

Federal Agency for the Prevention of Torture

# **ANNUAL REPORT 2009 / 2010**

Period under report

1 May 2009 – 30 April 2010

© Federal Agency for the Prevention of Torture

All rights reserved

Printed by: Druckerei Zeidler GmbH & Co. KG, Mainz-Kastel

Federal Agency for the Prevention of Torture

Viktoriastraße 35

65189 Wiesbaden

Tel.: 0611-15758-18

Fax: 0611-15758-29

E-Mail: [info@bsvf.de](mailto:info@bsvf.de)

An electronic version of this Annual Report can be retrieved from the “Annual Reports” section of the [www.bsvf.de](http://www.bsvf.de) Internet site.

**Article 1 of the Basic Law (*Grundgesetz*)**

- (1) Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority.
- (2) The German people therefore acknowledge inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world.
- (3) The following basic rights shall bind the legislature, the executive and the judiciary as directly applicable law.

### List of specific abbreviations

APT	Association for the Prevention of Torture
BPolG	Federal Police Act ( <i>Bundespolizeigesetz</i> )
BRAS	Regulations, Guidelines, Instructions, Collections of Lists and Reference Works ( <i>Bestimmungen, Richtlinien, Anweisungen, Sammlungen von Katalogen und Nachschlagewerken</i> )
BwVollzO	Ordinance on the Enforcement of Prison Sentences, Military Disciplinary Confinement, Youth Detention and Disciplinary Detention by authorities of the Federal Armed Forces ( <i>Verordnung über den Vollzug von Freiheitsstrafe, Strafhaft, Jugendarrest und Disziplinarhaft durch Behörden der Bundeswehr</i> )
CAT	Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
ETS	European Treaty Series
NPM	National Preventive Mechanism
OP-CAT	Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
PGO-BPOL	Police Custody Code for Places of Custody in Units of the Federal Police ( <i>Polizeigewahrsamsordnung für Gewahrsamsräume bei Dienststellen der Bundespolizei</i> )
SPT UN	Subcommittee on the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
WDO	Military Disciplinary Code ( <i>Wehrdisziplinarordnung</i> )
ZDv	Central Service Instructions ( <i>Zentrale Dienstvorschrift</i> )

## **Table of contents**

Preface

### **A. General information about the Federal Agency**

#### I. Introduction

#### II. The foundation for the work of the Federal Agency for the Prevention of Torture as a part of the national preventive mechanism

1. Institutional framework and legal nature of the Federal Agency
2. Tasks and powers of the Federal Agency
3. Provision of the Federal Agency with staff and funding

#### III. Activities of the Federal Agency in the period under report 1 May 2009 – 30 April 2010

1. Assumption of work by the Federal Agency
2. Establishing contact with partners at national level
3. Activities at international level
4. Transmission of information and of enquiries by individuals
5. The implementation of inspection visits

#### IV. General system followed in the inspection visits

1. Methodical foundation and tools
2. Visiting procedure

### **B. Presentation of the main results of the visits to the Federal Police in the period under report 1 May 2009-30 April 2010**

#### I. General preliminary remarks on visits to the Federal Police

1. Legal basis for custody in Federal Police facilities
2. Drafting recommendations for the facilities visited

#### II. The outcome of the inspection visits to the Federal Police

1. Visit to the federal police station at Düsseldorf Airport
2. Visit to Rostock federal police station
3. Visit to Frankfurt (Oder) federal police station

### **C. Description of the main results of the visits to the Federal Armed Forces in the period under report 1 May 2009-30 April 2010**

#### I. General preliminary remarks on visits to the Federal Armed Forces

1. Legal basis for custody in facilities of the Federal Armed Forces
2. Drafting recommendations for the facilities visited

#### II. Results of the inspection visits in the Kurpfalz barracks in Speyer and the Niederauerbach barracks in Zweibrücken

### **D. Joint Commission of the *Länder* for the Prevention of Torture**

**E. Annexes**

- I. The preventive visiting procedure of the Federal Agency for the Prevention of Torture
- II. General Assembly Resolution 57/199 on the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 18 December 2002
- III. Administrative Order of the Federal Ministry of Justice of 20 November 2008
- IV. State Treaty on the establishment of a national mechanism of all *Länder* in accordance with Article 3 of the Optional Protocol of 18 December 2002 to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
- V. Administrative agreement on the National Agency for the Prevention of Torture in accordance with the Optional Protocol of 18 December 2002 to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
- VI. Resolution of the 81st Conference of Ministers of Justice of 23 and 24 June 2010 in Hamburg on the nomination of the members of the Commission of the *Länder* against Torture to be established

## Preface

The Federal Agency for the Prevention of Torture is pleased to present its first Annual Report to the Federal Government and the German Federal Parliament.

This first Annual Report is determined by three findings:

- The Federal Agency was unable to find any indications in its inspection visits to facilities of the Federal Police and the Federal Armed Forces that the dignity of persons being held there might have been violated in these facilities. As documented by the report below, the Federal Agency did however make a large number of recommendations in the first year of its existence for general improvements to the accommodation conditions of persons being detained. The majority of these have thankfully been taken up by the competent authorities, and most have already been implemented.
- The Federal Agency has only been able to complete its task to a certain degree. According to the current regulations, which are binding under international law, regular preventive inspections, i.e. without cause, are to be carried out in all facilities of the Federation in which people are kept in detention. It would be an illusion to think that this requirement can be achieved, given the staffing available to the Federal Agency – the post of Director is honorary, and he only has one research associate and a part-time administrative assistant – given that the Federation has more than 300 detention facilities.
- One year after its establishment, the Federal Agency's work is still in its infancy. A national preventive mechanism according to the requirements of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (referred to as OP-CAT) did not previously exist in the Federal Republic of Germany. The Federal Agency has had to and will continue to need to completely re-work the methodical basis for the selection of the places to be visited and the implementation of the visits. It has not yet been possible to convincingly complete this task; the binding and systematically convincing parameters for the inspection visits are therefore yet to be found and established.

After one year's intensive planning and preparation work, we are looking into the future optimistically. We are particularly optimistic about the fact that we have met with openness and a positive echo at all levels, vis-à-vis ourselves, our tasks and our ideas. We feel that we are taken seriously at all levels of the hierarchy, and are confident that we can continue to make a major contribution in the second year of the Federal Agency's existence towards continuing to guarantee human dignity in German detention facilities, despite the problems that have been described.



Klaus Lange-Lehngut

## A. General information about the Federal Agency

### I. Introduction

The prohibition of torture and other cruel, inhuman or degrading treatment or punishment is among the most important human rights guarantees. Article 5 of the Universal Declaration of Human Rights postulates that no one may be subjected to torture or to cruel, inhuman or degrading treatment or punishment.<sup>1</sup> Article 7 of the International Covenant on Civil and Political Rights<sup>2</sup>, as well as Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms<sup>3</sup>, contain a similar prohibition. At national level, the prohibition of torture or cruel, inhuman or degrading treatment is based above all on Article 1 para. 1 of the German Constitution: the Basic Law.

The United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment<sup>4</sup> (UN Anti-Torture Convention) obliges the States to prevent any act of torture and to make torture offences punishable. Its Articles 2 and 16 also contain an obligation for all States Party to take effective measures to prevent acts of torture or mistreatment. The UN Anti-Torture Convention provides amongst other things for a procedure by which individuals may submit communications to the UN Committee against Torture claiming to be victims of violations of rights by a State Party. Furthermore, the States Party are obliged to file regular reports on the measures they have taken to give effect their to undertakings under the Convention. These procedures are however reactive in nature, and as a rule do not come into effect until the breach of rights has already taken place.

The Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT)<sup>5</sup>, by contrast, contains a preventive method. It is orientated in line with the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which has laid the foundation for a system of preventive visits in the States of the Council of Europe.<sup>6</sup> The Optional Protocol also provides to strengthen protection against torture and mistreatment by means of this instrument. To this end, Article 3 OP-CAT also entails an obligation to set up national preventive mechanisms which are to supplement the work of the newly-created Subcommittee on the prevention of torture<sup>7</sup> (SPT). The rights and duties of the national preventive mechanisms and of the Subcommittee are largely identical.

Germany signed the Optional Protocol on 20 September 2006 and transposed it into domestic law by approval act of the Federal Parliament of 26 August 2008. After the ratification certificate had been deposited on 4 December 2008, the Optional Protocol came into force for the Federal Republic of Germany on 3 January 2009 in terms of international law. Here, the possibility is provided for in accordance with Article 24 para. 1 OP-CAT to postpone complete transposition into national law. This declaration was made against the background of the need for a State Treaty between the *Länder*, the ratification of which was likely to delay the transposition process.

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

<sup>2</sup> Resolution of the UN General Assembly 2200A (XXI) of 16 December 1966; German Text reprinted in the Federal Law Gazette 1973 Part II, p. 1534.

<sup>3</sup> ETS No. 005 of 4 November 1950; German Text reprinted in the Federal Law Gazette 2002 Part II, p. 1054.

<sup>4</sup> Resolution of the UN General Assembly 39/46 of 10 December 1984; German Text reprinted in the Federal Law Gazette 1990 Part II, p. 246.

<sup>5</sup> Resolution of the UN General Assembly A/RES/57/199 of 18 December 2002; German Text reprinted in the Federal Law Gazette 2008 Part II, p. 854.

<sup>6</sup> ETS No. 126 of 26 November 1987; German Text reprinted in the Federal Law Gazette 1993, pp. 1115 and 1118.

<sup>7</sup> The German translation of the UN Resolution differs by referring to the SPT as “*Unterausschuss für Prävention*” (Subcommittee on Prevention”).



