



NATIONAL  
AGENCY  
FOR THE  
PREVENTION  
OF  
TORTURE

# ANNUAL REPORT 2021

**Period under review**

1 January 2021 – 31 December 2021

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National Agency for the Prevention of Torture  
Luisenstraße 7  
65185 Wiesbaden  
Tel.: +49 (0)611-160 222 8-18  
Fax: +49 (0)611-160 222 8-29  
e-mail: [info@nationale-stelle.de](mailto:info@nationale-stelle.de)  
[www.nationale-stelle.de](http://www.nationale-stelle.de)

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# FOREWORD

In 2021, the National Agency again identified threats to human rights in the course of its visits, which will be described in the present Annual Report. These include violations of the human dignity of persons deprived of their liberty – human dignity being protected by Article 1(1) of the Basic Law.

The National Agency's work was still restricted as a result of the COVID-19 pandemic. In addition to on-site visits, it therefore continued to use alternative methods to gain an overall picture of the situation in places of detention. In 2021, the National Agency further developed its previous recommendations on how to deal with the pandemic and adapted them to the experiences gained from its visits.

Its main focus in 2021 was on the areas of forensic psychiatric detention and deportation. In order to gain a full picture of the situation, the focus remained on both of these areas in 2022. Special mention should be made of the fact that, in the area of forensic psychiatric detention, several *Länder* still have not brought their *Land* legislation on physical restraint (*Fixierung*) in line with the requirements established by the Federal Constitutional Court in its judgment of 24 July 2018.<sup>11</sup> With regard to deportation, the National Agency placed the emphasis on respect for the best interests of children and on the treatment of persons who are vulnerable – including in terms of the coronavirus.

A particular problem, observed time and again over recent years, is the lack of psychiatric care available to sentenced prisoners, which may result in their condition further deteriorating. Since the National Agency lacks adequate resources of its own, it considers a comprehensive external investigation into this issue to be necessary.

The coalition agreement between the Social Democratic Party of Germany (SPD), Alliance 90/The Greens (Bündnis 90/Die Grünen) and the Free Democratic Party (FDP), concluded in autumn 2021, stipulated: “We will provide national human rights institutions such as the German Institute for Human Rights and the National Agency for the Prevention of Torture with more financial and human resources.”

Under the current financial framework,

<sup>11</sup> Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15.

the National Agency has an annual budget of EUR 640,000 at its disposal. The Agency consists of 10 honorary members whose mandate covers the whole of Germany. They are supported by a Secretariat staffed with six full-time employees.

By ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), Germany has undertaken to establish a national preventive mechanism, which, under the OPCAT, is required to “regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4”. This involves a series of visits aimed at achieving preventive effects and obtaining up-to-date information on the institutions concerned.

The National Agency, which is made up of members acting in a honorary capacity, is capable of visiting 55 out of a total of 13,000 places of detention per year. According to an expert opinion provided by the Reference and Research Services of the German Bundestag (*German federal Parliament*), the National Agency is “poorly equipped”<sup>2</sup> compared to the national preventive mechanisms of Germany's European neighbours. The Association for the Prevention of Torture (APT) has called for a target of one visit per year to institutions with a rapid turnover of detainees or where detainees are exposed to special risks, and of visits every three years to all other institutions.

An increase in resources cannot remedy the – often poor – implementation of the National Agency's recommendations. In order to compensate for the low frequency of visits, the National Agency attached great importance to developing and disseminating standards covering the main areas of human rights protection in places of detention. Only rarely do the supervisory authorities independently implement and assess the National Agency's standards and recommendations. Even if the National Agency points out during a

<sup>2</sup> Reference and Research Services of the German Bundestag (*Wissenschaftliche Dienste des deutschen Bundestages*) (2020): “Ausstattung und Kompetenzen der „Nationalen Stelle zur Verhütung von Folter“ in Deutschland im Vergleich zu ähnlichen Einrichtungen in ausgewählten europäischen Staaten, die im Zuge des Fakultativprotokolls zur Anti-Folter-Konvention der Vereinten Nationalen (OPCAT) geschaffen wurden.” p. 31. URL: <https://www.bundestag.de/resource/blob/695584/fd22265b74de7df9989fc439873c96e5/WD-2-021-20-pdf-data.pdf> (available in German only, retrieved on 21 March 2022).

visit that there is a high risk of human dignity being violated, this does not necessarily lead to such situations being remedied swiftly.

The National Agency is of the opinion that the obligation to reinforce efforts to implement its recommendations also extends to the Federal Government and the *Land* governments. Therefore, in addition to reforming the National Agency itself, there should be designated contact persons within the Federal Government and the *Land* governments who are tasked with working towards the effective implementation of recommendations.

Providing more financial and human resources, as envisaged in the coalition agreement, will also require a new organisational form for the National Agency.



Rainer Dopp  
State Secretary (retd)  
Chairman of the Joint Commission

On a positive note, in 2021 the National Agency was able to hold its regular meeting with the NPMs from Switzerland and Austria in Berlin, which had been put off due to the COVID-19 pandemic. Sincere thanks go out to all participants for the productive exchange.

Moreover, in 2021, the post of Deputy Director of the Federal Agency, which had been vacant for over a year, was taken up by Sabine Thureau, President of the Land Criminal Police Office of Hesse (retd). This means that the National Agency is able to pursue its mandate at full strength once again.



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

## LIST OF ABBREVIATIONS

APT	Association for the Prevention of Torture
File no.	File number
BMI	Federal Ministry of the Interior and Community ( <i>Bundesministerium des Innern und für Heimat</i> )
BMVg	Federal Ministry of Defence ( <i>Bundesministerium der Verteidigung</i> )
BVerfG	Federal Constitutional Court ( <i>Bundesverfassungsgericht</i> )
CAT	Committee against Torture
Covid-19	Corona Virus Disease 2019
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
DIMR	German Institute for Human Rights
Ibid.	Ibidem
ECHR	European Court of Human Rights
EU	European Union
GG	Basic Law ( <i>Grundgesetz</i> )
NPM	National Preventive Mechanism
OPCAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
RKI	Robert Koch Institute (German federal government agency and research institute responsible for disease control and prevention)

Margin no.	Margin number
StGB	Criminal Code ( <i>Strafgesetzbuch</i> )
StPO	Code of Criminal Procedure ( <i>Strafprozessordnung</i> )
SPT	Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
UN	United Nations

# I SUMMARY



The National Agency for the Prevention of Torture carried out a total of 30 visits to residential care and nursing homes, to detention facilities operated by the Federal and *Land* Police, the customs authorities and the Federal Armed Forces, as well as to prisons and to one facility for child and youth psychiatry. A particular focus of the visits was put on facilities for forensic psychiatric detention/forensic psychiatry as well as on monitoring deportation procedures.

All of the visited facilities were affected by the **impact of the COVID-19 pandemic**. The National Agency adjusted its recommendations for dealing with the pandemic.<sup>3</sup> During the visits, a special focus was placed on the measures taken to prevent infections, on the effects of such measures and on compensatory measures. To complement its own observations, the National Agency wrote to the facilities it had already visited, i.e. care facilities for the elderly and child and youth welfare facilities.

In forensic psychiatric detention facilities and in prisons, all newly admitted persons are initially segregated from other detainees by placing them in quarantine, in order to prevent infections from being brought in. In all the facilities visited, this was done by keeping the detainees or patients concerned largely isolated from the rest of the facility in single-occupancy cells/rooms. The duration of quarantine ranged from 2 to 14 days. The National Agency recommends that quarantine measures should be kept as short as possible based on medical necessity. In addition, in several visited prisons the National Agency recommended that increased support and care be provided to prisoners in quarantine. With regard to vaccination coverage among the staff of the facilities visited, the surveys showed that rates varied widely, ranging from 50% to 90%. Where necessary, these rates should be increased with a view to protecting the persons held in the facilities concerned. In the National Agency's view, facilities are under an obligation to keep the restrictions imposed due to the pandemic at a low level and to compensate for them as best they can. This applies in particular to children and juveniles deprived of their liberty

The information gathered as well as the recommendations on how the pandemic should be dealt with are shown in tabular form in a separate chapter.<sup>4</sup>

Regarding the **focus area of deportation**, the National Agency observed that since the beginning of the COVID-19 pandemic, there has been a significant increase in the number of deportees being collected at night. This includes families with children, resulting in the best interests of the children concerned being jeopardised and placing them at risk of trauma.

In many cases, the precondition for carrying out deportations was a negative test. However, test results were not always available at the time of arrival at the airport. In one case, for instance, when a test turned out to be positive during an ongoing deportation procedure from Frankfurt to Baku, the deportation of the person concerned was aborted, but the deportation of their contact person went ahead. In other cases, deportees refused to take a COVID-19 test, which resulted in tests being carried out on them forcibly. The National Agency considers the use of direct physical force when carrying out COVID-19 tests (by taking nose or throat swabs or saliva samples) to pose a general risk as this may cause serious injuries to the persons concerned.

In the course of its visits in the **focus area of forensic psychiatric detention/forensic psychiatry**, the National Agency criticised overcrowding in several facilities for forensic psychiatric detention. In many of the facilities visited, double-occupancy is standard practice, and there were even cases where three or four persons were accommodated in one room. This often results in disputes and stressful situations. To complement its visits, the National Agency conducted a survey regarding the occupancy rates of forensic psychiatric detention facilities in all the *Länder*. In all the *Länder*, high occupancy rates of 94% and more were found. The forensic psychiatric detention facilities of several *Länder* had occupancy rates of 100%, while five *Länder* reported rates of over 100% up to a maximum of 111%. This also results in a lower quality of treatment provided to patients. It should be ensured that the occupancy of patients' rooms does not result in therapy being rendered more difficult and that patients' privacy is guaranteed. The National Agency believes that, in the area of forensic psychiatric detention, single-occupancy should be prescribed by law as the general rule and should be implemented accordingly – as is the case in the prison system. With regard to several visited facilities, the National Agency called for the practice of night

<sup>3</sup> See Chapter III – COVID-19 pandemic.

<sup>4</sup> Table 1 in Chapter III – COVID-19 pandemic.



lock-up – which is done purely for organisational reasons – to be abandoned. In addition, the National Agency assessed whether the regulations on the ordering and implementation of physical restraints, as provided for under the *Land* legislation governing forensic psychiatric detention, are compatible with the requirements of the Federal Constitutional Court’s judgement of 24 July 2018.<sup>5</sup> More than three years after the judgment was passed, the statutory provisions of Thuringia, Berlin, Lower Saxony and Saxony-Anhalt in particular still do not meet the constitutional requirements.

The National Agency also criticised the conditions of detention in the visited **prisons**. As the National Agency already found in 2017, the conditions of detention at Karlsruhe Prison violate the human dignity of prisoners, who are held in double-occupancy cells without separate toilets. The Baden-Württemberg Ministry of Justice and Migration could not commit to resolving this situation, although this is urgently required. In addition, the size of the cells at Karlsruhe Prison is below the minimum required for accommodation to be humane; the same also applies to Landsberg am Lech Prison (Bavaria). As a result of overcrowding at Schwäbisch-Hall and Karlsruhe Prisons, the conditions of detention have deteriorated for all prisoners there. With regard to its visit to Tegel Prison, the National Agency recommends that the plans for the completely new construction of Division II should be implemented swiftly. From the National Agency’s point of view, there are doubts as to whether the current building is suitable for housing prisoners. The National Agency frequently recommends that strip-searches should not be carried out routinely or in the absence of case-specific suspicions. According to the Federal Constitutional Court, strip-searches involving a visual inspection of detainees’ genital area represent a severe interference with their general right of personality. The European Court of Human Rights also found that body searches carried out without specific cause constitute degrading treatment within the meaning of Article 3 of the European Convention on Human Rights.

It is encouraging that, following the visits to Straubing and Landsberg am Lech Prisons, the Bavarian State Ministry of Justice committed to adjusting the regulations regarding phone calls applicable to prisoners in the Bavarian prison

system to match the standards applicable in the other *Länder*.

When visiting prisons, the National Agency frequently finds that the psychiatric care provided to mentally ill prisoners is insufficient. Due to the lack of adequate care, prisoners remain segregated or under physical restraint for a long time, during which certain conditions may further deteriorate while they remain untreated. The National Agency considers a comprehensive scientific investigation of this issue to be necessary.

In the National Agency’s view, a particular problem is posed by so-called swallowers’ toilets used in **customs custody**. In order to secure evidence, “body packers” – i.e. persons internally concealing small packages of drugs – who are taken into custody at the airport office of Frankfurt/Main Customs Investigation Office (*Zollfahndungsamt Frankfurt a. M., ZFA*) have to use a “swallowers’ toilet”, which is visible by staff, and are monitored throughout the process. However, there is no medical supervision during the custody period. “Body packer syndrome”, which occurs when ingested drug packages rupture, may quickly lead to the death of the person concerned. Unlike the Frankfurt office, the Munich Airport office of the Munich Customs Investigation Office (*ZFA München*), which was also visited, provides medical supervision in a clinic.

With regard to its visit to the **custody facilities** of Düsseldorf **police headquarters**, the National Agency once again recommended that physical restraints should not be used during police custody. The police forces of many *Länder* as well as the Federal Police already no longer use this practice. Generally, compliance with the Federal Constitutional Court’s requirements regarding physical restraints, such as one-on-one supervision by therapeutic or care staff, cannot be ensured in police custody.

With regard to one **residential care and nursing home** that the National Agency visited in Hesse, the Agency criticised, among other things, the fact that there would be considerable delays in the evacuation of immobile persons in the event of a fire due to the structural conditions of the facility.

<sup>5</sup> Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15.

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



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

## 1 – INSTITUTIONAL FRAMEWORK

The objective of preventing torture and abuse is laid down in the OPCAT, which adds a preventive approach to the UN Convention against Torture of 1984. At the start of 2021, it had 105 signatory states and had been ratified by 92 states.<sup>6</sup>

Article 3 of the OPCAT requires that the States Parties set up a national preventive mechanism (NPM). These independent national mechanisms engage in preventive measures and assess whether places of detention ensure humane treatment and detention conditions. To date, 76 States Parties are in compliance with this requirement.<sup>7</sup>

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

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

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

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

## 2 – TASKS

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

At the federal level, this definition encompasses all detention facilities operated by the Federal Armed Forces, Federal Police and customs authorities. In addition, the Federal Agency is also responsible for monitoring forced deportations. In 2021, a total of 10,349 persons were deported from Germany by air.<sup>9</sup>

The vast majority of facilities fall within the remit of the Joint Commission. These include prisons, *Land* police stations, all courts with holding cells, facilities for custody awaiting deportation (*Abschiebungshaft*), psychiatric clinics, child and youth welfare facilities with closed units, and homes for people with disabilities. Furthermore, all residential care and nursing homes where measures depriving people of their liberty are or

<sup>6</sup> URL: <https://indicators.ohchr.org/> (retrieved on 11 February 2022).

