination over and above the requirements set by the Federal Constitutional Court in regard to pre-trial detention.<sup>26</sup>

The Joint Commission gained a positive general impression of the staff's treatment of the detainees awaiting deportation and in regard to implementation of the recommendations it had made in 2013.<sup>27</sup>

<sup>25</sup> See III.4.2 above

<sup>26</sup> See Federal Constitutional Court, order of 4 Feb. 2009, file no. 2 BvR 455/08, margin no. 35 – juris

<sup>27</sup> National Agency, Annual Report 2013, p. 49 et seqq.

## 6 – CHILD AND YOUTH WELFARE FACILITIES

In 2015 the Joint Commission visited two youth welfare facilities in which children and youths were accommodated in closed units. One of these facilities is responsible for male children and youths aged 11 and over and can accommodate up to 16 detainees in two intensive pedagogical therapy groups, with case-specific placement in partially open plan areas. The other facility can accommodate more than 35 male children and youths aged between 12 and 16 in four intensive pedagogical residential groups and a fifth closed residential group for youths being detained for sexual abuse.

In one of the facilities the Joint Commission in particular noted the poor state of repair and the lack of an emergency call system in the detention rooms. In addition, the facility had no fenced-off yard area in which all the children and youths could spend at least one hour exercising in the fresh air every day. Further,

there were no rooms in which the pedagogical therapy work can be done. The Commission positively noted the committed and empathetic attitude of the staff towards the children and youths, as well as the wide range of therapies on offer. Positive mention should also be made of the fact that there were no rooms in which children and youths can be isolated (known as “time-out rooms”). All the staff are given de-escalation training and the opportunity for individual and group supervision, which is important when it comes to treating the youngsters professionally and appropriately.

The Joint Commission is still engaged in an exchange with the competent supervisory authority regarding the findings of another visit to a youth welfare facility. The results of this visit will be presented in the Annual Report 2016.

## 7 – RESIDENTIAL CARE HOMES AND NURSING HOMES FOR THE ELDERLY

All residential care homes and nursing homes for the elderly are permitted to carry out court approved measures to deprive people of their liberty, for instance the use of bed side rails or therapy tables. That is why residential care homes and nursing homes for the elderly, regardless of whether they have a closed unit or not, are defined as places of detention as per Article 4 of the OPCAT.

As the Joint Commission gained new members at the start of the year who have the competencies required to conduct visits in this field, during the period under review the Commission carried out preparatory work both regarding the content and methodology of its visits to these facilities and went on one fact-finding visit.

As part of its preparations regarding the content of its visits to these facilities the Joint Commission got an overview of those aspects of the profession which are relevant to its inspection visits. The focus was on the following issues:

- + Delimiting the National Agency’s remit pursuant to its mandate from that of other monitoring mechanisms in the field of residential nursing care for the elderly, such as the home supervisory authorities and the

Medical Service of the Health Funds (MDK);

- + Legal aspects of measures depriving people of their liberty carried out in residential nursing homes for the elderly, possible measures, aids (incl. the use of sedatives) and means of avoiding the need for such measures;
- + Researching and analysing the relevant legal bases for residential nursing care for the elderly, the institutional context and relevant codices, such as Germany’s Charter of Rights for People in Need of Long-Term Care and Assistance<sup>28</sup> and the UN Convention on the Rights of Persons with Disabilities<sup>29</sup>;
- + Facilities providing residential nursing care for the elderly as the place of residence and permanent home of those in need of long-term care and assistance;

<sup>28</sup> See [www.pflege-charta.de](http://www.pflege-charta.de) (where an English version of the Charter is also available), retrieved on 16 February 2016

<sup>29</sup> Federal Law Gazette 2008 II, p. 1419

- + Mobility as a basic need and expression of life and the possible consequences of (forced) immobility, particularly as regards the increased potential risk of falling and its contribution to changes in personality.

In August a delegation from the Joint Commission accompanied the Austrian Ombudsman Board, at its invitation, on a visit to a residential care home and nursing home for the elderly. This enabled the Joint Commission to gain a first-hand insight into the methodology applied in Austria to such visits.