Unlike other countries, Germany did not previously have a facility which could have taken on the role of the national preventive mechanism in line with the requirements of the OP-CAT. There are certainly institutions in some areas whose tasks and powers at least partly correspond to those from the Optional Protocol. In addition to the Parliamentary Commissioner for the Armed Forces of the German Federal Parliament, these include amongst others the Petitions Committees of the Federal Parliament and of the *Länder* Parliaments, psychiatry commissions, advisory boards in prisons or individual ombudsmen institutions, such as for the prison service. However, these mechanisms are unable to guarantee a universal visiting system covering all places where people are deprived of their liberty. According to this requirement, the decision was hence made that those tasks under the Optional Protocol which were under federal jurisdiction were to be carried out by a Federal Agency to be set up by the Federal Ministry of Justice, and that those under the jurisdiction of the *Länder* were to be effected by a *Länder* commission to be established by the latter.

The Federal Agency for the Prevention of Torture was established by means of an Administrative Order of the Federal Ministry of Justice of 20 November 2008<sup>8</sup>, and started operations in Wiesbaden on 1 May 2009. In accordance with No. 3 of the Administrative Order, the Federal Agency is obliged to report on its activities to the Federal Government and to the German Federal Parliament on an annual basis. The Federal Agency is now complying with its obligation for the first time by publishing this Annual Report. This report by the Federal Agency covers the period from 1 May 2009 to 30 April 2010. It contains a description of the general legal and factual basis, of the activities of the Federal Agency, as well as a summary of the essential outcome of the visits. The Federal Agency will be submitting the Annual Report together with the Joint Commission of the *Länder* for the Prevention of Torture in future.<sup>9</sup>

## **II. The foundation for the work of the Federal Agency for the Prevention of Torture as a part of the national preventive mechanism**

### **1. Institutional framework and legal nature of the Federal Agency**

The Federal Agency for the Prevention of Torture and the Joint Commission of the *Länder* for the Prevention of Torture together form the two pillars of the national mechanism for the prevention of torture (also known as the national preventive mechanism). They are to work together in future as the “National Agency for the Prevention of Torture”.

The legal and de facto requirements of the national preventive mechanism emerge from Article 18 OP-CAT, according to which the States Parties are obliged to guarantee the functional independence of the national preventive mechanism as well as the independence of their personnel. The States must also ensure that the national mechanisms are as multidisciplinary, multiethnic and gender balanced as possible. Finally, they must make sufficient funding available to the preventive mechanisms to carry out their tasks. Supplementary regulations for the Federal Agency are contained in the Administrative Order of the Federal Ministry of Justice of 20 November 2008, and those for the activities of the Commission of the *Länder* emerge from the State Treaty of the *Länder* of 25 June 2009.<sup>10</sup> No details of the regulations on the Commission of the *Länder* will however be provided below.

The Federal Agency was created as an independent federal facility. It is funded from the budget of the

<sup>8</sup> Administrative Order of the Federal Ministry of Justice of 20 November 2008, reprinted in the Federal Gazette No. 182, p. 4277.

<sup>9</sup> The joint Annual Report will also be forwarded to the *Land* Governments and the *Land* Parliaments.

<sup>10</sup> State Treaty on the establishment of a national mechanism of all *Länder* in accordance with Article 3 of the Optional Protocol of 18 December 2002 to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, reprinted in the Law Gazette of Baden-Württemberg of 7 December 2009, p. 681. amongst other places

Federal Ministry of Justice, but is not subject to the hierarchy of any of the Ministries. In accordance with No. 4 of the Administrative Order, the Director of the Federal Agency is completely free of instructions in the performance of his/her office. There is no legal or specialist supervision by the Federation. The Director of the Federal Agency works on an honorary basis and only receives compensation for expenditure in accordance with the Federal Travel Expenses Act (*Bundesreisekostengesetz*). The Director may resign from office at any time. However, he/she may be removed from office early against his/her will in accordance with No. 5 of the Administrative Order only subject to the prerequisites of section 24 of the German Judiciary Act (*Richtergesetz – DRiG*).

The Administrative Order provides for only one person to act as the Director of the Federal Agency and makes no provision for a deputy. Thus, the Federal Agency is only able to do limited justice to the multidisciplinary balance provided for in the OP-CAT. The Federal Agency will hence avail itself in future of the possibility to consult well-versed experts from other fields on inspection visits in order to compensate for any potential shortcomings. It would nonetheless be useful if persons with medical or psychological expertise also formed part of the Federal Agency's established team.

## **2. Tasks and powers of the Federal Agency**

The tasks and powers of the Federal Agency for the Prevention of Torture are set out in the Optional Protocol and the Administrative Order of 20 November 2008, which were transposed into national law by means of the approval act of 26 August 2008.

In order to prevent torture and mistreatment, the Federal Agency is tasked to visit places where people are deprived of their liberty under federal jurisdiction, to draw attention to problems and to make recommendations to the authorities for improvements. In accordance with Article 4 para. 1 OP-CAT, this refers to any place under the jurisdiction and control of the State where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence.

In accordance with Article 4 para. 2 OP-CAT, for the purposes of the Optional Protocol, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority. This includes in Germany: prisons, closed wings of psychiatric hospitals, detention facilities of the Federal Armed Forces, facilities of detention awaiting deportation, detention centres for asylum-seekers, transit zones at international airports, police stations, facilities of youth welfare, closed homes for children and juveniles as well as homes for the elderly and long-term care homes.<sup>11</sup> Only facilities of the Federal Police (*Bundespolizei*) and the Federal German Defence Forces (*Bundeswehr*) fall within the mandate of the Federal Agency in this context.

The powers of the Federal Agency accrue from Articles 19 and 20 OP-CAT, read in conjunction with No. 3 of the Administrative Order. In accordance with Article 19, the Federal Agency is hence empowered

- to regularly monitor the treatment of persons who have been deprived of liberty in places where people are deprived of their liberty within the meaning of Article 4 with the aim in mind of where necessary increasing the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment;
- to make recommendations to the competent authorities with the aim in mind of improving the

---

<sup>11</sup> cf. the commentary re Article 4 OP-CAT, Federal Parliament printed paper (*BT-Drs.*) No. 16/8249.

treatment and the conditions of persons who have been deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment in compliance with the relevant regulations of the United Nations;

- to make proposals and observations on existing or proposed legal provisions.

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

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

Further important rights and guarantees are set out in Articles 21 and 22 OP-CAT. In accordance with Article 21 para. 1 OP-CAT, persons who communicate information to the Federal Agency are not to be sanctioned or otherwise prejudiced in any way. This applies regardless of whether the information proves to be true or false, so that for instance prosecution in accordance with sections 164 and 185 et seq. of the Criminal Code (*StGB*) or the ordering of disciplinary measures in accordance with sections 102 et seqq. of the Prison Act (*StVollzG*) is ruled out.<sup>12</sup> Furthermore, Article 21 para. 2 OP-CAT guarantees the protection of confidential information collected by the Federal Agency in the context of its work. Personal data are not published without the express consent of the person concerned. Also, no evidence may be taken with regard to such confidential information; in particular employees of the Federal Agency may not be obliged to testify as witnesses in court in this regard (cf. section 160 subs. 4 of the Code of Criminal Procedure [*StPO*]).

The implementation of the recommendations made by the Federal Agency are in accordance with Article 22 OP-CAT, in accordance with which the competent authorities must examine the recommendations and enter into a dialogue with the Federal Agency on possible implementation measures. This takes place in practice by means of a statement on the part of the competent Ministry on the state of implementation. Because of its limited resources, the Federal Agency is not able to immediately verify the implementation of the recommendations in situ. It initially relies on accepting as accurate the information provided by the Ministries regarding implementation. Nonetheless, the Federal Agency will, wherever possible, re-inspect facilities which it has already visited in order to convince itself in situ that its recommendations have been implemented.

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

---

<sup>12</sup> cf. the commentary re Articles 15 and 21 OP-CAT, Federal Parliament printed paper No. 16/8249.

### 3. Provision of the Federal Agency with staff and funding

The Federal Agency has an honorary Director and a full-time Secretariat, which is headquartered in Wiesbaden. In organisational terms, it is part of the Centre for Criminology (*Kriminologische Zentralstelle e.V. – KrimZ*), a research and documentation facility of the Federation and the *Länder*.<sup>13</sup> The Federal Agency uses the existing infrastructure (such as the library) of the Centre for Criminology and receives considerable support from the latter, especially in terms of budgeting, accounting and personnel.

Klaus Lange-Lehngut (*Leitender Regierungsdirektor, ret.*) was appointed honorary Director of the Federal Agency by the Federal Ministry of Justice in agreement with the Federal Ministries of the Interior and of Defence on 4 December 2008.<sup>14</sup> Klaus Lange-Lehngut, who previously worked in Berlin as a judge, public prosecutor and senior ministry official in the Senate Administration of Justice, was governor of Berlin-Tegel Prison for more than 25 years before retiring. Furthermore, he was a lecturer on prison service law at the Law Faculty of the Free University of Berlin for more than 30 years. Klaus Lange-Lehngut also advised on the establishment of rule-of-law institutions in states of Eastern Europe as an expert.

The Federal Agency is funded from the budget of the Federal Ministry of Justice. The Federal Agency has at its disposal EUR 100,000.00 in funds per year, no more than EUR 10,000.00 of which may be accounted for by travelling expenses. The Federal Agency received a further amount of EUR 50,000.00 from the budget of the Federal Ministry of Justice in December 2008, earmarked for 2008. The funding is channelled as a subsidy to the Centre for Criminology and is administered by the latter in a separate account.

As the “National Agency for the Prevention of Torture”, the Federal Agency and the Commission of the *Länder* will in future share the same resources and staffing. To this end, it is necessary to conclude an administrative agreement between the Federation and the Federal *Länder*, which was signed on the occasion of the 81st conference of Ministers of Justice held in Hamburg on 23 and 24 June 2010.

The Federal Agency employs for the Secretariat two part-time staff members. These are Sarah Mohsen, a fully-qualified lawyer with an additional qualification in the field of international human rights protection, as a research assistant (90 %), and Jill Waltrich as a specialist employee for office communication (50 %). The staff members are paid in accordance with the Collective Agreement for the Public Service (*Tarifvertrag für den öffentlichen Dienst – TVöD*). Costs incurred in connection with the Director’s travels are refunded in accordance with the Federal Travel Expenses Act. The Director receives no other remuneration for his honorary activity.