<sup>7</sup> URL: <https://www.apr.ch/en/knowledge-hub/opcat> (retrieved on 11 February 2022).

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

<sup>9</sup> Statistical survey by the Federal Police.

can be enforced are also classified as places of detention under the above definition.

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

### 3 – POWERS

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

- + Access to all information concerning the number of persons deprived of their liberty in places of detention as defined in Article 4 of the OPCAT, as well as the number of 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;
- + To maintain contact with the UN Subcommittee on Prevention of Torture (SPT), to send it information and to meet with it.

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

### 4 – ENQUIRIES BY INDIVIDUALS

Between 1 January 2021 and 31 December 2021, 59 enquiries were made to the National Agency by individuals. Most of these individual enquiries were made by prison inmates, followed by patients in forensic psychiatric detention. Every

now and again, individual enquiries are made by persons who are not held in facilities where measures depriving people of their liberty are enforced.

Since the National Agency does not operate as an ombuds institution, it is not authorised to directly investigate complaints by individuals or to remedy them. However, it may provide enquiring persons with the addresses of relevant contact points or complaints bodies. Where an enquiry contains information regarding serious shortcomings in a facility, the National Agency, with the consent of the enquiring person, contacts the competent authorities. If an enquiry provides an indication of a person posing a danger to themselves or to others, the National Agency immediately contacts the head of the facility concerned.

Nevertheless, tips from individual enquiries are of considerable relevance for the National Agency's work, since such information directs attention to specific problem areas. In addition, concrete information and tips can have an influence on which facilities the agency visits.

### 5 – PERSONNEL AND FINANCIAL RESOURCES

The mandate of the National Agency for the Prevention of Torture is carried out by two members of the Federal Agency and eight members of the Joint Commission, all of them acting in an honorary capacity. They are supported by a Secretariat staffed with six full-time employees. The National Agency's budget was most recently increased by EUR 100,000 to a total of EUR 640,000 for the 2020 budget year.

The Agency's structure and the resources available to it are regularly criticised. There are calls to provide it with more resources.<sup>10</sup> According to an expert opinion provided by the Reference and Research Services of the German Bundestag, the National Agency for the Prevention of Torture is

<sup>10</sup> CPT/Inf (2017) 13, p. 14; CAT/OP/DEU/1, 16 December 2013, p. 6; Follmar-Otto, "Die Nationale Stelle zur Verhütung von Folter fortentwickeln! Zur völkerrechtskonformen Ausgestaltung und Ausstattung", policy paper no. 20, 2013, URL: [https://www.ssoar.info/ssoar/bitstream/handle/document/34935/ssoar-2013-follmar-otto-Die\\_Nationale\\_Stelle\\_zur\\_Verhutung.pdf?sequence=1](https://www.ssoar.info/ssoar/bitstream/handle/document/34935/ssoar-2013-follmar-otto-Die_Nationale_Stelle_zur_Verhutung.pdf?sequence=1), (available in German only, retrieved on 21 March 2022); Motion put forward in the Bundestag by Alliance 90/The Greens ("Für den Menschenrechtsschutz in Deutschland – Die Nationale Stelle zur Verhütung von Folter reformieren und stärken") of 30 May 2017 (Bundestag Printed Paper 18/12544).

“poorly equipped” compared to the NPMs of European neighbouring countries.<sup>11</sup>

The coalition agreement between the Social Democratic Party of Germany (SPD), Alliance 90/The Greens (Bündnis 90/Die Grünen) and the Free Democratic Party (FDP), concluded in autumn 2021, stipulated: “We will provide national human rights institutions such as the German Institute for Human Rights and the National Agency for the Prevention of Torture with more financial and human resources.”<sup>12</sup>

In 2021, Sabine Thureau, President of the Land Criminal Police Office of Hesse (retd), was appointed as the Deputy Director of the Federal Agency. Michael Thewalt, senior civil servant and prison director (retd), prematurely terminated his mandate as member of the Joint Commission at his own request with effect from 31 December 2021.

## 6 – WORLDWIDE TORTURE PREVENTION

### 6.1 – SPT enquiry on Article 4 of the OPCAT

In early 2021, the SPT made an enquiry to the national preventive mechanisms with the aim of obtaining information on their respective interpretations of the scope of the mandate derived from Article 4 of the OPCAT. This was due to the frequent requests by NPMs regarding this issue. Article 4(1) of the OPCAT gives the preventive mechanisms the mandate to visit any place where persons are or may be deprived of their liberty. Given the preventive approach underpinning the OPCAT, its provisions are to be interpreted broadly.<sup>13</sup> In this context, due consideration is to

<sup>11</sup> Reference and Research Services of the German Bundestag (*Wissenschaftliche Dienste des deutschen Bundestages*) (2020): “Ausstattung und Kompetenzen der „Nationalen Stelle zur Verhütung von Folter“ in Deutschland im Vergleich zu ähnlichen Einrichtungen in ausgewählten europäischen Staaten, die im Zuge des Fakultativprotokolls zur Anti-Folter-Konvention der Vereinten Nationen (OPCAT) geschaffen wurden.”, p. 31. URL: <https://www.bundestag.de/resource/blob/695584/fd22265b74de7df9989fc439873c96e5/WD-2-021-20-pdf-data.pdf> (available in German only, retrieved on 21 March 2022).

<sup>12</sup> Coalition agreement between the SPD, Alliance 90/The Greens and the FDP (2021), “Dare more progress – alliance for freedom, justice and sustainability”, p. 146.

<sup>13</sup> Cf., *inter alia*, Ninth annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, CAT/C/57/4: “The preventive

be given to Articles 31 to 33 of the Vienna Convention on the Law of Treaties.

Article 4(2) of the OPCAT defines “deprivation of liberty” in terms of form (“any form”), but not in terms of place. The exact wording of the provision is: “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”. The mere possibility of a person being deprived of their liberty, which generally exists in the case of forced returns, for example, triggers the National Agency’s responsibility. This interpretation is supported by the intent and purpose of the instrument, i.e. to ensure the utmost protection of individuals from state violence.<sup>14</sup>

The National Agency reported to the SPT, *inter alia*, that the ministries of some *Länder* questioned its responsibility for monitoring deportation procedures. In addition, there is no legal basis for the National Agency to publish the names of the privately owned facilities it visits.

### 6.2 – Exchange between German-speaking NPMs

The international exchange with various partner organisations is important for the National Agency’s work. In the year under review, the National Agency invited representatives of the Austrian Ombuds Board and the Swiss National Commission for the Prevention of Torture to the regular annual exchange of German-speaking NPMs, which took place in Berlin on 18 and 19 November 2021.

The pandemic situation in Europe has a major influence on the NPMs’ ability to work. It also affects the way in which individuals deprived of their liberty are dealt with. For these reasons, the issue of how COVID-19 measures are dealt with was a top priority at the meeting. The topics discussed included the issues of how the NPMs’ methods could be effectively adjusted to the current situation and how visits could be carried out.

approach underpinning the Optional Protocol means that as extensive an interpretation as possible should be made in order to maximize the preventive impact of the work of the national preventive mechanism”.

<sup>14</sup> Cf. the corresponding wording in the preamble of the OPCAT: “to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment”.

Moreover, the effects of the pandemic on various types of facilities – in particular child and youth welfare facilities and forensic psychiatric detention facilities – were discussed in comparison with each other.

Particular emphasis was placed on the specific consequences of the pandemic, such as forced testing of detainees and quarantine measures imposed in prisons. In the National Agency's view, the use of direct physical force when carrying out COVID-19 tests (by taking nose or throat swabs or saliva samples) poses a general risk as this may result in injuries to the persons concerned. Where this issue is concerned, the National Agency shares the position of the Swiss National Commission for the Prevention of Torture.<sup>15</sup> In Austria, there is no forced testing.

Another topic was the increase in suicide rates as a possible consequence of the pandemic. The representatives from Austria reported that suicide rates in prisons had increased considerably during the COVID-19 pandemic. In Germany, the number of suicides in prisons also increased; however, there are as yet no data which would conclusively prove that a connection exists between this increase and the pandemic. The National Agency will monitor the situation closely.

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<sup>15</sup> The relevant statement by the Swiss National Commission for the Prevention of Torture is available online at: <https://www.nkvf.admin.ch/nkvf/de/home/publikationen/stellungnahmen.html>.

# III COVID-19 PANDEMIC



## 1 – INTRODUCTION

In 2021, the National Agency’s work was still affected by the COVID-19 pandemic. The members of the National Agency did not carry out any visits to places of detention during the pandemic’s first wave starting in March 2020 and during its second wave starting in November 2020. In line with the “Do No Harm Principle”, the National Agency considered this particularly necessary in order to protect persons deprived of their liberty as well as for reasons of self-protection. In June 2021, visits were resumed as the number of vaccinations was increasing.

The 30 visits the National Agency completed in 2021 were carried out in accordance with the safety and hygiene requirements applicable in the individual facilities. In order to discuss hygiene aspects, the National Agency generally provided a few days notice of its visits. On site, the National Agency specifically asked about the approaches taken in order to deal with the COVID-19 pandemic. Information on this is provided at the beginning of the visit reports published on the National Agency’s website.

The information gathered, as well as the recommendations made on how the pandemic should be dealt with, can be found in Table 1. All of the visited prisons and forensic psychiatric detention facilities follow an approach whereby new arrivals are subject to a general quarantine, which involves accommodating them in single cells/rooms. The National Agency made recommendations on the duration and other conditions of such quarantine. In some cases, it also suggested that vaccination rates among staff should be increased.

**Table 1:**

Overview of the approaches taken in order to deal with the Covid-19 pandemic at a selection of facilities visited by the National Agency in 2021, vaccination status, duration and organisation of quarantine and recommendations given

Date	Facility visited	Vaccination status staff*	Vaccination status detainees/patients*	Recommendation to increase the vaccination rate	Duration of quarantine upon admission in days	Recommendation to reduce quarantine	Recommendation regarding the organisation of quarantine
8 June	Residential care and nursing home, North-Rhine Westphalia	80%	98%	No	No quarantine		
13 September	Residential care and nursing home, Hesse	81%	80-85%	No	No quarantine		
22 July	Straubing Prison	No information	No information	No	16 with test	Yes	Yes – more intensive care
17 August	Schwäbisch Hall Prison	No information	No information	No	14, placement in double-occupancy cells	No	
22 September	Bautzen Prison	52%	65%	Yes	7 with test	No	Yes – more intensive care
6 October	Tegel Prison (follow-up visit)	70-80%	71.5%	No	No quarantine, only transfers from other prisons	-	-
12 October	Landsberg am Lech Prison	60%	No information		14	Yes	Yes – more intensive care
23 July	Forensic Psychiatric Clinic, Straubing	60%	50%	Yes	7 with test	No	No
8 September	Forensic Psychiatric Clinic, Lüneburg	Some unvaccinated persons	Some unvaccinated persons	No	5 with test	No	No
9 September	Forensic Psychiatric Clinic, Stralsund	60%	70-80%	Yes	2 with test	No	No

<b>10 September</b>	Forensic Psychiatric Clinic, Ueckermünde	75%	90%	No	5 with test	No	No
<b>23 September</b>	Forensic Psychiatric Clinic, Arnsdorf, with a unit for juveniles	60%	60%	Yes	5 with test	No	Yes – no quarantine in the crisis intervention room
<b>7 October</b>	Forensic Psychiatric Clinic, Berlin	No information	80%	No	Max. 2-3 days with test	No	
<b>8 October</b>	Forensic Psychiatric Clinic, Berlin, Unit for juvenile psychiatry, Berlin	No information	80%	No	Max. 2-3 days with test	No	Yes – no quarantine in the crisis intervention room
<b>13 October</b>	Forensic Psychiatric Clinic, Kaufbeuren	60%	70-80%				
<b>4 November</b>	Forensic Psychiatric Clinic, Uchtspringe	66%	66%	Yes	10, no test	Yes	No
<b>5 November</b>	Forensic Psychiatric Clinic, Uchtspringe, Lochow branch	65%	65%	Yes	No quarantine, only transfers from other prisons	-	-
<b>30 November</b>	Forensic Psychiatric Clinic, Hamburg	90%	Nearly 100%	No	Until the results of a PCR test are available after a few hours	No	No
<b>1 December</b>	Clinic for Child and Youth Psychiatry, Hamburg	Considered to be “very high”	Considered to be “very high”	No	Until the results of a PCR test are available after a few hours	No	No

\* The data are based on information provided by the management of the facilities on the day of the visit. In part, they are estimated and may fluctuate, especially with regard to detainees/patients.

On 10 December 2021, the Bundestag decided to introduce compulsory vaccination for the staff of specific types of facilities, including hospitals and residential or semi-residential care facilities for elderly or handicapped persons or persons in need of long-term care.<sup>16</sup> This should result in an increase in those vaccination rates which were found to be too low in some of the forensic psychiatry facilities visited. There were also suggestions regarding facility-specific compulsory vaccination for prisons.<sup>17</sup>

Since the beginning of the COVID-19 pandemic in March 2020, the National Agency has developed recommendations for all facilities within its remit. In dealing with the pandemic, due consideration is to be given, on the one hand, to protecting the health of the persons placed in the relevant facilities; on the other hand, however, consideration must also be given to the drastic effects of individual protection measures such as quarantine or contact restrictions. These effects must be compensated or limited as far as medically possible.

All facilities the National Agency visited in 2021 had taken precautionary measures regarding the pandemic, in particular by implementing hygiene concepts. As the National Agency's visits took place at times when local incidence rates were relatively low, the regulations applying to the persons in these facilities were comparatively mild.

In the visited residential care and nursing homes in North Rhine-Westphalia and Hesse, only few or no infections occurred during the COVID-19 pandemic. The vast majority of staff and residents had been vaccinated.