After preparing aspects regarding the content of its own future visits it became clear that in order to gain sufficient insight during a visit the Joint Commission will have to hold numerous separate meetings and carry out a comprehensive on-site examination of the care records. It thus had to draw up concrete plans for its visits and also to develop a methodology appropriate to each type of facility.

The Joint Commission chose facilities operated by various organisations in three *Länder* for its first visits. It held preliminary meetings with the competent supervisory authorities in which it provided the facilities with information regarding its legal bases, remit, tasks and powers, as well as the methodology applied during visits to facilities providing residential nursing care for the elderly.

In November the Joint Commission went on a fact-finding visit to a care home and nursing home for the elderly. The visit was conducted under real conditions and thus gave the Commission the opportunity to test its methodology.

In November 2015 the National Agency began conducting visits to residential nursing homes for the elderly, and by the end of the period under review it had visited three facilities in Hesse, Rhineland-Palatinate and Thuringia. No comments were yet available at the time of this Annual Report going to press.

## 8 – PSYCHIATRIC CLINICS

In recent years the Joint Commission has visited three psychiatric clinics. On account of the additional members who joined the Commission being competent in this field, it was able to look at psychiatric clinics in more depth in the period under review and to once more conduct visits to such facilities.

The Joint Commission first outlined its mandate in a psychiatry trade journal and explained its tasks in this area.<sup>30</sup> In preparation for its visits it adapted its general visit documentation to the special requirements in the field of psychiatry, and looked through and updated the available material. Account was also

taken of the legal and organisational circumstances of the deprivation of liberty in psychiatric clinics as well as the competencies and activities of other commissions conducting visits.

The Joint Commission's first visit took it to a facility in Baden-Württemberg. In preparation for this visit the Joint Commission held a meeting in the Ministry for Labour and Social Affairs, Families, Women and Senior Citizens, during which the mandate, tasks and powers of the National Agency as well as standard procedure when conducting visits were discussed.

The report of the visit was not available at the time of the Annual Report 2015 going to press.

<sup>30</sup> National Agency, "Die Nationale Stelle zur Verbütung von Folter", in: *34 Recht und Psychiatrie* (2016), p. 80–81



**IV**  
**ANNEX**

## I – CHRONOLOGICAL LIST OF VISITS

<i>Date</i>	<i>Facility visited</i>
3 Feb. 2015	Lebach Youth Detention Centre
11 Feb. 2015	Freiburg Federal Police Station; Freiburg Railway Station Federal Police Duty Room
12 Feb. 2015	Offenburg Federal Police District Office
24 Feb. 2015	Schifferstadt Juvenile Penal Institution
10 Mar. 2015	Moltsfelde Youth Detention Centre
10 Mar. 2015	Cuxhaven Federal Police Station
11 Mar. 2015	Bremerhaven Federal Police Station
12 Mar. 2015	Münster Federal Police District Office
24 Mar. 2015	Cottbus-Dissenchen Prison
9 April 2015	Arnstadt Youth Detention Centre
7 May 2015	Neunkirchen Police Station; Saarbrücken St. Johann Police Station
1 June 2015	Passau Federal Police Station
2 June 2015	Federal Army Barracks “Am Goldenen Steig”, Freyung; Freyung Federal Police District Office; Zwiesel Federal Police Station
3 June 2015	Youth welfare facility
5 June 2015	Central Police Detention Facility (G7 Summit)
6 June 2015	Garmisch-Partenkirchen Prison (G7 Summit)
15 June 2015	Cologne Police Headquarters; Bonn Police Headquarters
16 June 2015	Dortmund Police Headquarters
17 June 2015	Adelsheim Prison
3 July 2015	Rockenberg Prison
15 July 2015	Hameln Juvenile Institution
24 July 2015	Erfurt North Police Station
5 Aug. 2015	Potsdam Police Station; Frankfurt (Oder) Police Station
18 Aug. 2015	Wittlich Juvenile Penal Institution
1 Sept. 2015	Youth welfare facility
14 Sept. 2015	Ebrach Prison
28 Sept. 2015	Neumünster Federal Police Station
30 Sept. 2015	Bruchsal Prison
5 Oct. 2015	Berlin North East Police Custody
16 Oct. 2015	Eisenhüttenstadt Pre-Deportation Detention Facility (follow-up visit)
19 Oct. 2015	Laufen-Lebenau Prison
13 Nov. 2015	Residential care home and nursing home for the elderly, Rhineland-Palatinate (fact-finding visit)
23 Nov. 2015	Wuppertal-Ronsdorf Prison
25 Nov. 2015	Residential care home and nursing home for the elderly, Hesse
26 Nov. 2015	Residential care home and nursing home for the elderly, Rhineland-Palatinate
2 Dec. 2015	Residential care home and nursing home for the elderly, Thuringia
7 Dec. 2015	Ottweiler Prison
9 Dec. 2015	Lübeck Central Custody Unit; Bremen Police Headquarters
16 Dec. 2015	Monitoring of a forced return by air from Leipzig/Halle Airport to Belgrade
17 Dec. 2015	Hof Federal Police Station
18 Dec. 2015	Psychiatric clinic (general psychiatry), Baden-Württemberg