## III. Activities of the Federal Agency in the period under report 1 May 2009 – 30 April 2010

### 1. Assumption of work by the Federal Agency

After the Director of the Federal Agency had been nominated on 20 November 2008 with effect as per 4 December 2008, the first discussions took place in February and March 2009 with the Parliamentary Commissioner for the Armed Forces of the German Federal Parliament, as well as with representatives of the Federal Ministry of the Interior in Berlin.

<sup>13</sup> The amendment of the Statutes necessary for this purpose was already adopted in December 2007 by the 48th General Assembly of the Centre for Criminology.

<sup>14</sup> The Director of the Federal Agency was appointed by nomination letter of State Secretary Lutz Diwell of the Federal Ministry of Justice of 20 November 2008.

The Centre for Criminology carried out the recruitment procedure in February and March 2009, and after it had been successfully concluded the Federal Agency was able to officially commence its work in Wiesbaden on 1 May 2009.

The Federal Agency had to completely rely on the infrastructure of the Centre for Criminology during the first three months of its activities. It was not until July 2009 that the premises that had been rented on the 2nd floor in Viktoriastraße 35 could finally be used. The initial equipment (including IT, office furniture and office material) was purchased using funds from the EUR 50,000.00 budget that had been provided by the Federal Ministry of Justice.

The first working meeting between the Director of the Federal Agency and his two employees took place in Wiesbaden on 4 May 2009. Office organisation, the internal distribution of tasks and the activity programme for the coming months, amongst other things, were set out at the meeting. This process involved a not inconsiderable effort, given that there were no instructions for the management of the Federal Agency's office and an organisational procedure had to be arranged in all areas with no model to work from.

Moreover, a number of fundamental documents were developed on carrying out visits (e.g. checklist containing questions for inspection visits, visiting schedule, working guidelines). These documents were completed by the time the first inspection visit was carried out in August 2009, and have served as a basis for the Agency's work since then. The checklist and the guidelines have proven to be particularly helpful for the activities of the Federal Agency. They have been expanded on several times in the ensuing period, and in each case have been supplemented by further aspects emerging from the point of view of practical work.

Moreover, the Federal Agency launched its website in July 2009 at the addresses [www.antifolterstelle.de](http://www.antifolterstelle.de) and [www.bsvf.de](http://www.bsvf.de). The website was planned such that the Internet presence of the future Joint Commission of the *Länder* for the Prevention of Torture can be integrated at any time.

## **2. Establishing contact with partners at national level**

The Federal Agency initially expanded its contacts with the ministries involved in the period under report from May 2009 – April 2010. There were several accompanying talks with the Federal Ministry of Justice in Berlin. The Federal Agency took part in specialist consultations on the periodic report of the Federal Government in accordance with the UN Anti-Torture Convention on 9 June 2009.

On 26 May 2009, the Federal Agency carried out a fact-finding visit to Frankfurt/Main Regional Federal Police Headquarters at Frankfurt Airport at the invitation of the Federal Ministry of the Interior. It was followed by two further visits to the Federal Armed Forces initiated by the Federal Ministry of Defence, at the Kurmark barracks in Storkow on 8 October 2009 and in the Julius Leber barracks in Berlin on 26 November 2009. These visits served not only to explain the work of the Federal Agency to the units concerned, but also to eliminate any prejudices existing on the part of all those involved. The Federal Agency attended the annual conference of the heads of the detention group of the Federal Armed Forces in Veitshöchheim from 19 to 21 April 2010.

Especially in the initial months, the Federal Agency established contact with various non-governmental organisations, as well as with university and other facilities concentrating on human rights activities. Several meetings took place in the period under report with representatives of the German Institute for Human Rights in Berlin. The Federal Agency established contact with the German section of Amnesty International, with facilities for observing deportation and with various non-governmental organisations. On 4 March 2010, the Federal Agency had the opportunity to

introduce its mandate and the activities to date to the chairman of the Committee on Human Rights and Humanitarian Aid of the Federal Parliament, Tom Koenigs, and to other parliamentarians.

Participation in research projects is not one of the Federal Agency's core tasks. What is more, it only has limited staffing and funding available for this purpose. The Federal Agency would nonetheless like to contribute to academic research on national preventive mechanisms as its resources allow. The Federal Agency hence attended a conference from 1 to 3 March 2010 on the topic of "Human rights monitoring – Opportunities and limits of out-of-court human rights protection" held by the Center for Interdisciplinary Research of the University of Bielefeld (ZIF). The activity of the Federal Agency was described in a lecture on the Federal Agency's preventive visiting procedure. The contribution will be published in a conference volume in 2010; an advance copy is annexed to this report. Moreover, the Director of the Federal Agency held talks in November 2009 and March 2010 with the head of the Human Rights Centre of the University of Potsdam. It is planned to attend a conference held by the Human Rights Centre October 2010 on the comparison of mechanisms for torture prevention.

### **3. Activities at international level**

The Federal Agency is convinced that the implementation of OP-CAT can particularly become more effective through international networking. Cooperation between the national preventive mechanisms and the SPT is already stressed in Articles 12 c) and 20 f) of the Optional Protocol. The focus is further on an exchange of experience and knowledge with other national preventive mechanisms (NPMs), as well as with the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Many NPMs of other states were therefore contacted in September 2009 and requested to engage in an exchange of experience. The Federal Agency attended a conference held on 5 and 6 November 2009 by the Council of Europe and the European Commission in cooperation with the Association for the Prevention of Torture (APT) in Strasbourg. At the same time, the event served to launch a Council of Europe project to improve the networking of the national preventive mechanisms, as well as their networking with members of the CPT and of the SPT. The "NPM project" funded by the Council of Europe and the European Commission offers to all participating national mechanisms the opportunity to meet international experts in the framework of regular workshops on relevant topics. The Federal Agency will participate in this project as its resources permit.

The Director of the Federal Agency furthermore met with the UN Special Rapporteur on torture, Prof. Dr. Manfred Nowak, in Berlin on 20 November 2009. A "Round Table on detention conditions in the EU" held by the European Commission took place in Brussels on 8 December 2009, also attended by the Federal Agency.

A first meeting of all contact persons in the NPM project took place in Padua on 27 and 28 January 2010. The first workshop on the topic of "The role of NPMs in preventing ill-treatment in psychiatric institutions" was held in Padua in March 2010. A further workshop on the "Role of NPMs in Protecting Individuals' Key Rights in Police Custody", attended by the Federal Agency's research assistant, took place in Tirana from 9 to 11 June 2010.

### **4. Transmission of information and of enquiries by individuals**

The Federal Agency received roughly ten written, telephone and electronic enquiries or tip-offs from individuals in the period under report. The enquiries exclusively related to facilities under the jurisdiction of the Commission of the *Länder*, the lion's share relating to prisons. Further reports related to police activities, as well as to the placement of offenders with mental disorders in psychiatric institutions. All individuals received from the Federal Agency a brief statement that their enquiry had

been registered and that it would be forwarded to the Commission of the *Länder* at the appropriate time. In individual cases, the individuals were also informed that they could forward their report to the Secretariat of the CPT.

For lack of a legal basis, the Federal Agency is not entitled to remedy individuals' complaints or to offer them legal advice. It specifically informs individuals of this when acknowledging enquiries. Nonetheless, information on specific incidents is highly relevant in practical terms for the work of the Federal Agency. Firstly, it is available as background information on inspection visits and can draw attention to specific problem areas. Furthermore, concrete information and pointers may exert an influence on the selection of the places to be visited and the concomitant priorities. The Federal Agency therefore revised its website in June 2010, and now offers a simplified contact via a web-based contact form. This aims to provide individuals with a simple mechanism to provide information to the Federal Agency on relevant facts on an anonymous basis.<sup>15</sup>

## **5. The implementation of inspection visits**

The Federal Agency carried out a total of four inspection visits to the Federal Police and two with the Federal Armed Forces in the period under report. The first visit took place on 26 August 2009 at Düsseldorf Airport federal police station. The Federal Agency visited Rostock Federal police station on 24 and 25 November 2009 and Frankfurt (Oder) federal police station on 21 January 2010. Visits to the Federal Armed Forces' Speyer and Zweibrücken locations followed on 25 and 26 March 2010.

The Federal Agency counts each visit to a unit as a separate visit as soon as it has carried out an introductory and a concluding meeting with the head of the unit. This method of counting led with Rostock federal police station to the visit to the station of the Federal Police in Wismar also being counted separately since the Federal Agency held an introductory and a concluding meeting with the head of the authority here.

## **IV. General system followed in the inspection visits**

### **1. Methodical foundation and tools**

The Federal Agency applies above all valid German law and the case-law of the Supreme and Federal Courts and of the Federal Constitutional Court when carrying out its visits. The Federal Agency furthermore includes the case-law of the European Court of Human Rights, as well as the recommendations of the SPT and of the CPT, in its decision-making.

When it commenced its activities, the Federal Agency drew up a variety of materials on implementing visits. A visiting schedule was developed for the course of the visits which the Federal Agency uses in planning. Further requirements for planning and implementing visits can be found in the working guidelines of the Federal Agency. Furthermore, a list of questions based on documents from the Council of Europe is used for reference when making visits and is updated on a continual basis. The Federal Agency furthermore uses a separately-developed form on which the actual circumstances (e.g. size, equipment, condition) in the detention cells inspected are recorded. The information thus documented is incorporated in the visiting report. Furthermore, the Federal Agency has further technical aids (a digital camera, a room measurement device and a climate measurement device) which are used as and when necessary.

---

<sup>15</sup> The contact form can be retrieved from the website of the Federal Agency at <http://www.antifolterstelle.de/kontaktformular.html>.

## **2. Visiting procedure**

The Federal Agency currently still announces its visits to the unit in question 24-48 hours in advance. Unannounced visits are however also to be carried out in future. The Federal Agency will have certificates issued for this by the Federal Ministry of the Interior and the Federal Ministry of Defence which can be submitted for identification purposes in the case of an unannounced visit.