In the facility in Hesse, the main entrance door was locked from outside at all times. In order to be able to access the building, visitors had to ring a doorbell and the door was opened by staff. Visitors' personal details were recorded. From the inside, however, it was possible to leave the building at any time. While lockdown measures were in place, a second entrance with an adjacent testing facility was used. Via this testing facility, visitors were able to directly access three separate visitors' rooms that had been specially converted for this purpose, without having to enter any other parts of the facility. Moreover, during the lockdown measures, residents were offered additional options for maintaining social contacts, i.e. so-called garden-fence talks and the possibility to use digital media.

At the time of the visit to the facility in North Rhine-Westphalia, no restrictions were in place for visits from outside and for residents leaving the facility. Visits from outside required a current negative test result, proof of complete immunisation or of prior COVID-19 infection. Testing was offered on site. The facility thus fulfilled the *Land* of North Rhine-Westphalia's requirements regarding the prevention of infection and the facilitation of visits, as applicable at the time of the visit.

However, the first measures to relax visitation rules were implemented with a four-week delay. This meant that visits to the facility were allowed later than envisaged by the law. Being isolated from the outside world during the COVID-19 pandemic was perceived by the residents as very burdensome. The justification provided by the facility was that implementing the government's decisions on prevention of infection had been challenging. New regulations had regularly been communicated at 4 p.m. on Fridays, which had meant that their implementation had had to be delayed until the following week.

In some of the prisons visited, infections occurred during the pandemic, i.e. at Straubing and Bautzen Prisons and, after the visit, at Landsberg am Lech Prison. Numerous prisoners and prison units were temporarily isolated. In addition, chains of infection needed to be tracked, which involved a lot of effort.

In the visited prisons, there was an obligation for staff to wear medical masks. For prisoners, such an obligation did not apply in their own units; it did, however, apply in the quarantine and

<sup>16</sup> Cf. Federal Law Gazette of 11 December 2021, no. 83, URL: [https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger\\_BGBI&start=/\\*\[@attr\\_id=%27bgbl1215162.pdf%27\]#\\_\\_bgbl\\_\\_%2F%2F\\*%5B%40attr\\_id%3D%27bgbl1215162.pdf%27%5D\\_\\_1643024051472](https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&start=/*[@attr_id=%27bgbl1215162.pdf%27]#__bgbl__%2F%2F*%5B%40attr_id%3D%27bgbl1215162.pdf%27%5D__1643024051472) (available in German only, retrieved on 21 March 2022).

<sup>17</sup> The Federal Association of Prison Directors and the Saxon Minister of Justice supported this; the Federation of Prison Staff in North Rhine-Westphalia did not. URL: <https://www.n-tv.de/panorama/JVA-Leiter-wollen-Impfpflicht-fuer-Gefaengnisse-article23036716.html> (available in German only, retrieved on 21 March 2022). URL: <https://www.zeit.de/news/2022-01/19/meier-befuertwortet-debatte-ueber-impfpflicht-im-gefaengnis>; URL: <https://www.lto.de/recht/nachrichten/n/justizministerium-sachsen-ist-fuer-impfpflicht-in-jva-corona-pandemie/>; URL: <http://www.bsbd-nrw.de/aktuelles/aktuelles-bsbd/973-impfpflicht-ist-ueber-zogene-forderung> (available in German only, all retrieved on 21 March 2022).

isolation units, during escorted leave and presentations before a court, during longer conversations with staff in closed rooms, and during an acute COVID-19 outbreak on the affected floors.

In addition, in the visited prisons, access to the facilities and opportunities to spend time outside the facilities were more limited than during normal times. Partition screens were used during regular visits while long-term visits, such as the father-child group at Landsberg am Lech Prison, were suspended altogether. As an alternative, prisoners were provided with the opportunity to read children's books aloud via video. At Schwäbisch-Hall Prison, persons who had to come to the facility to provide care and support to prisoners for medical, therapeutic or other reasons specified in their enforcement plans were allowed to access the prison throughout the entire time. Group activities, on the other hand, were suspended. At Schwäbisch-Hall Prison, other fully vaccinated or recovered persons had also been allowed to visit prisoners again on a regular basis since July 2021; at the time of the visit in August 2021, this included persons who had tested negative.

In order to promote acceptance of COVID-19-related restrictions, opportunities to purchase goods were adjusted and expanded in individual facilities.

In many facilities, prisoners were informed about measures to contain the spread of COVID-19 infections through notices and via prisoner representation bodies.

Visiting restrictions were also in place in **forensic psychiatry** facilities. At the Straubing district hospital, for example, the applicable visitation rule of one hour per patient per week was completely suspended as part of the temporary lockdown regulation. Visits took place behind glass panes. In order to prevent contact between patients from different wards, joint inter-ward activities such as occupational therapy were suspended in almost all facilities visited. Therapy took place only within individual wards.

At the Uchtspringe and Lochow forensic psychiatric detention facilities, visits by children, for example, were no longer permitted as of 13 November 2021 due to a tightening of the visitation rules. In addition, unsupervised leave, day trips, home visits and holidays, which had temporarily been allowed, were suspended again. Video telephony options were expanded and offered in all facilities.

## 1.1 – Positive examples

The National Agency highlighted several positive examples during its visits, including the following:

Prisons took measures to compensate for restrictions imposed to prevent infections, for example by allowing additional free TV. Moreover, compensation payments were made in cases where, due to the COVID-19 pandemic, prisoners had lost their jobs in the prisons' own workshops or in prison industry workshops providing contract services to private enterprises, or where there were only reduced employment opportunities. In order to compensate for wages that were lost due to the fact that work was suspended for the purpose of preventing infections, Bautzen Prison, in consultation with the Saxon State Ministry of Justice, implemented a "home office" arrangement for prisoners. This involved them performing certain tasks in their cells in return for payment. In order to protect vulnerable prisoners in particular, a "reverse isolation ward" was temporarily set up at Tegel Prison, which was largely separated from the outside world. Prisoners could be transferred to this ward on a voluntary basis after having spent a certain period of time in quarantine, in order to protect themselves more effectively against infection. Once the option to be vaccinated was available, the reverse isolation ward was dissolved in August 2021.

In many of the forensic psychiatric clinics visited, the National Agency highlighted positively the efforts made by the facilities and the supervisory authorities to minimise the restrictions imposed on patients in the context of the pandemic response.

The Agency also welcomes the fact that, following the positive experiences with providing patients with the possibility to use video telephony, there are plans to maintain this approach in the long term in almost all of the facilities visited.

## 1.2 – Recommendations

From the standpoint of protecting human rights, the following recommendations should be implemented in all facilities falling within the scope of the National Agency's mandate. For the fulfilment of this task, it is necessary that its recommendations are implemented not only in the facilities it visits but in all the relevant facilities across Germany. Irrespective of recommenda-

tions made to the specific facilities visited, the National Agency would like to point out the relevance of the following, general recommendations.

### **Medical, psychological and social-work support during the pandemic**

In light of the new situation, increased medical, psychological and social-work support is necessary in many facilities. Treatment and care options should be adapted to the needs of the facility.

### **Safeguarding the rights of persons deprived of their liberty**

Efforts must be made to continue to guarantee the minimum required standards of human rights, such as the guarantee of one hour of outdoor exercise per day, and to uphold the rights of the individuals deprived of their liberty.

Restrictions may only be imposed if they are absolutely necessary. In doing so, the principle of minimum intervention must be adhered to.

### **Informing the persons concerned**

The persons concerned should be informed, in a language they understand, of any restrictive measures, the applicable rules of conduct and the reasons for them, and their representatives should be involved in the planning of the protective measures.

The visited facilities were given the following main recommendations for dealing with the COVID-19 pandemic:

#### **1.2.1 – Occupancy**

At Schwäbisch-Hall Prison, overcrowding also occurred during the COVID-19 pandemic, which resulted in prisoners having to live together in an even smaller space. This notably increases the risk of infection with COVID-19 and other infectious diseases.

Especially given the COVID-19 pandemic, measures need to be taken to counteract structural overcrowding and to create sufficient room for health protection.

#### **1.2.2 – COVID-19 vaccination**

In several facilities visited (shown in Table 1), vaccination rates among staff were only between 50 % and 70 %.

A high vaccination rate can improve health protection for the persons held in these facilities and reduce the need for further restrictions through lockdown measures, which may also affect rehabilitation, treatment or activities offered as well as opportunities for visits or excursions outside the facility.

#### **1.2.3 – Opportunities for contact and digitalisation**

All the facilities visited provided the possibility to use video telephony during the pandemic. At Straubing, Landsberg am Lech and Schwabisch-Hall Prisons, telephone hours were extended. Whether these possibilities will be maintained, however, had not yet been finally decided. The National Agency recommended that prisons should maintain or further expand these options; in comparable facilities, the concept of detainees having access to telephones inside their cells proved successful.

The possibilities for digital communication created during the COVID-19 pandemic should not be diminished. The periods of time available for real-life visits after the pandemic should not be limited due to the option of video telephony.

#### **1.2.4 – Quarantine measures**

##### **Duration of quarantine**

In most of the prisons and forensic psychiatric detention facilities visited, newly admitted persons were initially accommodated in single cells/rooms for the purpose of quarantine. There is no formal legal basis for this. The National Agency's visits revealed that there are large differences between individual facilities and individual *Länder* as regards the duration of quarantine (cf. Table 1). In forensic psychiatric detention facilities in particular, quarantine was shorter than in prisons; however, this was not due to any differences in the conditions of accommodation in terms of infection risks. The doctors working on site and the management of these facilities did not consider shorter quarantines including testing possibilities to pose any medical risk for staff or prisoners/

detainees. However, such approaches involving short quarantines were less stressful for the persons concerned.

It was therefore recommended to the Straubing and Landsberg am Lech Prisons and to the Uchtspringe forensic psychiatric facility to shorten the duration of the quarantine imposed upon arrival.

The duration of preventive quarantine should be kept as short as possible based on medical necessity. Care should be taken to ensure that quarantine is maintained only as long as the risk of the virus spreading cannot be eliminated by other measures such as testing.

In addition, the National Agency gathered from written information that, in isolated cases, persons admitted at the same time were quarantined in common rooms. Due to quarantine requirements, these individuals could hardly leave the room. Joint accommodation under such conditions may lead to conflicts which the persons accommodated together cannot avoid due to the confined space and the conditions of quarantine.

Joint quarantine of new arrivals in common rooms should be avoided. In any event, the statutory requirements for the joint occupancy of rooms are to be observed in this context.

### Care, support and activities during quarantine

During quarantine in solitary confinement, prisoners in the admission units of Straubing, Landsberg am Lech and Bautzen Prisons were allowed to exercise outdoors for one hour per day under the condition that they kept a distance of 1.5 m from each other and wore a mask. Proactive care was provided in Bautzen by the social service and in Straubing by members of the medical service. At Landsberg am Lech Prison, conversations were possible in rooms converted for this purpose. However, opportunities for contact with the outside world were not ensured. For instance, the prisoners in quarantine at Landsberg am Lech Prison were not given the opportunity to make telephone calls.

Prisoners were able to request drawing materials and to borrow books. Televisions were

provided. The National Agency was informed by individual *Länder* that support services were increased and that educational and recreational materials or writing and drawing utensils were handed out. Staff in individual *Länder* received special training on identifying signs of a risk of impending suicide.

It should be noted that the isolating effect of single-occupancy accommodation under quarantine conditions is particularly burdensome for the person concerned. While in quarantine, all newly admitted persons need to be provided with increased care and support.

In order to avoid any disadvantages that may arise from single-occupancy accommodation under quarantine conditions, all necessary measures should be taken to the extent that they are compatible with the constraints of the pandemic. These include providing opportunities for contact with others in line with hygiene standards, purposeful activities, and maintaining care and support measures during the period of quarantine.

### Premises used for quarantine

In the wards for juvenile patients at the forensic psychiatric clinics in Berlin and Arnsdorf, preventive quarantine is always (Berlin) or partly (Arnsdorf) carried out in crisis intervention rooms at the beginning of the placement. In both facilities, the crisis intervention rooms are visible from anterooms through a glass façade, which means that the necessary privacy is not ensured. The rooms have no furnishings such as a bed, a table or chairs, and there is only a minimum amount of vandalism-proof furniture.

Crisis intervention rooms are designed and equipped for accommodating patients in exceptional or emergency situations where such placement is absolutely necessary to prevent them from posing a danger to themselves or to others. It is difficult to create a homely atmosphere there. Especially for newly admitted persons, being accommodated there is a shocking experience. A quarantine measure represents an emotionally and psychologically demanding situation. During this time, those affected require increased care and support and need to be offered possibilities to occupy themselves. This is all the more true

when children and adolescents are affected. Under the circumstances, the crisis intervention rooms do not allow for such possibilities.

Crisis intervention rooms or specially secured detention rooms must not be used to carry out quarantine measures. If these rooms do have to be used for quarantine, they should be equipped for everyday use.

### Renewed quarantine

In isolated cases, the National Agency was informed that prisoners were repeatedly placed in quarantine for a longer period of time after stays outside of prison, for example after returning from court hearings.

Renewed quarantine after stays outside of prison should be avoided as far as medically possible through the use of protective measures such as wearing a mask.

### 1.3 – Residential care and nursing homes during the COVID-19 pandemic

In many residential care and nursing homes, residents were largely isolated from the outside world during the waves of the COVID-19 pandemic. The facilities were not to be left and visits from outside were not permitted.

With residents and staff of residential care and nursing homes having had the possibility of being vaccinated from the end of 2020/beginning of 2021, the factual basis for imposing restrictions in these facilities had changed. In spring 2021, the National Agency therefore enquired in writing about the implementation of measures to relax restrictions in those residential care and nursing homes which it had already visited. The facilities concerned indicated that visits were possible for persons with a current negative test result in accordance with the legal requirements of the respective *Land*. External services such as chiropody and hairdressing as well as group activities were permitted, whereas communal singing was only possible to a limited extent or outdoors. In some facilities, unvaccinated residents were tested more frequently or had to continue wearing masks when leaving their rooms.

In all facilities surveyed, the vaccination rates for residents were high, i.e. at least 80%, and in

many cases even over 90%. This was also true for staff in the majority of facilities; however, in three facilities the rates were only 50%, 54% and 55% respectively at the time of their responses between May and June 2021. Vaccinations had already been offered since the beginning of the year. One facility did not provide any information on the vaccination rate for its staff. Compulsory vaccination for certain facilities, which was introduced at the end of 2021, is intended to improve vaccination rates and health protection for residents.