## MEMBERS

### 2 – MEMBERS OF THE FEDERAL AGENCY

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

### 3 – MEMBERS OF THE JOINT COMMISSION

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

## 4 – ACTIVITIES IN THE PERIOD UNDER REVIEW

<i>When</i>	<i>Where</i>	<i>What</i>
11 Feb. 2015	Wiesbaden	Meeting with Prof Dr Walkenhorst, University of Cologne
2/3 March 2015	Strasbourg	Conference “The CPT at 25: Taking stock and moving forward”
4–7 March 2015	Munich	XXXIVth Congress of the German Society of Child and Adolescent Psychiatry, Psychosomatics and Psychotherapy (DGKJP) “Different Society – Different Families”
28 May 2015	Vienna	Conference “Strengthening the Effective Implementation and Follow-up of NPM, CPT and SPT Recommendations in the European Union”, Ludwig Boltzmann Institute of Human Rights
8/9 June 2015	Frankfurt	25th German Congress on Crime Prevention
11–13 June 2015	Istanbul	International Conference for National Human Rights Institutions: On Best Practices and Lessons Learned
22 June 2015	Strasbourg	Meeting with the Human Rights Commissioner of the Council of Europe
24 June 2015	Oldenburg	Speech at Oldenburg Model United Nations (OLMUN)
26 June 2015	Wiesbaden	Expert discussion on the UN International Day in Support of Victims of Torture
10–13 Aug. 2015	Bristol	Summer School on the Bangkok Rules
26–28 Aug. 2015	Zell am See	Accompanying the Austrian Ombudsman Board during a visit to a residential care home and nursing home for the elderly
21 Sept. 2015	Stuttgart	Meeting in the Ministry of Labour and Social Affairs, Families, Women and Senior Citizens of Baden-Württemberg
25 Sept. 2015	Berlin	Meeting with an Uzbek delegation on protecting human rights in Germany and Uzbekistan
29 Sept. 2015	Lübeck	Meeting with representatives of the Federal Police Academy
2 Oct. 2015	Berlin	Presentation of the Report of the Human Rights Commissioner of the Council of Europe on his visit to Germany
5 Oct. 2015	Berlin	Meeting with the Chair of Amnesty International Germany
7 Oct. 2015	Wiesbaden	Hearing in the Hesse <i>Land</i> parliament
27 Oct. 2015	Vienna	Training course organised by the Ludwig Boltzmann Institute of Human Rights on interview techniques
28–30 Oct. 2015	Vienna	Exchange of experience between the German-speaking national preventive mechanisms
9 Nov. 2015	Mainz	Meeting with the Rhineland-Palatinate Police Commissioner
11 Nov. 2015	Munich	Meeting in Department 13 (Internal Investigations), Bavarian <i>Land</i> Criminal Police Office
12 Nov. 2015	Saarbrücken	Hearing in the Saarland <i>Land</i> parliament
24 Nov. 2015	Berlin	Meeting with a delegation from the CPT
7 Dec. 2015	Berlin	Concluding meeting following the CPT’s visit
16 Dec. 2015	Wiesbaden	Meeting in the Ministry of Social Affairs and Integration of Hesse