The following concrete visiting procedure has become established over time: The visit is opened by holding a brief talk with the head of the unit. The role of the Federal Agency, its tasks and powers are discussed during that meeting. The detention area is then inspected and requests made to inspect the available documents and accounts. If the Federal Agency finds that individuals are being held in custody, it will take the opportunity to have a confidential talk with them. Equally, interviews will be carried out where necessary with officers on duty, with the staff representative as well as with chaplains or social workers. Another discussion will be carried out at the end of the visit with the head of the unit or other responsible persons. This discussion serves to provide initial feedback to those in charge and to explain the further course taken by the procedure. The results of the visit are finally recorded in an internal visit report. The recommendations mentioned are announced in a letter to the Ministries as well as to the units that have been visited.

All the visits carried out to date have given rise to a number of recommendations which are taken note of both by the units visited and by the Ministries. Some initial changes were carried out on the spot and in the presence of the Federal Agency. The Federal Agency has always received prompt feedback with regard to the recommendations that it has made. A detailed list of the recommendations and of their implementation is found in Sections B and C of this Annual Report.

In the long term, the visits of the Federal Agency will also promote the establishment of a collection of "best practices". These initial, rapid successes show that the activity of the Federal Agency is taken very seriously by the authorities involved. They also prove that the inspection of places where people are deprived of their liberty by an independent facility can indeed lead to an improvement in the conditions of persons in custody.



## **B. Presentation of the main results of the visits to the Federal Police in the period under report 1 May 2009-30 April 2010**

### **I. General preliminary remarks on visits to the Federal Police**

#### **1. Legal basis for custody in Federal Police facilities**

The Federal Police can take individuals into custody on the basis of section 39 of the Federal Police Act (*BPolG*). Additional regulations can be found in the Custody Code of the Federal Police.<sup>16</sup> The Federal Agency was given a list of custody facilities by the Federal Ministry of the Interior in the spring of 2009, according to which there are 171 facilities of the Federal Police in the entire national territory. The list also includes those places which are no longer in use or the use which are shortly to be removed from service.

The Federal Agency aims where possible to visit facilities from all nine directorates within a period under report<sup>17</sup>. It visited facilities falling in the organisational sphere of the Regional Federal Police Headquarters in Bad Bramstedt, Berlin and Sankt Augustin in the period under report 1 May 2009-30 April 2010.

#### **2. Drafting recommendations for the facilities visited**

In accordance with Article 19 b) OP-CAT, the Federal Agency is obliged as the national preventive mechanism to make recommendations for improvements to the authority visited. The competent authorities are obliged in accordance with Article 22 OP-CAT to enter into a dialogue with the Federal Agency on the implementation of those recommendations. The Federal Agency addresses recommendations on the Federal Police to the Federal Ministry of the Interior, and here specifically to Directorate-general B, which has explicit responsibility for the Federal Police. Both the unit visited and the superior Regional Federal Police Headquarters always receive a copy of the letter.

---

<sup>16</sup> Police Custody Code for Places of Custody in Units of the Federal Police (*PGO-BPOL*), BRAS 391, edition 2008.

<sup>17</sup> The directorates are: Bad Bramstedt, Berlin, Hanover, Koblenz, Munich, Pirna, Sankt Augustin, Stuttgart, Frankfurt/Main.

## II. The outcome of the inspection visits to the Federal Police

### 1. Visit to the federal police station at Düsseldorf Airport

The Federal Agency carried out its first inspection visit to the federal police station at Düsseldorf Airport on 26 August 2009.<sup>18</sup> The Federal Agency inspected the custody area as well as a terminal which is used for mass returns (so-called Module F). The Federal Agency did not encounter any persons in custody at the time of the inspection. The mass return area had also not been used for several days.

Recommendations	Reaction
<p>The Federal Agency recommends that the medical examination room in Module F at Düsseldorf Airport be placed in a medically-suitable condition. This particularly concerns equipping it with a workplace (chair and table), as well as installing a washroom. Furthermore, it should be ensured that medical material can be stored hygienically.</p>	<p>The Federal Ministry of the Interior stated on 4 November 2009 that the federal police station at Düsseldorf Airport would be provided in future with such a room which could also be used in case of mass returns. This room was said to be also equipped with a treatment stretcher.</p>
<p>According to item 2.5 of the Police Custody Code for Places of Custody in Units of the Federal Police (<i>PGO-BPOL</i>), House Rules are to be affixed in the custody rooms. The Federal Agency therefore recommends to affix House Rules with the prescribed content in a suitable place or to hand these out to persons in custody.</p>	<p>The Federal Ministry of the Interior stated on 27 October 2009 that the Federal Police would be glad to comply with this recommendation. The “House Rules” would therefore be provided in several languages and in the form prescribed by the Custody Code.</p>

<sup>18</sup> Düsseldorf Airport federal police station has two detention cells and two return cells.

## 2. Visit to Rostock federal police station

The Federal Agency carried out a visit to the Federal Police in Rostock on 24 and 25 November 2009. The inspection included the premises at the headquarters of the federal police station in Kopernikusstraße 1b, the guardroom at Rostock Central Station, as well as at Rostock-international port and Wismar federal police stations.<sup>19</sup> No persons were in custody at the time of the inspection.<sup>20</sup>

<b>Recommendations</b>	<b>Reaction</b>
<p>The custody register should document the times of checks as precisely as possible. The use of blanket designations such as “always” should be avoided.</p> <p>Furthermore, the custody register should be regularly submitted to the head of the unit for his attention and initialling, where possible on a weekly basis.</p>	<p>The Federal Police stated on the spot that it was willing to implement the changes to the custody documentation as recommended.</p> <p>The Federal Police Headquarters ordered in January 2010 that the custody register should be initialled on a weekly basis for all units.</p>
<p>Daylight should be insisted on for new buildings in future. The Federal Agency considers daylight to be essential even for a short-term stay. The requirement for cells to have a window is also found in the provision contained in 3.4 of BRAS 618.4.</p>	<p>The Federal Ministry of the Interior confirmed on 20 January 2010 that daylight had to be provided in new buildings built from 2002 onwards. It stated on 12 March 2010 in response to an enquiry that it had no longer been possible to incorporate daylight in the detention cells of the property of the Federal Police in Rostock (which had been built after 2002) because of short-notice changes in the construction planning.</p>
<p>Persons in custody should also be provided with a pillow should they ask for one. This particularly applies if persons spend the night in the cells or are kept there for more than twelve hours.</p>	<p>The Federal Ministry of the Interior stated on 20 January 2010 that detainees were provided with an additional disposable blanket should they ask for one. This could be rolled and used as a pillow.</p>
<p>The House Rules should be quickly translated into the customary languages by the Federal Police Headquarters and provided in the information collection in the units in question.</p>	<p>The Federal Ministry of the Interior stated on 20 January 2010 that the House Rules were already being translated into various languages by the Specialist Information and Media Unit of the Federal Police and would be provided to the units in electronic form as soon as possible.</p>
<p>The Federal Agency recommends to provide the premises of Wismar federal police station with a fire detection system, a ventilation system, dimmable lighting as well as a cell intercom as soon as possible.</p>	<p>The Federal Ministry of the Interior stated on 20 January 2010 that the fire detection system had already been added in Wismar in December 2009. Bramstedt Regional Federal Police Headquarters was installing dimmable lighting. The installation costs for a cell intercom were said to be too high, especially given that it was an older, rented property. Since however there already was an alarm system, detainees could contact an officer at any time.</p>

<sup>19</sup> Rostock federal police station (Kopernikusstraße 1b) has four cells and the guardroom at Rostock Central Station and Rostock-international port federal police station and the federal police station in Wismar each have two cells.

<sup>20</sup> A person who had just been apprehended was taken to the custody area in the federal police station at Kopernikusstraße 1b at a later time the Federal Agency was permitted to have a confidential talk with the person. The Federal Agency however did not avail itself of this possibility.

### 3. Visit to Frankfurt (Oder) federal police station

On 21 January 2010 the Federal Agency visited the federal police station Frankfurt (Oder). The inspection includes the properties in Kopernikusstraße 71–75 and the federal police station at Frankfurt (Oder) station<sup>21</sup>. No one was in detention at the time of the inspection.

<b>Recommendations</b>	<b>Reaction</b>
The Federal Agency recommends to equip the cells of the Frankfurt (Oder) police station in Kopernikusstraße 71–75 with a fire detection system in line with the requirements of BRAS 618.3 and with dimmable lighting as soon as possible.	The Federal Ministry of the Interior stated on 12 March 2010 that the contracts to install a fire detection system and dimmable lighting had been forwarded to the building's owner. It pointed out that the regulations merely provided for lighting which could be switched off at night, and not necessarily for dimmable lighting.
It is recommended that the custody register should be regularly submitted to the head of the unit for his attention and initialling, where possible on a weekly basis.	The Federal Ministry of the Interior stated on 12 March 2010 that the current instructions of the Federal Police Headquarters had been implemented by the head of the unit.

<sup>21</sup> Frankfurt (Oder) federal police station has two detention cells in Kopernikusstraße 71–75 and two at the Frankfurt (Oder) station.

## **C. Description of the main results of the visits to the Federal Armed Forces in the period under report 1 May 2009-30 April 2010**

### **I. General preliminary remarks on visits to the Federal Armed Forces**

#### **1. Legal basis for custody in facilities of the Federal Armed Forces**

Prison sentences, criminal and youth detention as well as disciplinary detention are carried out on soldiers in custody facilities of the Federal Armed Forces (section 1 of the Ordinance on the Enforcement of Prison Sentences, Military Disciplinary Confinement, Youth Detention and Disciplinary Detention by authorities of the Federal Armed Forces [*BwVollzO*]). The legal basis for disciplinary detention is constituted by section 26 of the Military Disciplinary Code (*Wehrdisziplinarordnung – WDO*), detention lasting at least three days and up to a maximum of three weeks. Disciplinary detention may only be imposed with the participation of a judge (section 40 of the Military Disciplinary Code). Jurisdiction for deprivations of liberty lasts as long as the person concerned is in service with the Federal Armed Forces (No. 103 of the 14/10 Central Service Instructions). Further regulations on imprisonment in the Federal Armed Forces are also found in the 14/10 Central Service Instructions.<sup>22</sup>

At the beginning of its activities, the Federal Agency was provided by the Federal Ministry of Defence with a list of detention facilities of the Federal Armed Forces. According to this list, which is dated April 2009, the Federal Armed Forces maintain a total of 137 detention facilities in Germany. The military police operate a further 30 facilities in which persons can be detained or soldiers who have been apprehended can be temporarily kept.