A high vaccination rate is essential for protecting the health of the residents of residential and nursing homes. It also contributes to avoiding restrictions in everyday life, for example as a result of lockdown measures.

Care must be taken to ensure that the autonomy and dignity of the persons concerned are not violated. Complete isolation must be avoided. Any restrictions must always be adapted to the currently applicable regulatory framework. Visitation rules should allow for as many contacts as possible. Moreover, restrictions on activities should be compensated where possible. In order to ensure this, the current staffing situation should be adapted to the specific challenges of the pandemic.

### 1.4 – Deportations during the COVID-19 pandemic.

As in 2020,<sup>18</sup> deportations of sick persons<sup>19</sup> and persons with an increased risk of developing a severe form of COVID-19 were carried out regularly in 2021. This affected elderly people,<sup>20</sup> pregnant women<sup>21</sup> and people with pre-existing conditions,

<sup>18</sup> Cf. the National Agency's 2020 Annual Report.

<sup>19</sup> Cf., *inter alia*, DIMR, *Abschiebungen trotz Krankheit*, <https://www.institut-fuer-menschenrechte.de/publikationen/detail/abschiebung-trotz-krankheit> (available in German only, retrieved on 25 March 2022).

<sup>20</sup> According to a statistical survey by the Federal Police, a total of 250 persons aged 60 or older were deported in 2021. For instance, a deportation procedure from Munich Airport to Kiev (Ukraine) on 29 January 2021 included the return of an 81-year-old woman.

<sup>21</sup> In addition, the statistics showed that the persons deported included a minor. In the course of one procedure, a pregnant woman was restrained with an abdominal belt.



including children with pre-existing conditions.<sup>22</sup>

In 2021, the National Agency monitored four deportation procedures under COVID-19 conditions. Deportations during the pandemic pose a fairly considerable health risk for deportees, as the often confined spaces increase the danger of contracting COVID-19. COVID-19 tests were regularly carried out prior to departure. An issue which prompted particular criticism was the fact that test results were not always available by the time of arrival at the airport or a test had not yet taken place.<sup>23</sup>

During the monitored return from Frankfurt to Baku, it was observed that PCR tests had been carried out on persons transferred from several *Länder* but that these persons were taken to the airport before the results were available. Thus, as the factual situation was unclear, at the time of the handover there was a risk that COVID-positive returnees might have been transferred, as well as a risk of detainees and staff involved in the procedure being infected.<sup>24</sup>

In fact, there was one case where a mother and her adult son were taken to the airport in the same car and it later turned out that the son had tested positive for COVID-19. During the journey to the airport, the mother and the son did not wear masks. They also loudly expressed their dissatisfaction about the procedure. Nevertheless, the procedure was aborted only for the son, who had tested positive. According to the staff on site, the mother's negative COVID-19 test was sufficient to carry out her deportation.

This reasoning is difficult to comprehend since a negative test result can only provide a snapshot of a given situation. From the National Agency's perspective, quarantine should have been manda-

tory for the mother. As such, the situation at hand fulfilled two of the conditions which, according to the Robert Koch Institute, would result in the mother being defined as a close contact person (with an increased risk of infection):

- + Close contact (<1.5 m, close range) for more than 10 minutes without adequate protection.<sup>25</sup>
- + Conversation with the person concerned (face-to-face contact, <1.5 m, regardless of duration of conversation) without adequate protection.<sup>26</sup>

The National Agency urgently recommends that deportation procedures be suspended as long as there is a serious risk for deportees or a general risk of the virus spreading. The Robert Koch Institute's recommendations and the applicable quarantine obligations should be strictly complied with.

During a deportation procedure from Munich to Kabul, all persons had to undergo PCR testing, in accordance with the requirements of the destination country. In the case of two deportees, testing was carried out forcibly at the facility for custody awaiting deportation. During a deportation procedure from Leipzig to Baghdad, such testing was carried out at the airport.

In the National Agency's view, the use of direct physical force when carrying out COVID-19 tests (by taking nose or throat swabs or saliva samples) poses a general risk as this may result in the persons concerned suffering injuries.<sup>27</sup>

### 1.5 – Child and youth welfare during the COVID-19 pandemic

In the National Agency's view, due to the particular vulnerability of children and juveniles, child and youth welfare facilities were faced with a particularly responsible task during the COV-

<sup>22</sup> The National Agency was also concerned to learn that a child with Down syndrome (trisomy 21) had been transferred and deported. For individuals with Down syndrome, the risk of contracting a severe or lethal form of COVID-19 is significantly increased; cf. Robert Koch Institute (2021), Aktuelle Daten und Informationen zu Infektionskrankheiten und public health, Epidemiologisches Bulletin Heft 2, pp. 36-37.

<sup>23</sup> This is evident from the documentation of several deportation measures. During a deportation procedure on 9 March 2022 from Hanover Airport to Kabul, several deportees were not tested by the accompanying doctor until after their admission to the airport.

<sup>24</sup> Furthermore, upon inspection of additional documentation of deportation procedures, it became apparent that some of the persons transferred had tested positive for COVID-19. For example, a person transferred from Baden-Württemberg was not admitted to the airport after the staff in charge stated that this person had tested positive.

<sup>25</sup> Adequate protection = infected person and contact person wear (FFP2) masks all the time and in the correct way.

<sup>26</sup> URL: [https://www.rki.de/DE/Content/InfAZ/N/Neuartiges\\_Coronavirus/Kontaktperson/Management.html](https://www.rki.de/DE/Content/InfAZ/N/Neuartiges_Coronavirus/Kontaktperson/Management.html) (available in German only, retrieved on 15 February 2022).

<sup>27</sup> On this issue, the National Agency shares the position of the (Swiss) National Commission for the Prevention of Torture. The relevant statement by the Swiss National Commission for the Prevention of Torture is available online at URL: <https://www.nkvf.admin.ch/nkvf/de/home/publikationen/stellungnahmen.html> (retrieved on 1 February 2022).

ID-19 pandemic. Changes to the environment of children and juveniles may be harmful to them. For this reason, Article 3(1) of the UN Convention on the Rights of the Child stipulates that their best interests must be a primary consideration in all decisions.

This must result in a careful weighing-up of restrictions for the purpose of health protection and their effects on children and juveniles. Naturally, the same must also apply in the context of the COVID-19 pandemic. Even though children and juveniles are at a lower risk of becoming severely ill from COVID-19, the pandemic also poses a health risk for them.

The necessary measures to protect their health must be accompanied by enhanced compensatory measures and alternative additional support services.

According to Article 3(1) of the UN Convention on the Rights of the Child, the best interests of the child must be a primary consideration when designing and compensating for restrictive measures. Therefore, more alternative activities should be offered and restrictions should be compensated to a greater extent. Funds for additional material and adapted care and support should be made available.

At the beginning of 2021, the National Agency sent a questionnaire to all the child and youth welfare facilities it had visited since its inception. The aim of the questionnaire was to obtain information about the conditions at the facilities as regards the human rights of the individuals held there; all facilities responded to the enquiry. The results are summarised in the following.

To avoid infections, restrictions were imposed in closed child and youth welfare facilities – for example, with regard to opportunities for contact, work and leisure activities, as well as with regard to shopping and weekend trips home for children and juveniles.

The majority of facilities reported that occupancy levels had remained largely constant during the COVID-19 pandemic. They merely noted that an increased number of children and juveniles had been admitted directly after being treated in a facility for child and youth psychiatry; this ensured that these children and juveniles had had few changes in their social contacts beforehand. Many facilities only admitted children

and juveniles who had already tested negative for COVID-19, and then waived quarantine measures on admission. Children and juveniles were also regularly tested after trips home, after being on leave and upon return if they had absconded without permission. In addition, measures were described such as health questionnaires and the taking of temperatures. If there were indications of a risk of infection with COVID-19, the children and juveniles concerned were isolated until they tested negative.

If any children or juveniles showed symptoms of infection or had high-risk contacts during their time spent at the facility, they had to quarantine in their rooms. According to the information provided, the educational and psychological staff provided thorough care and support to the persons concerned and also taught them during that time, while complying with protective measures. Via video telephony, they were able to maintain contact with family and friends outside their residential group. In addition, those affected were provided with opportunities to occupy themselves as well as to play and exercise outdoors. School lessons continued. One case was also described where a staff member had been infected with COVID-19, which resulted in the entire group, including the responsible support staff, being placed in quarantine for twelve days. During that time, all persons were able to move freely within the group and in the courtyard. In another facility, the rule was that children and juveniles were not allowed to take part in communal meals for five days after returning from weekend trips home, but had to eat in their rooms. In addition, due to the increased risk of infection, they were required to keep a distance from each other and to wear a mask within the group.

According to the information provided, in cases where individual or group isolation became necessary, the aim was always to keep quarantine as short as possible. For this purpose, PCR testing was arranged to take place immediately; as a rule, results were available after three to five days, so that quarantine could be ended.

Isolating children and juveniles from their familiar environment should be avoided as far as possible. If quarantine measures are necessary, testing should be used to minimise their duration. During quarantine, too, children and juveniles must be able to have personal contact with

attachment figures who provide them with care and support and who counteract the burdens of quarantine.

It was often necessary to alternate between schooling outside and inside the facilities. However, there was a lack of staff time and technical equipment, especially laptops, for providing support and supervision on site. Some facilities arranged for emergency support and supervision by teachers in order to relieve the burden on their staff. According to the information provided, the closing of schools, which meant that there was no longer any structure to provide stability and grounding, resulted in a certain lethargy and lack of perspective among children and juveniles. This also affected the goal of them achieving a school-leaving qualification, as they were increasingly left to their own devices in dealing with school materials. In addition, many internships and other services offering career guidance were cancelled.

Schooling is fundamental for the development of children and juveniles and also provides structure. Schooling of adequate quality, including adequate support and supervision, must therefore be maintained during lockdown measures.

According to the information provided, the children and juveniles required even more intensive care and support due to the increased psychological burden. As a result of sports clubs being closed, the children and juveniles were not able to apply newly acquired coping strategies, providing an alternative to violence or drug use, in the usual way. In addition, their sense of belonging to the sports team was diminished.

In terms of general developments during the COVID-19 pandemic, many conversations were necessary to help children and juveniles cope with the situation. For example, they did not understand why large crowds were attending Bundesliga football matches while strict contact restrictions were in place at their facilities.

The longer the pandemic lasted, the greater the psychological burden became – not least due to boredom and cabin fever. Combined with a low tolerance for frustration, this mostly manifested itself in the form of verbal swearing, arguments or irritable moods. Fortunately, none of the facilities surveyed reported an increase in crisis situations. Thus, according to the information provided by

the facilities, the occupancy of so-called time-out rooms for segregating children and juveniles in case of conflict did not increase significantly.

Due to the increased psychological burden on children and juveniles, increased care and support must be provided during the COVID-19 pandemic.

In the course of its visits to child and youth welfare facilities with closed units, the National Agency often found that leisure activities, especially those taking place outside the facility, are very important to the children and juveniles concerned. The facilities reported that, especially in the context of closed placement, leisure activities such as outings also had a special rewarding character. However, restrictions on leave prevented freedoms from being exercised and granted to the usual extent. In some cases, freedoms that the children and juveniles had already earned some time ago based on a phased model could not be granted during the pandemic. This was partly due to the closure of many places such as swimming pools and cinemas, as well as the constant adjustment of contact restrictions to the general situation regarding infection rates. Thus, it was not possible to sufficiently compensate for the measures in an age-appropriate way, something that the children and juveniles absolutely needed.

Activities such as sports and other experience-based learning activities were largely moved outdoors. Since the children and juveniles within one residential group were considered to be one household, many leisure activities could be carried out in groups. Some facilities reported that, partly with the help of donations, they had been able to acquire sports equipment, media and board games in order to offer alternative activities.

Restrictions for the purpose of health protection in child and youth welfare facilities must be limited to what is absolutely necessary. Educational and leisure activities which are cancelled must be compensated as far as possible.

Some youth welfare offices were reported to have prohibited contact between parents and children for many weeks, while others allowed contact. This unequal treatment led to unrest among the children and juveniles concerned. At times, personal contact with families and friends were significantly restricted. External persons

were not allowed access to the residential groups; however, many facilities reported that separate rooms were made available for family visits. At times, weekend trips home were permitted only in special cases.

A fundamental task of child and youth welfare facilities is to enable and support the return of children and juveniles to their families. Against this background, regular contacts are essential as a training environment for jointly coping with problems and for building and maintaining relationships. Contact between children/juveniles and their parents must be facilitated for these purposes.

According to the information provided, contact with youth welfare offices and so-called assistance plan conversations mostly took place via telephone or video conferences. This was perceived as strenuous by those involved as they could not see each other in person. As a result, it was not always possible to ensure the best possible setting for getting through to the children and juveniles concerned, as compared to conversations conducted in person.

It was possible to maintain therapeutic measures predominantly in cases where facilities had their own psychological and/or psychotherapeutic service. In other cases, therapy sessions were reduced to a minimum, were frequently cancelled or had to take place online. It was also more difficult for consultant doctors to attend because, in most cases, appointments within residential groups were not permitted. At the same time, however, therapy services offered online were increasingly used.

Therapy and care services as well as medical care for the children and juveniles concerned must be maintained in an adequate way. If necessary, premises must be provided for this purpose.



# IV STANDARDS

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

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

# 1 – DEPORTATION

## 1.1 – Time of collection

Collections at night should be avoided.

## 1.2 – Deportation from prison

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

## 1.3 – Deportation from educational, medical, and care facilities

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

## 1.4 – Respect for the best interests of children

Families should not be separated as a result of deportation measures. Children should not be shackled. Parents should not be shackled in the presence of their children. If children are deported, there should always be one person who is tasked with ensuring the child's best interests are respected during the deportation procedure. Suitable facilities to keep children occupied should be available at the airport.

## 1.5 – Strip-searches

Strip-searches involving a visual inspection of the detainee's genital area represent a severe interference with the detainee's general right of personality.<sup>28</sup> It should therefore be decided on a case-by-case basis whether there are indications of a danger to public security and order that would justify a strip-search. Any such measures must adhere to the principle of proportionality.<sup>29</sup>

If a strip-search is carried out, the reasons for this should be documented in a clear and comprehensible manner. Furthermore, the search should be conducted as respectfully as possible, for example involving two stages where half the body remains dressed in each stage. Staff members of

the opposite sex to the detainee must not be present during such searches.

## 1.6 – Further training for prison staff

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

## 1.7 – Luggage

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

## 1.8 – Cash lump sum

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

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

For humanitarian reasons, wherever individual cases require – for example if families with children or sick persons are involved – persons required to leave the country should be informed at least a week in advance that their deportation is imminent.<sup>30</sup> A corresponding amendment to section 59(1), 8th sentence, of the Residence Act (*Aufenthaltsgesetz*) aims to ensure this.

## 1.10 – Information on the deportation procedure

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

<sup>28</sup> Federal Constitutional Court, order of 05 March 2015, file no.: 2 BvR 746/13, margin no. 33

<sup>29</sup> Cologne Administrative Court, judgment of 25 November 2015, file no.: 20 K 2624/14, margin no. 115 et seqq.

<sup>30</sup> Cf. CPT/Inf (2019) 14, margin nos. 16-19.



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

#### **1.11 – Communication during the entire deportation procedure**

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

#### **1.12 – Contact with legal counsel**

During the deportation procedure, persons awaiting deportation must be allowed to contact legal counsel. Such contact must be made possible at the beginning of the deportation procedure so that any necessary legal measures can be taken in due time. In case the person concerned has so far had no contact with a lawyer, they must be given contact details for emergency legal services.

#### **1.13 – Special consideration for children and sick persons**

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

#### **1.14 – Phone calls with relatives**

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

#### **1.15 – Mobile phones**

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

#### **1.16 – Meals**

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

## 2 – CUSTODY AWAITING DEPORTATION AND CUSTODY TO SECURE DEPARTURE

### 2.1 – Initial medical examination

Every person required to leave the country must undergo an initial medical examination upon admission into custody awaiting deportation (*Abschiebungshaft*) or custody to secure departure (*Ausreisegewahrsam*). It must be ensured that any indications of trauma or mental illness are diagnosed. In case of communication difficulties, an interpreter should always be called upon to assist in initial medical examinations. For reasons of confidentiality, translations should not be performed by other detainees awaiting deportation. Moreover, if translations are performed by staff members or other detainees awaiting deportation, there is no guarantee that technical terms and subject matter will be correctly translated into the other language.

### 2.2 – External contact

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

### 2.3 – Work and recreational activities

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

### 2.4 – Strip-searches

Strip-searches involving a visual inspection of the detainee's genital area represent a severe interference with the detainee's general right of personality. It should therefore be decided on a case-by-case basis whether there are indications of a danger to public security and order that would justify a strip-search. Any such measures

must adhere to the principle of proportionality.

If a strip-search is carried out, the reasons for this should be documented in a clear and comprehensible manner. Furthermore, the search should be conducted as respectfully as possible, for example involving two stages where half the body remains dressed in each stage. Staff members of the opposite sex to the detainee must not be present during such searches.

### 2.5 – Visibility of toilets

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

CCTV cameras must be installed in such a way that the toilet area is either not visible on the monitor at all or, alternatively, is only shown in the form of pixelated images. If deemed necessary in individual cases, it may be possible to permit unrestricted monitoring of detainees held in specially secured cells due to an acute danger of self-harm or suicide. However, any such decision should be carefully considered, substantiated and clearly documented. If a toilet area is indeed covered by CCTV monitoring and is not pixelated, only persons of the same sex as the detainee should carry out the monitoring.

### 2.6 – Physical restraint

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

The use of physical restraints is only to be ordered as a last resort, on the basis of clear and precisely defined criteria, and for the shortest possible period of time. To minimise the risk of physical harm, restraints should be applied using a strap-based system. Persons being physically restrained should, at the very least, be given paper underwear and a paper shirt to wear in order to protect their sense of modesty. They must be checked on regularly by a doctor. Persons under physical restraint must also be observed continuously and personally by therapeutic or care staff

who are in direct proximity to the detainee (one-on-one supervision). For any physical restraint applied for more than just a short period of time, a court decision is required.<sup>31</sup> The measure should be discussed with the detainee concerned afterwards.<sup>32</sup> The detainee should also be informed after the measure of the possibility to have a court review the permissibility of the restraint procedure.<sup>33</sup>

Written reasons should be given for every instance of physical restraint. This includes documenting which less severe measures have already been tried and an explanation of why they failed.

### 2.7 – CCTV monitoring

CCTV monitoring should only be used in individual cases where it is imperative to protect the person concerned. The reasons for the use of CCTV monitoring should be documented. In addition, the person concerned must be informed that monitoring is taking place. The mere fact that the camera is visible is not sufficient. It should be possible for the person concerned to discern whether the camera is running.

### 2.8 – Clothing

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

### 2.9 – Staff

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

### 2.10 – Psychological and psychiatric care

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

### 2.11 – Legal advice

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

### 2.12 – Legal basis

The detention conditions of persons in custody awaiting deportation and custody to secure departure must differ from those of sentenced prisoners.<sup>34</sup> Furthermore, any interference with fundamental rights beyond the mere placement in such a detention facility requires its own legal basis.<sup>35</sup> Consequently, a specific legal basis must be established for the enforcement of custody awaiting deportation and custody to secure departure.

### 2.13 – Respectful treatment

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

### 2.14 – Placement of minors

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

### 2.15 – Weapons in custody

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

Due to the significant health risks involved, the use of pepper spray in confined spaces is not a proportionate measure under any circumstances. It should therefore be avoided inside detention facilities.<sup>36</sup>

<sup>31</sup> Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15, margin no. 69.

<sup>32</sup> DGPPN [German Society for Psychiatry and Psychotherapy] (2018): “S3-Leitlinie: Verhinderung von Zwang: Prävention und Therapie aggressiven Verhaltens bei Erwachsenen.”, URL: [https://www.dgppn.de/\\_Resources/Persistent/154528053e2d-1464d9788cob2d298ee4a9d1cca3/S3%20LL%20Verhinderung%20von%20Zwang%20LANG%20BLITERATUR%20FINAL%2010.9.2018.pdf](https://www.dgppn.de/_Resources/Persistent/154528053e2d-1464d9788cob2d298ee4a9d1cca3/S3%20LL%20Verhinderung%20von%20Zwang%20LANG%20BLITERATUR%20FINAL%2010.9.2018.pdf) (available in German only, retrieved on 18 March 2021)

<sup>33</sup> Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15, margin no. 85.

<sup>34</sup> Article 16(1) of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

<sup>35</sup> Federal Constitutional Court, judgment of 31 May 2006, file no.: 2 BvR 1673/04, NJW 2006, 2093 (2093).

<sup>36</sup> ECHR, Tali v. Estonia, judgment of 13 February 2014, Application no. 66393/10, § 78; CPT/Inf (2008) 33, margin no. 86.

### **2.16 – Admission meeting**

An admission meeting must be held with every newly admitted person, during which they should be informed of the reason for their detention. They should also be informed of their rights.

During these meetings, special attention should be paid to any indications of mental illness. If necessary, a psychologist should be involved.

For these purposes, the detention facility's staff members responsible for conducting admission meetings must receive specialised training enabling them to recognise signs of trauma or mental illness. In case of communication difficulties, an interpreter must be called upon to assist in admission meetings.

## **3 – FEDERAL AND LAND POLICE, CUSTOMS**

### **3.1 – Furnishing and fittings, conditions in custody cells**

The conditions in custody cells, including furnishings and fittings, must uphold the human dignity of detainees. Every custody cell should be equipped with a smoke detector, an emergency button, adjustable lighting, a non-flammable, washable mattress, a blanket and a pillow. Where a custody cell is only equipped with a low bed, it should have additional seating at standard height.

To ensure the protection of persons placed in custody in the event of a fire, all custody cells must be equipped with a smoke detector.

In addition, it must be possible for persons deprived of their liberty to call for attention through an emergency button. It must be guaranteed that the alarm system is working. This should be checked before each occupancy of a detention cell.

It should be possible to adjust the lighting in custody cells to ensure that persons taken into custody are able to sleep, while at the same time reducing the risk of injury and enabling detainees to find their way in the dark.

Every custody cell should receive natural light, including those intended for short-term custody. Furthermore, a suitable room temperature should be ensured in custody cells.

### **3.2 – Instruction about rights**

Each and every person deprived of their liberty must be informed of their rights, immediately and without exception. To this end, forms containing all the relevant information should be available in various languages. They must at the very least include information about the fact that anyone who is taken into custody has the right to be examined by a doctor, to consult a lawyer, to notify a trusted third party and, where applicable, inform the consulate of their home country. It should be documented in the police custody record book that the person taken into custody has been instructed about their rights so that it is immediately clear to staff members following a shift change-over whenever the relevant information has not been communicated for any specific reason. If a person was not instructed about their

rights when they were brought into custody, this must be done at a later point in time.

### 3.3 – Documentation

Custody documentation at police stations and customs offices should be clear and comprehensible. This serves to protect those being held in custody, as well as the responsible staff members.

The following details should be documented:

- + The detainee's personal details
- + When the deprivation of liberty began
- + The staff members responsible for taking the person concerned into custody and for supervising them during custody
- + The health condition of the person concerned
- + Whether the person was informed of their rights
- + Whether the person was informed of the reason for the deprivation of liberty
- + Whether a judicial order has been obtained
- + If a strip-search was conducted, the reasons for this
- + The name of the staff member conducting the strip-search
- + The times of checks, including the initials of the responsible staff member
- + The time and type of meals
- + The removal and subsequent return of personal objects
- + The time of release
- + If it was not possible to inform the persons concerned of their rights when they were brought into custody, it should be documented whether this was done at the latest by the time they were released.

Senior officers should check at regular intervals whether the documentation is complete. These checks should be recorded.

### 3.4 – Strip-searches

Strip-searches involving a visual inspection of the detainee's genital area represent a severe interference with the detainee's general right of personality.<sup>37</sup> It should therefore be decided on

<sup>37</sup> Federal Constitutional Court, judgment of 05 March 2015, file no.: 2 BvR 746/13, margin no. 33.

a case-by-case basis whether there are indications of a danger to public security and order that would justify a strip-search. Any such measures must adhere to the principle of proportionality.<sup>38</sup>

If a strip-search is carried out, the reasons for this should be documented in a clear and comprehensible manner. Furthermore, the search should be conducted as respectfully as possible, for example involving two stages where half the body remains dressed in each stage.

### 3.5 – Visibility of custody cells

It must not be possible for third persons to look inside a custody cell.

### 3.6 – Visibility of toilets

It must be ensured without exception that persons taken into custody cannot be observed when using the toilet. For example, a screen could be installed to block the view of the toilet area.

CCTV cameras must be installed in such a way that the toilet area is either not visible on the monitor at all or, alternatively, is only shown in the form of pixelated images. Unrestricted monitoring of the custody cell should only be permitted in carefully assessed, substantiated and clearly documented individual cases where there is an acute danger of self-harm or suicide. If a toilet area is indeed covered by CCTV monitoring and is not pixelated, only persons of the same sex as the detainee should carry out the monitoring.

### 3.7 – Shackles

In contrast to physical restraint, “shackling”, in the National Agency's usage of the term, is the restriction of movement by tying together arms or legs, or by tying them to an object.

Tying persons to the wall or to other objects violates their human dignity and must be avoided without exception.

In order to protect the right to physical integrity, any shackling in custody should be carried out using textile hand restraint belts<sup>39</sup>, which should be kept in stock at all times.

<sup>38</sup> Cologne Administrative Court, judgment of 25 November 2015, file no.: 20 K 2624/14, margin no. 115 et seqq.

<sup>39</sup> An example of this can be seen in the model used by FRON-TEX during deportation flights.

### 3.8 – Physical restraint

Physical restraints should not be used at all during police custody or customs custody.

### 3.9 – Size of custody cells

Custody cells must be designed in a way that ensures humane detention conditions.

A single-occupancy custody cell must have a floor space of at least 4.5 square metres. Multiple-occupancy custody cells must have a floor space of at least 3.5 square metres per person.

Facing walls must be separated by a distance of at least two metres, and the ceiling must be considerably higher than two metres.

### 3.10 – CCTV monitoring

CCTV monitoring should only be used in police stations and customs offices in individual cases where it is imperative for the protection of the person concerned. The reasons for the use of CCTV monitoring should be documented. In addition, the person concerned must be informed that monitoring is taking place. The mere fact that the camera is visible is not sufficient. It should be possible for the person concerned to discern whether the camera is running.

### 3.11 – Multiple-occupancy of custody cells

In order to ensure humane detention conditions, it is imperative that custody cells accommodating more than one person have a fully partitioned toilet with separate ventilation.

### 3.12 – Right to medical examination

Every person taken into custody has the right to consult a doctor.

### 3.12A – Medical supervision during excretion of drug packages

Due to the potential risks involved and in order to protect the right to life and physical integrity, a detained person who internally concealed drugs should be under medical supervision before, during and after excretion of the foreign objects.

### 3.13 – Respectful treatment

Persons being held in detention should be treated respectfully. For example, staff members should indicate their presence in a suitable manner before entering a custody cell, and should, as

a rule, speak to detainees using polite forms of address.

### 3.14 – Independent complaints offices and investigation bodies

An essential element of preventing abuse by staff members is the detection, prosecution and punishment of misconduct.

Every *Land* should therefore set up independent complaints offices and investigation bodies.<sup>40</sup>

### 3.15 – Confidentiality of conversations

Persons in custody must be given the opportunity to have confidential conversations with their lawyers. Confidentiality should also be assured for conversations with doctors or relatives.

### 3.16 – Weapons in custody

Officers should remove firearms before entering a custody suite.

Due to the significant health risks involved, the use of pepper spray in confined spaces is not a proportionate measure under any circumstances. It should therefore be avoided inside police stations and customs offices.<sup>41</sup>

<sup>40</sup> See, *inter alia*, ECHR, Kummer v. Czech Republic, judgment of 25 July 2013, Application no. 32133/11, § 83; Eremiášova and Pechová v. Czech Republic, judgment of 16 February 2012, Application no. 23944/04, § 135.

<sup>41</sup> ECHR, Tali v. Estonia, judgment of 13 February 2014, Application no. 66393/10, § 78; CPT/Inf (2008) 33, margin no. 86.