The Federal Agency aims to visit facilities from military districts I-IV within a visiting period. The Federal Agency visited the Federal Armed Forces barracks in Speyer and Zweibrücken, which belong to military district II, in the period under report 1 May 2009-30 April 2010.

#### **2. Drafting recommendations for the facilities visited**

In accordance with Article 19 b) OP-CAT, the Federal Agency, as the national preventive mechanism, is obliged to make recommendations for improvements to the authority visited. In accordance with Article 22 OP-CAT, the authorities in question are obliged to enter into a dialogue with the Federal Agency on the implementation of the recommendations. Recommendations regarding the Federal Armed Forces are forwarded by the Federal Agency to the Federal Ministry of Defence, and here to the Directorate-general Armed Forces Staff/Personnel, which is responsible for implementing detention. Both the Federal Armed Forces facility visited and the competent head of the detention group receive a duplicate of the letter.

---

<sup>22</sup> 14/10 Central Service Instructions (Imprisonment Regulation), edition January 1980. The regulations are currently being comprehensively revised by the Federal Ministry of Defence.

## II. Results of the inspection visits in the Kurpfalz barracks in Speyer and the Niederauerbach barracks in Zweibrücken

The Federal Agency visited the Kurpfalz barracks in Speyer and the Niederauerbach barracks, as well as the military police headquarters belonging to it, in Zweibrücken on 25 and 26 March 2010.<sup>23</sup> Both visits were announced 48 hours in advance to the competent head of the detention group of military district II. In none of the facilities visited did the Federal Agency find persons in detention on the occasion of its visits. Meetings were held with the barracks commanders, as well as with the individuals responsible for execution of detention. After inspecting the detention facilities in both barracks, the Federal Agency spoke with the soldiers' representatives, and in Speyer it also spoke with the Protestant military chaplain.

Furthermore, the premises of the military police headquarters on the barracks complex in Zweibrücken were inspected. The Federal Agency found in this context that video monitoring had been installed in the common rooms for apprehended soldiers. The Federal Agency informed the Federal Ministry of Defence that it would be making a statement on this at a later time.

<b>Recommendations</b>	<b>Reaction<sup>24</sup></b>
It is recommended to equip the detention cells with appropriate fire detection devices (e.g. smoke detectors, CO2 warning units).	The Federal Ministry of Defence stated on 11 June 2010 that it approved equipping all detention cells with fire detection devices and that the necessary measures had been taken to carry out this work.
It is recommended to expand the 14/10 Central Service Instructions to include a section regarding checks on the particularly secured detention cells. In particular, there should be regular checks on individuals under the influence of narcotics or alcohol, and these should be documented in an appropriate traceable manner.	The Federal Ministry of Defence stated on 11 June 2010 that there were no legal objections to regular checks being carried out on the particularly secured detention cells and that the addenda/instructions would be incorporated into the revision of the 14/10 Central Service Instructions.
It is recommended to regularly check the heat development in the detention cell wing of the guard service building of the Kurpfalz barracks in Speyer. A temperature of 22 °C should not be exceeded in the detention cells as a matter of principle.	The Federal Ministry of Defence stated on 11 June 2010 that, in accordance with Nos. 305 et seqq. of the 14/10 Central Service Instructions, the cells only had to be fit for healthy living. This did not entail limiting the room temperature to a maximum of 22°C. Organisational solutions would have to be applied here, such as regularly checking the temperatures and continual ventilation. As a matter of principle, it was not possible for a higher standard to apply to detention cells than for accommodation and workrooms of the soldiers.
An addendum is proposed to the "Information sheet on essential detention regulations" which is handed out at the Niederauerbach barracks in Zweibrücken to include the possibility of access to a lawyer. It is recommended in general terms for the Ministry to develop a uniform information sheet for detention and to make it available to all units.	The Federal Ministry of Defence stated on 11 June 2010 that the possibility of access to a lawyer, specifically in the shape of visiting rights of lawyers, would be included in the review of the 14/10 Central Service Instructions.

<sup>23</sup> The number of detention cells in Speyer is seven and there are five in Zweibrücken. The military police have two detention cells as well as a common room for apprehended soldiers.

<sup>24</sup> Unless stated otherwise, the recommendations that were made refer equally to the barracks in both Speyer and Zweibrücken.

#### **D. Joint Commission of the *Länder* for the Prevention of Torture**

The Joint Commission of the *Länder* for the Prevention of Torture is responsible for all detention facilities falling under the jurisdiction of the *Länder*. These are facilities of the prison service as well as those of the *Land* police and the psychiatric service, and for instance facilities for detention awaiting deportation, old-age homes and long-term care homes, and youth welfare facilities. The Commission of the *Länder* acts on the basis of a State Treaty which was signed by all Federal *Länder* at the sidelines of the 80th Conference of the Ministers of Justice held in Dresden on 24 and 25 June 2009 and has now been ratified. The State Treaty enters into force after all ratification certificates have been deposited, hopefully on 1 September 2010.

The four honorary members of the Commission of the *Länder* were nominated at the 81st Conference of Ministers of Justice held in Hamburg on 23 and 24 June 2010.<sup>25</sup>

These are State Secretary ret. Prof. Dr. Hansjörg Geiger (Chairman), Presiding Judge at Stuttgart Higher Regional Court Albrecht Rieß, Prof. Dr. Dieter Rössner, University Professor at the University of Marburg and ret. Elsave Schöner (*Leitende Regierungsdirektorin*).

The Federation and the *Länder* have furthermore signed an Administrative Agreement which is also expected to come into force on 1 September 2010 at the latest. This Agreement is to regulate inter alia the cooperation between the Federal Agency and the Commission of the *Länder*, as well as funding.

Euro 200,000.00 are available for the Commission of the *Länder*, provided by the individual Federal *Länder* in proportions determined by the Königstein Key. The Commission of the *Länder* will also take up its work at the headquarters of the Centre for Criminology in Wiesbaden. Both parts of the National Preventive Mechanism are to finally be merged under the umbrella of a “National Agency for the Prevention of Torture”.

---

<sup>25</sup> cf. resolution on agenda item I.12: Nomination of the members of the Commission of the *Länder* against torture to be established.

**E. Annexes**



Klaus Lange-Lehngut

## **I. The preventive visiting procedure of the Federal Agency for the Prevention of Torture<sup>1</sup>**

### **1. Legal foundations**

The legal foundation of the Federal Agency for the Prevention of Torture is the Optional Protocol (abbreviated below as OP-CAT)<sup>2</sup> to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>3</sup> The Convention was drawn up in December 1984; the Protocol was adopted by the UN General Assembly exactly 18 years later, in December 2002. The Federal Republic of Germany signed the Optional Protocol in New York on 20 September 2006 and transposed it into national law on 26 August 2008.<sup>4</sup> After the ratification document had been deposited on 4 December 2008, the Optional Protocol entered into force for the Federal Republic of Germany on 3 January 2009 within the framework of international law.

The Optional Protocol has essentially brought about two highly-significant results for the protection of human rights: One is the establishment of an internationally-composed Subcommittee of the UN Committee against Torture which has been equipped with the right to carry out unannounced inspections of all detention facilities in the States Parties. The other is that the States Parties have been obliged to establish one or several national preventive mechanisms which on the one hand are to serve as communication partners of the Committee, whilst on the other hand they are to carry out inspections in their respective home countries.<sup>5</sup> The Federal Agency for the Prevention of Torture is such a national preventive mechanism within the meaning of the OP-CAT. The Federal Agency was established in November 2008 by Administrative Order of the Federal Ministry of Justice<sup>6</sup>. The author was nominated as its honorary Director in December 2008. The Federal Agency was able to take up its work in Wiesbaden on 1 May 2009.

### **2. The tasks, rights and powers of the Federal Agency**

The tasks, rights and powers of the Federal Agency are listed in the OP-CAT<sup>7</sup> and in major aspects also in the Administrative Order of the Federal Ministry of Justice<sup>8</sup>:

The Federal Agency is thus tasked with visiting places where people are deprived of their liberty under federal jurisdiction to prevent torture, to draw attention to problems and where appropriate to recommend improvements. The Federal Agency can address recommendations to the competent authorities to improve the conditions for persons who have been deprived of their liberty. The authorities are obliged to examine these recommendations carefully and to make a statement on them to the Federal Agency within a suitable period. Further, the Federal Agency has the task of making proposals and comments on existing legal provisions or on those which have already reached the draft Bill stage. A major task, finally, is the drafting of an Annual Report which with regard to the present legal situation is “only” to be forwarded to the Federal Government and to the German Federal Parliament.

<sup>1</sup> This article is based on a speech which the author gave at a meeting of the Center for Interdisciplinary Research on the topic of “Human rights monitoring – Opportunities and limits of out-of-court human rights protection” in Bielefeld on 1 March 2010.

<sup>2</sup> Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment – OP-CAT.

<sup>3</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment – CAT.

<sup>4</sup> cf. Federal Law Gazette (*BGBI.*) Part II of 2 September 2008, pp. 853 et seqq.

<sup>5</sup> For more on this cf. Follmar-Otto, *Die Zeichnung, Ratifikation und Implementation des Zusatzprotokolls zur UN-Anti-Folter-Konvention in Deutschland – Anmerkungen zum politischen Prozess*, in: *Prävention von Folter und Misshandlung in Deutschland*, German Institute for Human Rights (publisher.) 2007, pp. 57 et seqq.