## 4 – CHILD AND YOUTH WELFARE FACILITIES

### 4.1 – Possibilities for complaint

Children and juveniles must be in a position to submit complaints to a suitable complaint body. In addition to contact persons within the facility, section 9a of the Eighth Book of the Social Code (*Sozialgesetzbuch VIII – SGB VIII*) provides for ombuds offices to be set up in the *Länder*, which young people and families can turn to for advice and in order to resolve conflicts. The necessary conditions for this need to be created under *Land* law.

It must be ensured that children and juveniles can contact such an ombuds office easily and confidentially. The complaint channels and all necessary contact details should be provided in an information leaflet worded in a child-appropriate manner, or in the facility's house rules, and explained to them when they are first admitted to the facility.

### 4.2 – Outdoor exercise

Every person deprived of their liberty should be offered at least one hour of outdoor exercise per day. Children and juveniles should be offered considerably more time outdoors for exercise.

### 4.3 – Information on rights

When they are admitted to the facility, children and juveniles must be informed in writing about their rights. This information must be given in a manner that is appropriate to their age.

### 4.4 – CCTV monitoring

Children and juveniles should not be subjected to uninterrupted and indiscriminate CCTV monitoring. Under no circumstances can CCTV monitoring replace the presence of members of staff. The reasons for the use of CCTV monitoring should be documented. In addition, the persons concerned must be informed of the monitoring. The mere fact that the camera is visible is not sufficient. It should be possible for the person concerned to discern whether the camera is running.

## 5 – PRISONS

### 5.1 – Clothing worn in specially secured cells

When detained in a specially secured cell containing no dangerous objects, prisoners should be given at least a pair of paper underwear and a paper shirt to wear.

### 5.2 – Strip-searches

According to the Federal Constitutional Court, strip-searches involving a visual inspection of detainees' genital area represent a severe interference with their general right of personality.<sup>42</sup> It is not permissible to carry out strip-searches routinely and without case-specific suspicions.<sup>43</sup> To satisfy this requirement, general strip-search orders must allow for exceptions if the principle of proportionality so demands. Staff must be made aware that in individual cases it may not be necessary for the prisoner to undress fully.

If it is indeed necessary that the person concerned undress fully, then the search should be conducted in a respectful procedure, for example involving two stages where half the body remains dressed in each stage.

### 5.3 – Showers

Persons who have been deprived of their liberty should be given the opportunity to shower alone if they wish to do so. At least one shower should be partitioned off in communal shower rooms.

### 5.4 – Visibility of toilets

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

CCTV cameras must be installed in such a way that the toilet area is either not visible on the monitor at all or, alternatively, is only shown in the form of pixelated images. If deemed necessary in individual cases, it may be possible to permit unrestricted monitoring of detainees held in

<sup>42</sup> Federal Constitutional Court, order of 5 March 2015, file no.: 2 BvR 746/13, margin nos. 33–35.

<sup>43</sup> Federal Constitutional Court, order of 10 July 2013, file no.: 2 BvR 2815/11, margin no. 16, with reference to ECHR, *Van der Ven v. the Netherlands*, judgment of 4 February 2003, Application no. 50901/99, margin no. 62.

specially secured cells due to an acute danger of self-harm or suicide. However, any such decision should be carefully considered, substantiated and clearly documented. If a toilet area is indeed covered by CCTV monitoring and is not pixelated, only persons of the same sex as the detainee should carry out the monitoring.

### 5.5 – Solitary confinement

To mitigate the negative impact of solitary confinement on mental and physical health, detainees should be provided with sufficient opportunities for human contact (e.g. extended visiting times) and to engage in meaningful activities. Those placed in solitary confinement are also to be seen regularly by a psychiatrist or psychologist. This should take place in a suitable and confidential environment.

### 5.6 – Physical restraint

The use of physical restraints<sup>44</sup> is only to be ordered as a last resort, on the basis of clear and precisely defined criteria, and for the shortest possible period of time. To minimise the risk of physical harm, restraints should be applied using a strap-based system. Persons being physically restrained should, at the very least, be given paper underwear and a paper shirt to wear in order to protect their sense of modesty. They must be checked on regularly by a doctor. Persons under physical restraint must also be observed continuously and personally by therapeutic or care staff who are in direct proximity to the detainee (one-on-one supervision). For any physical restraint applied for more than just a short period of time, a court decision is required.<sup>45</sup> The measure should be discussed with the detainee concerned afterwards.<sup>46</sup> The detainee should also be informed after the measure of the possibility to have a court review the permissibility of the restraint proce-

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<sup>44</sup> For definition, See part IV 2.6- Physical restraint. Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15, margin no. 69.

<sup>45</sup> DGPPN [German Society for Psychiatry and Psychotherapy] (2018): “S3-Leitlinie: Verbindung von Zwang: Prävention und Therapie aggressiven Verhaltens bei Erwachsenen.”, URL: [https://www.dgppn.de/\\_Resources/Persistent/154528053e2d-1464d9788cob2d298ee4a9d1cca3/S3%20LL%20Verhinderung%20von%20Zwang%20LANG%20BLITERATUR%20FINAL%2010.9.2018.pdf](https://www.dgppn.de/_Resources/Persistent/154528053e2d-1464d9788cob2d298ee4a9d1cca3/S3%20LL%20Verhinderung%20von%20Zwang%20LANG%20BLITERATUR%20FINAL%2010.9.2018.pdf) (available in German only, retrieved on 18 March 2021)

dure.<sup>47</sup>

Written reasons should be given for every instance of physical restraint. This includes documenting which less severe measures have already been tried and an explanation of why they failed.

### 5.7 – Cell size

In order for detention conditions to be humane, a single-occupancy cell must have a floor space of at least six square metres<sup>48</sup>, excluding the sanitary area. In cases where the sanitary area is not partitioned, approximately one further square metre should be added for that area, giving a total floor space of at least seven square metres. For multiple-occupancy, a further four square metres of floor space must be added to this figure for each additional person, excluding the sanitary area.

### 5.8 – CCTV monitoring

CCTV monitoring in prisons should only be conducted in individual cases where this is imperative to protect the person concerned. The reasons for the use of CCTV monitoring should be documented. In addition, the person concerned must be informed that monitoring is taking place. The mere fact that the camera is visible is not sufficient. It should be possible for the person concerned to discern whether the camera is running.

### 5.9 – Multiple-occupancy of prison cells

According to the case law of the German Federal Constitutional Court<sup>49</sup>, prison cells accommodating more than one person must have a completely separate toilet with separate ventilation. Multiple-occupancy without such a separation constitutes a violation of human dignity.

### 5.10 – Use of segregation units

In addition to the specially secured cells containing no dangerous objects, facilities may also have segregation units with similar furnishings and fittings. In such cases, the same detention conditions must be applied as for the specially

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<sup>47</sup> Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15, margin no. 85.

<sup>48</sup> The absolute minimum requirement is six square metres. In the National Agency’s view, cells that are smaller than this violate Article 1 of the German Basic Law. Any additional legal requirements must, of course, also be observed, and are welcomed.

<sup>49</sup> Federal Constitutional Court, judgment of 22 February 2011, file no.: 1 BvR 409/09, margin no. 30.



secured cells. Furthermore, comprehensive documenting must be carried out, in line with procedures for specially secured cells.

### 5.11 – Respectful treatment

Detainees should be treated respectfully. This includes staff indicating their presence in a suitable manner before entering the prison cell, and speaking to detainees using polite forms of address.

### 5.12 – Peepholes

With the exception of observation rooms, peepholes should be made opaque in order to protect the privacy of the detainees.

### 5.13 – Interpretation during medical consultations

Confidentiality must be assured for medical consultations, which are subject to medical secrecy. Furthermore, it must be ensured, where necessary, that technical terms and subject matter are adequately translated into the other language. In case of communication difficulties, an interpreter must be called upon to assist. Translation by fellow inmates or any of the facility's non-medical staff is not appropriate.

### 5.14 – Handling confidential medical information

In order to ensure medical information is handled confidentially, details concerning infectious diseases, for example, should only be recorded in medical files and not in prisoner files. This ensures that only medical personnel are made aware of such information, and not general prison staff.

### 5.15 – Conditions in prison cells

In prisons, inmates should have access to natural, unfiltered light in their cells. Their view outside may not be obstructed by opaque plexiglass panes, for instance.

## 6 – PSYCHIATRIC CLINICS

### 6.1 – Outdoor exercise

Every person deprived of their liberty should be offered at least one hour of outdoor exercise per day. Children and juveniles should be offered considerably more time outdoors for exercise.

### 6.2 – Documentation of coercive measures

All coercive measures should be documented comprehensively, comprehensibly and completely. The measure must be documented in writing. This includes documenting which less severe measures have already been tried and an explanation of why they failed.

### 6.3 – Physical restraint

The use of physical restraints<sup>50</sup> is only to be ordered as a last resort, on the basis of clear and precisely defined criteria, and for the shortest possible period of time. Persons under physical restraint must be observed continuously and personally by therapeutic or care staff who are in direct proximity to the individual concerned (one-on-one supervision). For any physical restraint applied for more than just a short period of time, a court decision is required.<sup>51</sup> The measure should be discussed with the detainee concerned afterwards.<sup>52</sup> The detainee should also be informed after the measure of the possibility to have a court review the permissibility of the restraint procedure.<sup>53</sup>

### 6.4 – Information on rights

Patients must receive written information on their rights in the psychiatric facility. Where young people are concerned, this information should be provided in an age-appropriate form.

<sup>50</sup> For definition, See part IV 2.6- Physical restraint.

<sup>51</sup> Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15, margin no. 69.

<sup>52</sup> DGPPN [German Society for Psychiatry and Psychotherapy] (2018): “S3-Leitlinie: Verbinderung von Zwang: Prävention und Therapie aggressiven Verhaltens bei Erwachsenen.”, URL: [https://www.dgppn.de/\\_Resources/Persistent/154528053e2d-1464d9788c0b2d298ee4a9d1cca3/S3%20LL%20Verhinderung%20von%20Zwang%20LANG%20BLITERATUR%20FINAL%2010.9.2018.pdf](https://www.dgppn.de/_Resources/Persistent/154528053e2d-1464d9788c0b2d298ee4a9d1cca3/S3%20LL%20Verhinderung%20von%20Zwang%20LANG%20BLITERATUR%20FINAL%2010.9.2018.pdf) (available in German only, retrieved on 18 March 2021)

<sup>53</sup> Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15, margin no. 85.

### **6.5 – CCTV monitoring**

Persons held in psychiatric facilities should not be subjected to uninterrupted and indiscriminate CCTV monitoring. Under no circumstances can CCTV monitoring replace the presence of members of staff. The reasons for the use of CCTV monitoring should be documented. In addition, the person concerned must be informed that monitoring is taking place. The mere fact that the camera is visible is not sufficient. It should be possible for the person concerned to discern whether the camera is running.

### **6.6 – Respectful treatment**

Patients should be treated respectfully. For example, staff members should indicate their presence by knocking on the door before entering a room, and should, as a rule, speak to patients using polite forms of address.

### **6.7 – Confidentiality of conversations**

In psychiatric facilities, measures should be introduced to ensure that phone calls can be made confidentially and personal conversations can be conducted in private.

## **7 – DETENTION FACILITIES OF THE FEDERAL ARMED FORCES**

### **7.1 – Detention cells of the Federal Armed Forces: conditions, furnishing and fittings**

In the detention facilities of the Federal Armed Forces, the conditions in the cells, including furnishings and fittings, must uphold the human dignity of detainees. Every detention cell should be equipped with a smoke detector, an emergency button, adjustable lighting, a non-flammable, washable mattress, a blanket and a pillow. In addition, it should have seating at standard height and a table.

To ensure the protection of detainees in the event of a fire, all detention cells must be equipped with a smoke detector.

In addition, it must be possible for persons deprived of their liberty to call for attention through an emergency button. It must be guaranteed that the alarm system is working. This should be checked before each occupancy of a detention cell.

It should be possible to adjust the lighting in detention cells to ensure that detainees are able to sleep, while at the same time reducing the risk of injury and enabling them to find their way in the dark.

In the detention facilities of the Federal Armed Forces, detainees should have access to natural, unfiltered light in their cells. Their view outside may not be obstructed by opaque plexiglass panes, for instance. Furthermore, a suitable room temperature should be ensured in detention cells.

### **7.2 – Instruction about rights**

Each and every person deprived of their liberty must be informed of their rights, immediately and without exception. To this end, forms containing all the relevant information – at the very least information about the fact that the persons concerned have the right to be examined by a doctor, to consult a lawyer and to notify a trusted third party – must be kept available.

### **7.3 – Specially secured detention cell**

In specially secured cells, there must be no objects that could enable detainees to injure themselves.

In addition, close supervision and medical observation of detainees must be ensured.

Where a person is placed in a specially secured cell and is therefore isolated, it is critical that the medical staff give particular attention to the person's health and that regular medical checks are ensured in order to prevent health damage. Close supervision must be ensured in order to exert a de-escalating influence on the detainee and to help terminate the measure in a timely manner.

### **7.4 – Documentation**

Documentation in detention facilities should be clear and comprehensible. In order to protect the individuals held in detention as well as the soldiers in charge (detention enforcement officers), all information related to the detention must be fully documented.

The following details should be documented:

- + The detainee's personal details
- + When the deprivation of liberty began
- + The soldiers in charge (detention enforcement officers) at the time the person to be detained is taken to the facility
- + The fitness for detention of the person concerned
- + The health condition of the person concerned
- + Whether the person was informed of their rights
- + Whether the person was informed of the reason for the deprivation of liberty
- + Whether a judicial order has been obtained
- + The times of checks, including the initials of the soldiers in charge
- + The time and type of meals
- + Outdoor exercise
- + The daily routine of the person concerned (whether they leave detention to perform their duties or to engage in purposeful activities)
- + The removal and subsequent return of personal objects

- + The time of release

Senior officers should check at regular intervals whether the documentation is complete. These checks should be recorded.

### **7.5 – Visibility of toilets**

The soldiers in charge (detention enforcement officers) should indicate their presence in an appropriate manner before entering a detention cell, especially if the toilet is not partitioned off. The person in the cell might be using the toilet and should be given the opportunity to indicate this.

### **7.6 – Size of detention cells**

In order for detention conditions to be humane, a detention cell must have a floor space of at least six square metres, excluding the sanitary area. In cases where the sanitary area is not partitioned, approximately one further square metre should be added for that area, giving a total floor space of at least seven square metres.