<sup>6</sup> Administrative Order of the Federal Ministry of Justice of 20 November 2008, reprinted in: Federal Gazette No. 182, p. 4277.

<sup>7</sup> Art. 18 et seqq. OP-CAT.

<sup>8</sup> No. 2 et seq. of the Administrative Order.

The rights and powers of the Federal Agency correspond with its tasks. In a brief, highly cursory description, the rights and powers can be summed up as follows: The Federal Agency has unlimited and unrestricted access

to all detention facilities,

to all persons held in detention, as well as

to all information on them.<sup>9</sup>

The right of unlimited, unrestricted access to all persons held in detention naturally also includes the right to talk with the detainees confidentially, where necessary via interpreters.

The rules briefly presented prove that the Federal Agency is a facility for monitoring fundamental rights. Three derivations from the rules appear to be particularly important in this context:

### **2.1 Restricted area of competence of the Federal Agency**

The competence of the Federal Agency is restricted to facilities which are subject to the supervision of the Federation. In the main, these are facilities of the Federal Police and the Federal Armed Forces. Even though the number of detention cells and their respective capacity at each location are only small, there are a total of several hundred locations from Flensburg to Berchtesgaden.<sup>10</sup> A joint Commission of the *Länder* supported and funded by all Federal *Länder* will take on responsibility<sup>11</sup> in future for facilities under the jurisdiction of the Federal *Länder* (that is in particular for prisons, *Land* police facilities, psychiatric facilities), and will be merged with the Federal Agency to form a “National Agency for the Prevention of Torture”.

### **2.2 The Federal Agency as a prevention facility**

The Federal Agency is not a complaint or petition instance, and does not have the task of an ombudsman institution. It is not any of this because the Federal Agency could not remedy an application, given that it does not have jurisdiction to do so. It on principle acts on an ad hoc basis, working preventively and not reactively. Incoming applications can hence only be answered in the sense that the circumstances put forward are recorded and input into the work of the Federal Agency. Apart from forwarding to the competent complaint body and/or the public prosecution office, the examination in terms of the content will however be unsatisfactory for the applicants because the Federal Agency is not able to help them to assert their rights. A complaint can however certainly be highly relevant to the selection of the next place to be visited in terms of setting priorities for deciding on an ad hoc visit.

### **2.3 Perception of the mandate of the Federal Agency**

The mandate of the Federal Agency is not limited to the prevention of torture. The Federal Agency naturally takes its mandate to prevent torture very seriously, and will react in a consistent, prompt manner to any indication or observation received in this respect. Where appropriate, it will submit ad hoc proposals to prevent torture in the future and seize the public prosecution office with the matter.

However, it is also possible for there to be a need for improvement, and hence for action, below the

---

<sup>9</sup> Art. 20 OP-CAT.

<sup>10</sup> According to documents available to the Federal Agency, the Federal Armed Forces maintain approx. 168 detention facilities and the Federal Police maintain approx. 170.

<sup>11</sup> Cf. section 7 for more details.

level of torture and cruel, inhuman or degrading treatment or punishment. Blindness towards what is taking place in an organisation and/or the lack of resources – both circumstances which experience shows occur in every larger institution – lead to procedures or the structure of constructions being in need of improvement in terms of respect for human dignity. This may include an incentive from the outside, from individuals who do not belong to the institution, and who have the requisite expertise providing the necessary impetus to improve the situation. This applies particularly if the circumstances regarded as being in need of improvement can be taken to a high level within the hierarchy and the Annual Report ultimately provides an opportunity for discussion in the political arena.

The task emerging from the Optional Protocol and the Administrative Order of the Federal Ministry of Justice, namely “[...] to make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty”<sup>12</sup>, coupled with the abovementioned duty to report to the Federal Government and the Federal Parliament, hence opens up to the Federal Agency a broad field of action also below the level of presumed or proven torture. To put it another way: The Federal Agency understands itself not as an opponent of the facilities which it visits; rather it acts as an organisational development manager working free of charge. The author at least hopes that its recommendations can lead to the approval of funding to remedy construction or other faults which have been the subject of complaints. Ultimately, there is also the chance that a standard for “best practices” will be formed over time.

### 3. Budget and staff

The Federal Agency for the Prevention of Torture currently has at its disposal a maximum of € 100,000.00 per year. Additionally, the Federal Agency’s travel expenses are set at a maximum of € 10,000.00. This leads to a shortage of staffing: The Federal Agency currently consists of the honorary Director (who bills for his expenditure in accordance with the Federal Travel Expenses Act), a research assistant, as well as a part-time office clerk. If monitoring is described as the “systematic collection of information and planned observation of events or processes with the aim in mind of sustained quality assurance and improvement, including the development of suitable standards to record and evaluate that quality”<sup>13</sup>, the staff appointed to the Federal Agency are certainly not able by any means to carry out the task of the systematic recording and planned observation of events or processes, despite their high level of commitment. It must appear blatantly obvious that two people (one of whom is in an honorary position) are unable to regularly inspect the several hundred facilities in the whole Federal territory at short intervals.

The shortcomings in the staffing of the Federal Agency however – and this is just as serious – lead to a risk of reducing the quality of the work. If OP-CAT provides for good reasons that the players of the national preventive mechanisms are to have the requisite capabilities and professional expertise<sup>14</sup>, this means that the detainees in the detention facilities should be visited by persons with different professional backgrounds, that is, depending on the situation, by social workers, psychologists, educationalists, physicians, lawyers, etc. If however only a total of two people are available to cope with the tasks of the Federal Agency, the broad spectrum of the capabilities and professional expertise required can never be covered.

The problems can be made clear using an example: When inspecting a terminal for mass deportations at a major German Airport, the author and Federal Agency’s research assistant were shown a medical treatment room which appeared to be signposted by a pictogram. The room contained only a dusty

<sup>12</sup> Art. 19 b) OP-CAT and No. 3 para. 2 of the Administrative Order.

<sup>13</sup> cf. Gusy in: *Grundrechtsmonitoring: Wirksamkeitsbedingungen und -grenzen*, to be published.

<sup>14</sup> Art. 18 para. 2 OP-CAT.

stretcher, but no washbasin or desk, telephone or medical equipment. If the inspection team had included a physician, the standards for the equipment of this treatment room could have been immediately defined with a much greater degree of authority.

As disappointing as the staffing shortcomings of the Federal Agency may be, the facility serves not only to prevent torture in Germany, but also other purposes. For instance, the nomination letter for the Director states as follows: “[...]Germany is concerned not only to prevent torture and other inappropriate treatment in the Federation’s detention facilities, but also to send out a signal internationally, together with other human rights-orientated states.”<sup>15</sup> From the point of view of the Federal Agency, it can only be hoped that the Agency’s staffing level in Germany is not taken as an excuse in other states in which the creation of facilities for torture prevention would perhaps be even more important than in Germany to equip their national prevention facilities in a similarly inadequate manner.<sup>16</sup>

Notwithstanding all the criticism of the legislature (in its capacity as presiding over the federal budget), which has allotted a weighty mandate to the Federal Agency, but placed only highly inadequate resources at its disposal, it is nonetheless true that at least the independence of the Federal Agency is guaranteed without any restrictions whatever. Two elements are decisive for this: Firstly, the existing rules (OP-CAT, the Administrative Order and nomination letter for the Director) do guarantee the independence of the facility at all levels. Secondly, the fact that the Director works on an honorary basis guarantees that the Federal Agency does not have to cater to any employer supplying it with resources. The rules determine that the Director may be appointed for a period of four years and following that may be nominated once more by the Federal Ministry of Justice in agreement with the Federal Ministry of the Interior and the Federal Ministry of Defence, and that it is virtually impossible to dismiss him/her. The honorary commitment of the Federal Agency’s Director however poses a risk in the long term: Only someone who is economically independent and does not have to engage in daily employment to earn a living can become the Director of the Federal Agency because it is highly time-consuming. As things are, no one can therefore be considered for this task who is not of pensionable age or of an age to become an emeritus professor. Nothing against sprightly pensioners with a commitment towards defending human rights, but this approach is hardly the first choice in the long run!

To return to the question of the independence of the Federal Agency: The Agency is completely free when deciding which work contents are to be mandatory for the Federal Agency, which facility of the Federation is inspected by the Federal Agency, and when. In organisational terms, the facility is linked to the Centre for Criminology in Wiesbaden. This is a research and documentation unit funded jointly by the Federation and the *Länder*. The Centre for Criminology provides welcome technical and organisational support, given that the staff, who can only be recruited or dismissed with the consent of the Director of the Federal Agency, have to be able to submit their leave requests and travel expenses somewhere, and their desks have to be somewhere.

#### **4. The visiting procedure**

A particular challenge is posed by the selection of the facilities which are to be visited by the Federal Agency. According to the letter and the spirit of the Optional Protocol, regular, additional ad hoc visits were to be paid to the facilities at short intervals, that is at a frequency of between one and three

---

<sup>15</sup> For instance State Secretary Diwell of the Federal Ministry of Justice in the nomination letter of 20 November 2008, which is available to the author.

<sup>16</sup> cf. Follmar-Otto, loc.cit., p. 66

years.<sup>17</sup> It should already be clear to the reader that the staffing situation described above does not permit visits to be carried out as frequently as is required, so that it is necessary to focus on specific areas and preferences have to be selected. It has not yet been possible to develop comprehensive, generally-applicable schedules. Agreement has however been reached that both facilities of the Federal Armed Forces and the Federal Police are to be inspected in each period under report.