### **7.7 – Respectful treatment**

Persons being held in detention should be treated respectfully. This includes staff indicating their presence in a suitable manner before entering the detention cell, and speaking to detainees using polite forms of address. Should peepholes be deemed necessary in substantiated individual cases, the soldiers in charge (detention enforcement officers) should make themselves heard before looking through the peephole.

### **7.8 – Fitness for detention**

Whether a person to be detained is actually fit for detention should always be determined on the basis of a medical examination.

**V**  
**FOCUS:**  
**FORENSIC PSYCHIATRIC**  
**DETENTION**

## 1 – INTRODUCTION

In 2021, the National Agency’s focus was on forensic psychiatric detention. Due to the Covid-19 pandemic, fewer visits than usual were possible in the year under review. Therefore, the National Agency decided to keep this focus in 2022.

## 2 – OCCUPANCY IN FORENSIC PSYCHIATRIC DETENTION

During its visits in 2021, the National Agency repeatedly pointed out the problem of over-occupancy and of multiple-occupancy with three or more persons in patient rooms of forensic psychiatric facilities. Confining three or more mentally ill patients or addicted patients to a room is problematic, even if the room is of sufficient size. The lack of privacy can trigger aggressive behaviour and provoke incidents. It can lead to conflicts between patients, but can also significantly complicate medical and therapeutic treatment and delay the treatment’s intended success.

The National Agency believes that, just like in prisons, single occupancy should be prescribed by law in forensic psychiatric clinics as the general rule. Future construction projects should also allow for single occupancy. In the course of renovations or new construction projects, the rooms should generally be geared towards single occupancy.

In view of the increased occupancy rates, the Federal Ministry of Justice submitted a draft reform of section 64 of the Criminal Code (*Strafgesetzbuch*, StGB) in early 2022. In order to reduce the number of persons admitted due to an addiction, it is planned to more narrowly define the term “addiction” to alcoholic drinks or other intoxicating substances in the future.<sup>54</sup> In this context, the National Agency would like to point out that a large number of mentally ill or addicted persons in prisons are also not receiving treatment.<sup>55</sup> Adequate medical, psychiatric and psychological treatment of persons deprived of their

liberty must be ensured in all types of facilities, including prisons.

In early 2022, the National Agency sent out a nationwide survey to all relevant *Land* ministries regarding occupancy capacity and occupancy rates in forensic psychiatric facilities. Of the responses received from 15 *Länder* by March 2022, 14 of them indicated almost full occupancy or over-occupancy. Saxony-Anhalt had yet to respond. Only Saxony reported a low occupancy rate of 84%. The remaining numbers range between 94 and 111%. Three *Länder* are slightly below their capacity at 94% (Mecklenburg-Western Pomerania), 96% (Hesse) and 97% (Brandenburg), while six *Länder* were at 100% capacity (Baden-Württemberg, Bavaria, Bremen, Hamburg, Saarland and Thuringia). Five *Länder* face over-occupancy: Lower Saxony and North Rhine-Westphalia with a rate of 104% each, Berlin and Schleswig-Holstein with 105% each, and Rhineland-Palatinate with 111%.

Against this backdrop, the responses of the ministries or responsible authorities also point to a reduction in the quality of care and treatment:

“In addition to multiple-occupancy of patient rooms and the **re-purposing** of crisis and temporary crisis areas, most clinics currently have to use visitor, common and functional rooms to accommodate patients.”<sup>56</sup>

This is also accompanied by a loss of spaces in which to retreat, which are essential for avoiding conflict. In some cases, a lack of space has also resulted in individual patients being released without having received any treatment.

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<sup>54</sup> Working group of the Federation and the *Länder* to consider the need to reform the law regarding placement in an addiction treatment facility pursuant to section 64 of the Criminal Code – Final version: 22 November 2021

<sup>55</sup> See chapter “Prisons”.

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<sup>56</sup> Ministry for Social Affairs, Health and Integration of Baden-Württemberg.

“Since there are not enough therapy places available, especially for patients placed in a facility under section 64 of the Criminal Code, around thirty persons in need of placement in a psychiatric clinic had to be released from prison last year where their detention had been executed for lack of a place in a clinic.”<sup>57</sup>

“Currently, the ward for women is full and there are waiting periods. Women who surrender themselves to forensic psychiatric detention from a position of liberty and not from prison can generally not be admitted at the moment.”<sup>58</sup>

Determining the problem of over-occupancy as a statistical basis for potential deficiencies is made more difficult for the National Agency if the responsible authorities themselves do not provide clear information:

“Forensic psychiatric facilities are obliged to admit patients. Therefore, there are no absolute capacities and, above all, no upper limits.”<sup>59</sup>

A strained situation was described in many of the responses received from the ministries. However, they did not see any possibility of influencing the occupancy rates:

“We would like to point out that neither the forensic psychiatric clinics nor the Ministry have any influence on occupancy. Allocations and discharges are made exclusively by the competent courts.”<sup>60</sup>

“Any forensic psychiatric facility must be able at all times to accommodate all persons – even at short notice – who are in need of a place in such a facility, even if the occupancy rate has already exceeded the available number of beds (i.e., the number of beds provided for in the construction plan excluding those in crisis intervention rooms). [...] Therefore, the number of beds provided for in the construction plan is expressly not a benchmark to be applied by the supervisory authority to measure absolute occupancy.”<sup>61</sup>

As a matter of principle, the state is obliged to provide sufficient facilities to ensure humane accommodation.

### 3 – REQUIREMENTS REGARDING THE USE OF PHYSICAL RESTRAINTS IN FORENSIC PSYCHIATRIC DETENTION

Following the Federal Constitutional Court’s judgment of 24 July 2018, greater attention was paid during the visits to the implementation of constitutional requirements on the use of physical restraints. At the same time, a full analysis of all 16 *Land* laws governing forensic psychiatric detention<sup>62</sup> was carried out. The following description of the legal provisions regarding the use of physical restraints reflects the status quo as of February 2022.

The National Agency found that, in 2021, the minimum standards set out in the judgment had still not been implemented in all *Länder*. In Saarland, Thuringia, Berlin, Lower Saxony and Saxony-Anhalt in particular, fundamental constitutional deficiencies still exist more than three years after the judgment was issued. The Federal Constitutional Court had given the *Länder* directly affected by the ruling, Bavaria and Baden-Württemberg, until 30 June 2019 to establish a legal situation in line with the constitution. The fact that numerous other *Länder* still do not fulfil these requirements to date means that, in many cases, there are illegal interferences with the right to freedom (Article 2 (2) of the Basic Law) of accommodated persons.

#### 3.1 – Implementation of the judgment issued by the Federal Constitutional Court on 24 July 2018

In order to meet the requirements set by the Federal Constitutional Court,<sup>63</sup> the laws of the *Länder* must contain the following: separate legal grounds for the use of physical restraints, the requirement of a judicial decision, permissible grounds for using physical restraints, adherence to the principle of proportionality (use of physical

<sup>57</sup> Ministry for Social Affairs, Health and Integration of Baden-Württemberg.

<sup>58</sup> Hessian Ministry of Social Affairs and Integration.

<sup>59</sup> Bavarian Centre for Family and Social Affairs.

<sup>60</sup> Hessian Ministry of Social Affairs and Integration.

<sup>61</sup> Bavarian Centre for Family and Social Affairs.

<sup>62</sup> Eight laws relate to forensic psychiatric detention alone, while the other eight concern both forensic psychiatric detention and the placement of mentally ill persons in a psychiatric hospital (as of 31 January 2022).

<sup>63</sup> Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15, margin no. 77.

restraints as as last resort), the requirement for physical restraint to be ordered and monitored by a doctor, one-on-one supervision by therapeutic or care staff for every instance of physical restraint, documentation and subsequent notification of legal remedies.

### 3.1.1 – Rules applicable to the use of physical restraints

The special requirements set by the Federal Constitutional Court with regard to the use of physical restraints necessitate a separate legal foundation for this special security measure.

In one *Land*, this is not the case. Section 19 (2) no. 5 of the Act on Forensic Psychiatric Detention (*Maßregelvollzugsgesetz*, MRVG) of Saarland only refers to a “restriction of the freedom of movement”; however, this applies to shackling in particular. The severity of interference involved in this form of restriction differs considerably from that of physical restraints. Since no requirements exist in Saarland regarding the ordering and application of physical restraints, there is also no adequate legal foundation for the application of physical restraints. As early as 2019, the National Agency had pointed out the serious deficiency in the Saarland Act on Forensic Psychiatric Detention in the course of its visit to the Merzig forensic psychiatric facility, where physical restraints were nevertheless applied. The Federal Constitutional Court’s requirements were not implemented, however – despite promises to do so. The National Agency is of the opinion that, based on the current legal provisions, physical restraints cannot legally be applied in forensic psychiatric facilities in Saarland. The application of physical restraints without adherence to the principles established by the Federal Constitutional Court violates the affected person’s fundamental right to liberty under Article 2 (2) sentence 2 in conjunction with Article 104 of the Basic Law and endangers the health of the person subjected to physical restraints. Saarland would have to meet all the requirements described in the following in order to create an adequate legal foundation.

Section 23 (1) no. 3 of the Act on Forensic Psychiatric Detention of Lower Saxony (*Niedersächsisches Maßregelvollzugsgesetz*, Nds. MVollzG) only allows “short-term use of mechanical restraints”, for which a judicial decision is not required if the measure lasts under 30 minutes. There is no legal foundation in Lower Saxony for longer use of

physical restraints. During its visit to the forensic psychiatric facility in Lüneburg, the National Agency was assured that the use of physical restraints is terminated after a maximum of thirty minutes. The cautious use of physical restraints is to be welcomed. However, the remaining constitutional requirements regarding the use of physical restraints must be met in cases of short-term use of physical restraints as well, especially the requirement for one-on-one supervision by therapeutic or care staff, but also the obligation to document the measure and to point out the possibility of subsequent judicial review.

### 3.1.2 – Requirement of a judicial decision

A judicial decision is required for every use of physical restraint that lasts longer than thirty minutes.<sup>64</sup> However, two *Länder* have not implemented the requirement to obtain a judicial decision in their legislation, even with regard to longer applications of physical restraints: Berlin and Thuringia.<sup>65</sup> During conversations at forensic psychiatric facilities in Berlin, the National Agency was informed that, even without a judicial decision being required by the respective *Land* acts, the competent courts are always contacted during the process of ordering the use of physical restraints. However, no decisions are issued. According to the information provided, the courts do not consider themselves competent under the *Land* legislation. In the cases of the respondent *Länder* Bavaria and Baden-Württemberg, the Federal Constitutional Court had held that even prior to the creation of a legal foundation under *Land* law, courts had to decide on the ordering of the use of physical restraints.<sup>66</sup>

The National Agency also became aware of individual problems regarding the implementation of the requirement to obtain a judicial decision: At the Lochow branch of Uchtspringe Forensic Psychiatric Clinic in Saxony-Anhalt, where a judicial decision is required by law, the National

<sup>64</sup> Federal Constitutional Court, cited above, margin no. 69.

<sup>65</sup> According to the statement from the Thuringian Ministry for Labour, Social Affairs, Health, Women and Families provided to the National Agency after its visit to the forensic psychiatric clinic of the Ecumenical Hainich Clinic in Mühlhausen, the requirement to obtain a judicial decision is regulated by way of a ministerial decree. It was planned to implement the requirement by law as part of the next legislative reform.

<sup>66</sup> Federal Constitutional Court, cited above, margin no. 124.

Agency received reports that, even though applications had been filed with the local court requesting a judicial decision on the use of physical restraints, no decisions had been issued. In 2019, the National Agency criticised court decisions allowing the repeated use of physical restraints on one person in the forensic psychiatric facility in Neustadt in Holstein (Schleswig-Holstein) over several months.<sup>67</sup>

### 3.1.3 – One-on-one supervision

According to past decisions of the Federal Constitutional Court, persons under physical restraint must be observed continuously and personally by therapeutic or care staff who are in direct proximity to the individual concerned.<sup>68</sup> In Lower Saxony, one-on-one supervision during the use of physical restraints is not guaranteed by law. In Saxony-Anhalt and Thuringia<sup>69</sup>, the legal situation allows for exceptions from the requirement to ensure one-on-one supervision. In both *Länder*, it is also possible to replace one-on-one supervision with CCTV monitoring. In Saxony-Anhalt, this is possible “where such supervision is not necessary for compelling therapeutic reasons” (section 20a (4) sentence 3 of the Act on Forensic Psychiatric Detention (*Maßregelvollzugsgesetz*, MVollzG) of Saxony-Anhalt).

During its visit to the forensic psychiatric clinic in Lüneburg (Lower Saxony), the National Agency was informed that, since there are no legal provisions to this effect, one-on-one supervision does not take place there either during the use of physical restraints.

In Berlin, “adequate and necessary supervision” of physically restrained persons must be guaranteed. For further clarification, it would be desirable to provide for such supervision to be direct. A constitutional interpretation and implementation of the requirement to provide this type of

one-on-one supervision must be ensured.

In this regard, the most recent reform of the Act on Criminal Law-related Committal to a Psychiatric Hospital or an Institution for Withdrawal Treatment in North Rhine-Westphalia is to be welcomed. Here, it is provided in section 33 (6) that, during the use of physical restraints, “uninterrupted, direct, personal one-on-one supervision [...] must be guaranteed”.

### 3.1.4 – Therapeutic or care staff

One-on-one supervision must be carried out by therapeutic or care staff. The Federal Constitutional Court’s reasons for this relate to the specific health hazards that can arise during the use of physical restraint and require an immediate, qualified response: “Even if carried out correctly, patients could suffer significant injuries or other health consequences such as venous thrombosis or pulmonary embolism due to prolonged immobilisation in the context of physical restraint or isolation.”<sup>70</sup> Moreover, only therapeutic or care staff can exert a de-escalating influence on the person concerned in order to allow for the measure to be terminated as soon as possible.<sup>71</sup>

However, in five *Länder* (Bavaria, Hamburg, Lower Saxony, Schleswig-Holstein and Thuringia), care by therapeutic or care staff is not provided for.

For instance, these *Länder* provide for “staff members medically instructed to perform such tasks”,<sup>72</sup> “suitable staff members”<sup>73</sup> or “sufficiently trained facility staff members”<sup>74</sup> in connection with one-on-one supervision. In the view of the National Agency, these guarantees are not sufficient.