The Federal Agency was able to carry out six official inspections in 2009 and in the first quarter of 2010. They were to the Federal Police (four facilities) and the Federal Armed Forces (two facilities). In the past, the Federal Agency announced each of its visits one day before arrival in order to ensure that the relevant contact persons could be available and that access could be unhindered. All the author's experience shows that announced visits in Germany do not generally cause the time before arrival on the spot (always much shorter than 24 hours) to be used build a Potemkin village. We are ultimately neither in Eastern Europe nor in Asia, where the author has several times experienced the smell of fresh paint in prison detention areas when visits had been announced, leading one to presume that these facilities had been quickly re-decorated before the visit by the foreign delegation. In future, however, inspections will also take place unannounced.

The following procedure has emerged in the short period in which the Federal Agency has been in existence, and it can certainly be refined in future:

The detention areas are visited and the premises inspected, in each case after a brief talk has been held with the head of the unit and his/her immediate staff.

The documentation – in particular the detention record – is then inspected, examined for its plausibility and completeness and where possible a discussion carried out with those in detention. Only one person has so far been found to be in detention in the detention facilities of the Federal Police. This is primarily caused by the fact that detainees' stay under the jurisdiction of the Federal Police is as a rule limited to only a few hours. In addition, no soldiers have so far been found in the detention facilities on inspections of Federal Armed Forces detention facilities.

A final talk is always carried out at the end of the inspection with the head of the authority and his/her close staff, in which the results of the inspection are notified. In topical terms, the final discussion is naturally not restricted to expressing criticism and consequences emerging from this in the view of the Federal Agency for the facility. Rather, emphasis is also placed on making positive observations promoting staff motivation. The Federal Agency attaches great importance to careful, comprehensive follow-up documentation of all relevant observations.

After the visit, an internal note is drawn up that is not intended for publication and which forms the basis for the visiting report to the inspected authorities and to the superior authorities, to the competent Ministry, as well as for the Annual Report.

## **5. Cooperation with other human rights protection facilities**

The Federal Agency is convinced that human rights protection in detention facilities becomes more effective as a result of national and international networking. Firstly, such contacts help to establish general standards, and secondly contacts with national non-governmental organisations in particular can provide information which is helpful when setting the priorities of the Federal Agency's work. In the short time that the Federal Agency has been in existence, meetings have taken place with representatives of the German Institute for Human Rights, of the Human Rights Centre of the

---

<sup>17</sup> Establishment and Designation of National Preventive Mechanisms, Association for the Prevention of Torture (APT) (publisher.) 2006, pp. 30 et seqq.

University of Potsdam, as well as with the UN Special Rapporteur on Torture.

The Federal Agency has also been able to expand its contacts at international level. Many national preventive mechanisms of other states were contacted back in September 2009 and an exchange of experience was proposed. Between November 2009 and January 2010, the Federal Agency took part in several international events of the Council of Europe and of the European Commission in Strasbourg, Brussels and Padua.

## **6. Initial assessment of the Federal Agency's work**

It will come as no surprise that the visits carried out to date have not provided the slightest indication of torture or cruel, inhuman or degrading treatment or punishment. On the contrary, it was gratifying to note definite indications that the staff working in the facilities have used the opportunities at their disposal and the discretion afforded to them in favour of the detainees. Nonetheless, one may not conclude from this that the visits had no consequences and that the work of the Federal Agency is hence actually superfluous. The Federal Agency has so far already been able to recommend a whole series of improvements to the facilities visited (in terms of optimising the objects visited and procedures to improve human rights protection). These proposals covered both the equipment of the detention facilities and the procedures. Furthermore, the proposals made by the Federal Agency to the authorities concerned were happily not merely noted. Rather, constructional alterations or changes to the procedures were promptly initiated. The first visits that were implemented have hence already proven the expediency of the establishment of national preventive mechanisms.

There are three arguments above all which in the author's initial, incomplete assessment will lend particular weight to the work of national preventive mechanisms in future:

First argument: The members of the national preventive mechanisms are outsiders, but they are familiar with the structures of the facilities visited. Having experience of the profession and being on home ground, they are able to quickly develop a feeling for the atmosphere prevailing in the facility without a need to overcome linguistic or cultural hurdles, to discover and draw attention to weaknesses and to point to solutions for the future. The author is convinced that the familiarity of the Federal Agency's staff with the conditions on the ground and their feeling for the atmosphere prevalent in a facility is the greatest ace up the Agency's sleeve. This appears to make the OP-CAT mechanism superior to other mechanisms in terms of its effectiveness.

The "atmosphere of a facility" is certainly a particularly important topic in the prevention of torture and mistreatment. In the view of the author, who was a prison governor for 25 years, if degrading treatment of detainees (or worse still) is likely to take place in Germany at all, it will not be carried out systematically under the approving eyes of superiors and colleagues. At most, it will take place in individual cases as a consequence of the overtaxing of the staff on the spot, or of stress, bad moods or lack of interest on their part. All experience however shows that, below the level of degrading treatment, minor gruffness certainly occasionally takes place in the detention facilities, or that there may be an inappropriate reaction in communication between staff and detainees. Gruffness in dealing with detainees may cause considerable lastingly hurt, especially since those concerned cannot defend themselves as a rule because the incidents cannot be proven. There is a tried-and-tested method against gruffness and worse: staff further training.

If it is possible to enable staff to work in a stress-free manner, remain in command of the situation and exercise empathy for the people temporarily entrusted to them, and hence to improve the atmosphere in the facility, there are prospects for reducing the risk of human rights violations. For this reason, exceptional importance attaches to further training of staff who are in contact with the detainees. The

Federal Agency will pay particular attention to this aspect in future.

Second argument: In the procedures in accordance with the Optional Protocol, objects and processes are also tested which do not have the nature of an activity, and hence are not completely amenable to being reviewed in court at the behest of those affected. For instance, there is no procedure to enforce suitable equipment of the abovementioned treatment room at the airport. Quite apart from this, after they have been deported those concerned are de facto likely to be unable to complain about the equipment of the room.

Third argument: The work of the Federal Agency however also takes effect beyond the facility visited. The discussion process commencing after a visit with the competent Ministry is highly likely to lead to agreed improvements being introduced not only at the place visited, but also nationally.

## 7. Projects in the near future

The most important task to be carried out in the near future – in addition to the implementation of further visits – is naturally the merger with the Commission of the *Länder*, which is in the process of being established, to become the “National Agency for the Prevention of Torture”. As was briefly mentioned at the outset, a parallel agency, the “Joint Commission of the *Länder* for the Prevention of Torture”, is to be set up for detention facilities which are subject to the supervision of the Federal *Länder* (that is in particular for prisons, police units of the *Länder*, psychiatric hospitals, etc.), and which will also be linked to the Centre for Criminology. The State Treaty between the Federal *Länder* establishing the Commission of the *Länder* was adopted at the sidelines of the Conference of Ministers of Justice in June 2009 and has now been ratified by almost all the Federal *Länder*.<sup>18</sup> An administrative agreement to be concluded between the Federal *Länder* and the Federation is ready for signing. If the composition of the Commission, which is to have four members also working on an honorary basis, is planned to be announced at the Conference of Ministers of Justice in June 2010, the work of the Commission of the *Länder* can also commence. Together, the Federal Agency and the Commission of the *Länder* will already form the two pillars of the National Agency for the Prevention of Torture this year and make their contribution from Wiesbaden towards the dignity of people in German detention facilities remaining unharmed.

as per: 31 March 2010

---

<sup>18</sup> State Treaty of 25 June 2009 on the establishment of a national mechanism of all *Länder* in accordance with Article 3 of the Optional Protocol of 18 December 2002 to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, reprinted in the Law Gazette of Baden-Württemberg of 7 December 2009, pp. 681. et seqq. amongst other places

## **II. General Assembly Resolution 57/199 on the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 18 December 2002**

*The General Assembly,*

*Recalling* article 5 of the Universal Declaration of Human Rights<sup>1</sup>, article 7 of the International Covenant on Civil and Political Rights<sup>2</sup>, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>3</sup> and its resolution 39/46 of 10 December 1984, by which it adopted and opened for signature, ratification and accession the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and all its subsequent relevant resolutions,

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

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

*Welcoming* the adoption of the draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by the Commission on Human Rights in its resolution 2002/33 of 22 April 2002<sup>4</sup> and by the Economic and Social Council in its resolution 2002/27 of 24 July 2002, in which the Council recommended to the General Assembly the adoption of the draft optional protocol,

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

*77th plenary meeting  
18 December 2002*

---

<sup>1</sup> Resolution 217 A (III).

<sup>2</sup> cf. 2200 A (XXI), Annex

<sup>3</sup> Resolution 3452 (XXX), Annex

<sup>4</sup> cf. *Official Records of the Economic and Social Council, 2002, Supplement No. 3 (E/2002/23)*, chap. II, sect. A.



## Annex

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

#### Preamble

*The States Parties to the present Protocol,*

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

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

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

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

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

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

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

*Have agreed* as follows:

#### Part I General principles

##### Article 1

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

##### Article 2

1. A Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (hereinafter referred to as the Subcommittee on

Prevention) shall be established and shall carry out the functions laid down in the present Protocol.

2. The Subcommittee on Prevention shall carry out its work within the framework of the Charter of the United Nations and shall be guided by the purposes and principles thereof, as well as the norms of the United Nations concerning the treatment of people deprived of their liberty.
3. Equally, the Subcommittee on Prevention shall be guided by the principles of confidentiality, impartiality, non-selectivity, universality and objectivity.
4. The Subcommittee on Prevention and the States Parties shall cooperate in the implementation of the present Protocol.

### *Article 3*

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

### *Article 4*

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

## **Part II Subcommittee on Prevention**

### *Article 5*

1. The Subcommittee on Prevention shall consist of ten members. After the fiftieth ratification of or accession to the present Protocol, the number of the members of the Subcommittee on Prevention shall increase to twenty-five.
2. The members of the Subcommittee on Prevention shall be chosen from among persons of high moral character, having proven professional experience in the field of the administration of justice, in particular criminal law, prison or police administration, or in the various fields relevant to the treatment of persons deprived of their liberty.
3. In the composition of the Subcommittee on Prevention due consideration shall be given to equitable geographic distribution and to the representation of different forms of civilization and legal systems of the States Parties.
4. In this composition consideration shall also be given to balanced gender representation on the basis of the principles of equality and non-discrimination.
5. No two members of the Subcommittee on Prevention may be nationals of the same State.

6. The members of the Subcommittee on Prevention shall serve in their individual capacity, shall be independent and impartial and shall be available to serve the Subcommittee on Prevention efficiently.

#### *Article 6*

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

#### *Article 7*

1. The members of the Subcommittee on Prevention shall be elected in the following manner:
  - a)* Primary consideration shall be given to the fulfilment of the requirements and criteria of article 5 of the present Protocol.
  - b)* The initial election shall be held no later than six months after the entry into force of the present Protocol.
  - c)* The States Parties shall elect the members of the Subcommittee on Prevention by secret ballot.
  - d)* Elections of the members of the Subcommittee on Prevention shall be held at biennial meetings of the States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Subcommittee on Prevention shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States Parties present and voting.
2. If during the election process two nationals of a State Party have become eligible to serve as members of the Subcommittee on Prevention, the candidate receiving the higher number of votes shall serve as the member of the Subcommittee on Prevention. Where nationals have received the same number of votes, the following procedure applies:
  - a)* Where only one has been nominated by the State Party of which he or she is a national, that national shall serve as the member of the Subcommittee on Prevention.
  - b)* Where both candidates have been nominated by the State Party of which they are nationals, a separate vote by secret ballot shall be held to determine which national shall become the member.

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

#### *Article 8*

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

#### *Article 9*

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

#### *Article 10*

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

### **Part III Mandate of the Subcommittee on Prevention**

#### *Article 11*

The Subcommittee on Prevention shall

- a)* Visit the places referred to in article 4 and make recommendations to States Parties concerning the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;
- b)* In regard to the national preventive mechanisms:

- i)* Advise and assist States Parties, when necessary, in their establishment;
  - ii)* Maintain direct, and if necessary confidential, contact with the national preventive mechanisms and offer them training and technical assistance with a view to strengthening their capacities;
  - iii)* Advise and assist them in the evaluation of the needs and the means necessary to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;
  - iv)* Make recommendations and observations to the States Parties with a view to strengthening the capacity and the mandate of the national preventive mechanisms for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;
- c)* Cooperate, for the prevention of torture in general, with the relevant United Nations organs and mechanisms as well as with the international, regional and national institutions or organizations working towards the strengthening of the protection of all persons against torture and other cruel, inhuman or degrading treatment or punishment.

#### *Article 12*

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

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

#### *Article 13*

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

4. If the Subcommittee on Prevention considers it appropriate, it may propose a short follow-up visit after a regular visit.

#### *Article 14*

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

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

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

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

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

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

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

#### *Article 15*

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

#### *Article 16*

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

report of the Subcommittee on Prevention.

#### **Part IV National preventive mechanisms**

##### *Article 17*

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

##### *Article 18*

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

##### *Article 19*

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

*a)* To regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;

*b)* To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;

*c)* To submit proposals and observations concerning existing or draft legislation.

##### *Article 20*

In order to enable the national preventive mechanisms to fulfil their mandate, the States Parties to the present Protocol undertake to grant them:

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

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

c) Access to all places of detention and their installations and facilities;

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

e) The liberty to choose the places they want to visit and the persons they want to interview;

f) ) The right to have contacts with the Subcommittee on Prevention, to send it information and to meet with it.

#### *Article 21*

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

#### *Article 22*

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

#### *Article 23*

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

### **Part V Declaration**

#### *Article 24*

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

### **Part VI Financial provisions**

#### *Article 25*

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



*Article 26*

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

**Part VII Final provisions***Article 27*

1. The present Protocol is open for signature by any State that has signed the Convention.
2. The present Protocol is subject to ratification by any State that has ratified or acceded to the Convention. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Protocol shall be open to accession by any State that has ratified or acceded to the Convention.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States that have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

*Article 28*

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

*Article 29*

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

*Article 30*

No reservations shall be made to the present Protocol.

*Article 31*

The provisions of the present Protocol shall not affect the obligations of States Parties under any regional convention instituting a system of visits to places of detention. The Subcommittee on

Prevention and the bodies established under such regional conventions are encouraged to consult and cooperate with a view to avoiding duplication and promoting effectively the objectives of the present Protocol.

#### *Article 32*

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

#### *Article 33*

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the present Protocol and the Convention. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General..
2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act or situation that may occur prior to the date on which the denunciation becomes effective, or to the actions that the Subcommittee on Prevention has decided or may decide to take with respect to the State Party concerned, nor shall denunciation prejudice in any way the continued consideration of any matter already under consideration by the Subcommittee on Prevention prior to the date on which the denunciation becomes effective.
3. Following the date on which the denunciation of the State Party becomes effective, the Subcommittee on Prevention shall not commence consideration of any new matter regarding that State.

#### *Article 34*

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

#### *Article 35*

Members of the Subcommittee on Prevention and of the national preventive mechanisms shall be

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

*Article 36*

When visiting a State Party, the members of the Subcommittee on Prevention shall, without prejudice to the provisions and purposes of the present Protocol and such privileges and immunities as they may enjoy:

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

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

*Article 37*

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

### III. Administrative Order of the Federal Ministry of Justice of 20 November 2008

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

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

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

4. The Director of the Federal Agency shall act on an honorary basis. He/she shall be independent and not subject to any instructions. Compensation for expenditure and costs shall be granted in accordance with the provisions contained in the Federal Travel Expenses Act.
5. The Director of the Federal Agency shall be nominated by the Federal Ministry of Justice in agreement with the Federal Ministry of the Interior and the Federal Ministry of Defence for a period of office of four years. Re-nomination shall be possible. The Director may renounce his/her office at any time. Prior to expiry of the period of office, dismissal against the will of the Director may only be effected subject to the provisos of section 24 of the of the German Judiciary Act by the Federal Ministry of Justice in agreement with the Federal Ministry of the Interior and the Federal Ministry of Defence. In this case, the Federal Ministry of Justice shall nominate a successor for the remaining period of office in agreement with the Federal Ministry of the Interior and the Federal Ministry of Defence.
6. The Federal Agency shall have at its disposal a secretariat which shall perform the ongoing business of the Federal Agency and shall be established with the latter in accordance with the Statutes of the Centre for Criminology.

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

The seat of the Federal Agency shall be Wiesbaden.

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

8. The Federal Agency shall be funded from the budget of the Federal Ministry of Justice.

Berlin, 20 November 2008

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

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

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

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

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

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

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

the *Land* Hessen, represented by the Prime Minister, in turn represented by the Minister of Justice, for Integration and Europe,

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

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

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

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

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

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

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

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

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

herewith conclude the following State Treaty:

## **Preamble**

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

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

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

The Commission is to use the infrastructure of the Centre for Criminology as extensively as possible. The necessary secretariat is to be established with the Centre for Criminology.

### **Article 1 Establishment of the Commission for the Prevention of Torture**

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

### **Article 2 Tasks and powers**

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

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

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

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

### **Article 3 Confidentiality**

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

### **Article 4 Members**

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

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

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

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

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

### **Article 5 Secretariat**

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

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

### **Article 6 Headquarters**

The Commission shall be headquartered in Wiesbaden.

### **Article 7 Modus operandi and rules of procedure**

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



operandi.

### **Article 8 Cooperation**

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

### **Article 9 Funding**

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

(2) The funding shall be effected in the shape of subsidies being provided to the Centre for Criminology<sup>1</sup>. The part amounts shall become due in the course of each respective accounting year in two instalments on 31 May and 30 November in accordance with the valuations of the budget plan. The staffing and material expenditure shall be advanced by the Hesse Ministry of Justice for Integration and Europe.

### **Article 10 Term, termination**

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

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

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

### **Article 11 Entry into force**

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

Dresden, 25 June 2009

---

<sup>1</sup> The *Länder* agree that the subsidies for the Commission are not counted in the calculation of cuts in the budget valuations based on the resolution of the Conference of Heads of Government of the *Länder* of 30 March 2006.

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

The Federal Republic of Germany, represented by the Federal Ministry of Justice, and the *Land* Baden-Württemberg, represented by the Prime Minister, the latter in turn represented by the Minister of Justice,

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

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

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

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

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

the *Land* Hessen, represented by the Prime Minister, in turn represented by the Minister of Justice, for Integration and Europe,

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

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

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

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

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

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

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

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

and the Free State of Thuringia, represented by the Prime Minister, the latter in turn represented by the Minister of Justice, conclude the following Administrative Agreement:

## **Preamble**

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

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

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

## **Section 1 Subject-matter**

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

## **Section 2 Cooperation**

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

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

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

## **Section 3 Headquarters**

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

## **Section 4 Secretariat**

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

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

### **Section 5 Funding**

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

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

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

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

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

### **Section 6 Annual Report**

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

### **Section 7 Term**

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

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

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

### **Section 8 Transitional provision**

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

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

### **Section 9 Entry into force**

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

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

**TOP I.12 Nomination of the members of the Commission of the *Länder* against Torture to be established**

Rapporteur: Hesse

1. In accordance with Article 4 of the State Treaty on the establishment of a national mechanism of all *Länder* in accordance with Article 3 of the Optional Protocol of 18 December 2002 to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Ministers of Justice herewith nominates the following persons as members of the Commission of the *Länder* against Torture:

- a) State Secretary ret. Prof. Dr. Hansjörg Geiger (Chairman)
- b) Presiding Judge at Stuttgart Higher Regional Court Albrecht Rieß
- c) Prof. Dr. Dieter Rössner, University Professor at the University of Marburg
- d) ret. Elsave Schöner (*Leitende Regierungsdirektorin*)

1. In accordance with Article 4 para. 2 of the State Treaty, the members re No. 1 a) and c) are herewith initially nominated for four years, and the members re No. 1 b) and d) initially for two years.
2. State Secretary ret. Prof. Dr. Hansjörg Geiger is herewith nominated as Chairman.
3. The nomination shall become effective on entry into force of the State Treaty.