The required medical instruction of the therapeutic or care staff concerned is welcomed as an additional measure. Additional special further

<sup>67</sup> In this respect, the Federal Constitutional Court ruled “that judicial authorisation to use physical restraint must meet a strict standard of proportionality, especially with regard to the length of the measure, and be limited to what is absolutely necessary. The constitutional requirement to obtain a judicial decision must not be undermined by the ordering of physical restraint beyond the necessary period in order to avoid having the court that issued the order decide on the matter again.” Federal Constitutional Court, cited above, margin no. 30.

<sup>68</sup> Federal Constitutional Court, cited above, margin no. 83.

<sup>69</sup> Pursuant to section 26 (5) of the Thuringian Act on Forensic Psychiatric Detention, uninterrupted monitoring must be ensured unless personal supervision has been arranged for.

<sup>70</sup> Federal Constitutional Court, cited above, margin no. 32.

<sup>71</sup> Therefore, the National Agency takes the view that this requirement regarding the qualification of staff must also apply where a judgment on the issue of physical restraints is enforced at other places of detention (e.g. prisons), since the same health hazards requiring supervision by qualified staff exist there, too.

<sup>72</sup> Section 20a (4) of the Act on Forensic Psychiatric Detention of Saxony-Anhalt

<sup>73</sup> Article 25 (3) sentence 3 of the Bavarian Act on Forensic Psychiatric Detention (*Bayerisches Maßregelvollzugsgesetz*, Bay-MRVG)

<sup>74</sup> Section 30 (7) of the Act on Forensic Psychiatric Detention (*Maßregelvollzugsgesetz*, MVollzG) of Schleswig-Holstein



training of the therapeutic or care staff intended for one-on-one supervision may also be useful.

### 3.1.5 – Documentation

According to past decisions of the Federal Constitutional Court, it is necessary to document the main reasons for ordering the use of physical restraints as well as its implementation, its duration and the type of supervision.<sup>75</sup> This obligation also comprises the complete and comprehensible documentation of the respective measures taken, any less severe measures tried in advance, the medical checks and the debriefing with the persons concerned.<sup>76</sup> Only the Act on Forensic Psychiatric Detention of Lower Saxony does not provide for such a documentation obligation. Documenting the less severe measures tried in advance as part of the reasons given for ordering the use of physical restraints<sup>77</sup> is explicitly provided for only in the Act on Forensic Psychiatric Detention of Schleswig-Holstein.<sup>78</sup>

In addition, the National Agency recommends that regular evaluation of the documentation of security measures should be provided for by law. According to the Federal Constitutional Court, this serves to ensure the effectiveness of legal protection, the proportionality of the intervention and the necessary systematic improvement-oriented quality control and evaluation.<sup>79</sup> In the view of the National Agency, separate documentation and the evaluation thereof can also help to reduce or prevent the use of special security measures. This provides transparency regarding measures which are often perceived as arbitrary by the persons concerned. In this way, the separate documentation of measures, including the less severe measures that were tried and failed, serves not only to improve recollection of the incidents and the frequency with which they occurred, but also to prevent special security measures from being applied disproportionately.

Documentation should be comprehensive, comprehensible and complete. The ordering and implementation of the measure should be documented in writing. This includes documenting which less severe measures have already been tried and an explanation of why they failed.

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<sup>75</sup> Ibid., margin no. 84.

<sup>76</sup> Ibid., margin no. 80, 84.

<sup>77</sup> Cf. *ibid.*, margin no. 80, 84.

<sup>78</sup> Section 84 (8) no. 2

<sup>79</sup> Federal Constitutional Court, cited above, margin no. 84.

### 3.1.6 – Indication of the possibility of subsequent judicial review

According to the Federal Constitutional Court, the patient must be informed after the measure of the possibility to have a court review the permissibility of the restraint procedure.<sup>80</sup> In three *Länder*, this requirement is not provided for by law: Berlin, Lower Saxony and Thuringia.

## 3.2 – Further recommendations of the National Agency

For the preventive protection of human rights, the National Agency also considers further statutory guarantees, which were not part of the Federal Constitutional Court's judgment, to be necessary.

### 3.2.1 – Scope of statutory guarantees (definition of physical restraint)

In two laws governing forensic psychiatric detention, physical restraint is defined as shackling whereby the persons concerned are fully deprived of their freedom to move (Saxony-Anhalt). This wording suggests that, here, the statutory conditions will apply exclusively to five-point restraints and above. In Hesse and Hamburg, physical restraint is defined as the full deprivation of the freedom of movement in "all" limbs, which includes four-point restraints. The same is implied by the wording "deprivation of the freedom of movement" in Brandenburg and North-Rhine Westphalia.

With such a restriction, there is a risk that alternative, but not necessarily less severe, measures such as three-point restraints could be applied without obtaining a judicial decision. The National Agency defines physical restraint as the act of depriving a person of their freedom to move by binding their arms, legs and in some cases the centre of the body, with the result that they are unable or only marginally able to change their sitting or lying position independently.

It believes that constitutional requirements must also be met for forms of physical restraint other than five-point or seven-point restraint. In all of these cases, the persons concerned are de-

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<sup>80</sup> Ibid., margin no. 85.

prived of their liberty to move within the space they are in. In addition, such measures can pose an equally serious risk of injury.

Therefore, the same constitutional guarantees should be applicable. This also applies to the regulations in Mecklenburg-Western Pomerania and Lower Saxony, where physical restraint is not defined in any detail. A definition should be introduced there, too.

### 3.2.2 – Medical care

Due to the health risks associated with the use of physical restraints, medical care that goes beyond the supervision required by the Federal Constitutional Court and that includes direct personal contact with the patient should be guaranteed.

It is to be welcomed that two *Länder* implemented this guarantee by law: “During the implementation of special security measures, the involvement of a doctor and medical supervision must be guaranteed” (Hesse)<sup>81</sup> or “medical care must be ensured at all times” (Saxony-Anhalt)<sup>82</sup>.

### 3.2.3 – Debriefing

The measure should be discussed with the person concerned afterwards<sup>83</sup> and this debriefing following the use of physical restraints should be provided for by law. However, not all applicable laws provide for such a debriefing (Berlin, Bavaria, Bremen, Mecklenburg-Western Pomerania, Lower Saxony, Thuringia).

Such a debriefing is essential, as it can create transparency regarding measures which may be perceived by the person concerned as arbitrary when they are applied. It can thus have a preventive effect and serve to prevent measures involving deprivation of liberty in the future. Moreover, it can help to prevent the measure from having a negative impact on the further treatment and the

relationship between the persons involved.<sup>84</sup>

## 4 – VISITS

In 2021, the National Agency visited 12 forensic psychiatric facilities. In Bavaria, it visited the Clinic for Forensic Psychiatry and Psychotherapy in Kaufbeuren and the Straubing district hospital. In Berlin, it visited the hospital of the forensic psychiatric facility and its unit for forensic juvenile psychiatry. In Hamburg, it visited the clinic for forensic psychiatry at Asklepios Clinic North – Ochsenzoll. In Mecklenburg-Western Pomerania, it visited the clinic for forensic psychiatry at the Helios Hanse Clinic Stralsund and the Ameos Clinic for Forensic Psychiatry and Psychotherapy in Ueckermünde. In Lower Saxony, it visited the psychiatric clinic in Lüneburg. In Saxony, it visited Saxon Hospital Arnsdorf with its unit for children and juveniles. And in Saxony-Anhalt, it visited the forensic psychiatric clinic in Uchtspringe and its branch in Lochow. The visits to the hospital of the forensic psychiatric facility in Berlin and Asklepios Clinic North – Ochsenzoll were follow-up visits to see whether and to what extent previous objections and recommendations had been addressed.

### 4.1 – Positive examples

The National Agency highlighted several positive examples during its visits:

At the forensic psychiatric clinic in Kaufbeuren, **strip-searches** are only carried out in justified exceptional cases. At this facility, searches are carried out in two stages where half the body remains dressed in each stage. This serves to protect the human dignity of those concerned, as they are not forced to stand in front of clinic staff completely undressed. The forensic psychiatric clinic in Arnsdorf usually does without a complete search upon admission. If such a search is in fact necessary, it is conducted in a more respectful procedure, i.e. involving two stages where half

<sup>81</sup> Section 34 (9) of the Act on Forensic Psychiatric Detention (*Maßregelvollzugsgesetz*, MVollzG) of Hesse.

<sup>82</sup> Section 20a (4) of the Act on Forensic Psychiatric Detention of Saxony-Anhalt.

<sup>83</sup> Margin number 31; cf. DGPPN (2018): “S3-Leitlinie: Verhinderung von Zwang: Prävention und Therapie aggressiven Verhaltens bei Erwachsenen.”, URL: [https://www.dgppn.de/\\_Resources/Persistent/154528053e2d1464d9788c0b2d298ee4a9d1c-ca3/S3%20LL%20Verhinderung%20von%20Zwang%20LANG%20BLITERATUR%20FINAL%2010.9.2018.pdf](https://www.dgppn.de/_Resources/Persistent/154528053e2d1464d9788c0b2d298ee4a9d1c-ca3/S3%20LL%20Verhinderung%20von%20Zwang%20LANG%20BLITERATUR%20FINAL%2010.9.2018.pdf) (retrieved on 14 February 2022)

<sup>84</sup> Cf. CPT/Inf (2006) 35, margin no. 46, URL: <https://rm.coe.int/1680696a83> (retrieved on 21 February 2022).

the body remains dressed in each stage.

The National Agency welcomes the **principle of continuity of treatment** exercised at the forensic psychiatric clinic in Kaufbeuren, which is recognised to have a positive effect on the treatment of mental illnesses. It also allows for continuity in relationships and can thus give patients a sense of greater security and strengthen their trust in the staff members caring for them. The facility also offers a wide array of complementary therapies (animal-assisted therapy etc.) and training opportunities.

The permanent presence of a clock in the crisis intervention rooms of the forensic psychiatric clinics in Uchtspringe deserves positive mention. The clock can be easily seen by patients at eye level behind the viewing window and can help normalise the stressful situation and improve orientation in the daily routine.

In addition, some positive observations made in Bavaria, Saxony and Saxony-Anhalt on the topic of CCTV monitoring are worth mentioning. In a patient room with the possibility of CCTV monitoring at the forensic psychiatric clinic in Straubing, the switched-off camera was additionally covered with a fabric cover sewn by the patients themselves. This additionally illustrates the protection of patients' privacy in everyday life. At the forensic psychiatric clinic in Arnsdorf, there is no **CCTV monitoring** on the wards. More precisely, no rooms used by patients are monitored by CCTV camera. At the forensic psychiatric clinic in Uchtspringe, the video surveillance of crisis intervention rooms or isolated patients in the wards runs on screens that can only be viewed directly in front of the screen due to a privacy film. This prevents unauthorised persons from viewing the monitor and thus protects the patients' privacy.

Finally, the strong orientation towards the treatment goal in the forensic psychiatric clinic in Ueckermünde and the increased efforts made there to enable patients to have a high quality of life should be emphasised. The facility has rooms for extended visits with kitchenettes, pull-out sofas and private bathrooms, which can be used for visits over the duration of a weekend. A variety of long excursions, including to more distant regions, are carried out and patients can participate to a large degree in the organisation of their stay in the clinic.

## 4.2 – Findings and recommendations

The visited facilities were given recommendations on the following main topics:

### 4.2.1 – Segregation

#### Duration of segregation

During visits to forensic psychiatric clinics in recent years, the National Agency has repeatedly noted cases where individuals had been segregated for several weeks or even months at a time in a separate and sparsely furnished room without any access to the wider community.

For example, the documentation viewed by the National Agency during its visit to the forensic clinic in Uchtspringe did not contain any indications that any treatment offers had regularly been made in order to terminate the segregation.

There are serious doubts as to whether the use of long-term isolation can ever be proportionate if regular efforts are not made to provide treatment and conversations aimed at terminating the segregation. Insufficient social contact due to isolation can have a negative impact on patients' mental health. Indeed, according to the Federal Constitutional Court's judgment of 24 July 2018, isolation may not always be considered a less severe measure, since the intensity of its effects in the specific case can be equal to those of five-point or seven-point restraints. If persons placed in isolation are not sufficiently monitored, isolation also entails the risk of considerably damaging their health.<sup>85</sup>

Particularly where segregation lasts for a long period of time, therapeutic and nursing care should be ensured. Segregation should be closely monitored, especially with regard to its duration, in order to bring about a relaxation and termination of the measure as soon as possible. Detailed reasons should be given if the measure is to be continued. Moreover, steps should be taken to enable a reduction in the duration of segregation and to largely limit the effects segregation has on the persons concerned.

#### Furnishing of crisis intervention rooms

In the crisis intervention rooms in the facilities

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<sup>85</sup> Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15, 2 BvR 502/16, margin no. 80.

visited in Kaufbeuren, Lochow and Uchtspringe, there is no seating at normal height available for the patients. The crisis intervention rooms in Uchtspringe and Lochow are only furnished with mattresses lying on an elevated platform. Other than that, there is no further furniture in these supervision rooms.

Where the period of detention lasts for several hours, days or months, it is inhumane to force prisoners to stand or sit on the floor. If segregation is necessary, a humane environment for this should be created.

Even where the period of detention is only short, solutions should be found to allow patients to sit in a normal position. In similar facilities, the National Agency observed that foam seating was used for the individuals concerned. So-called “challenging” furniture can also be an option that would allow the rooms to be designed appropriately – even if there is a risk of the persons concerned harming themselves or others – without having to sacrifice furniture or comfort for safety reasons. In appropriate cases, this furniture could be put in the rooms.

It was also observed in the facilities in Kaufbeuren, Lochow and Uchtspringe that in crisis intervention rooms or their anterooms, restraining beds or restraint belts were openly displayed, ready to hand and also visible from the crisis intervention room. This can have a threatening effect, trigger insecurities and fears and unnecessarily increase the stress levels of the accommodated patients.

Restraining beds and restraint belts should be kept out of patients’ sight.

#### **4.2.2 – Over-occupancy and conditions of accommodation**

At the facilities visited in Kaufbeuren, Lüneburg and Uchtspringe, cases were observed where three or more persons were accommodated in one room. Due to the pressure of high number of incoming patients, many facilities felt forced to accommodate more patients than they were supposed to. This has a negative impact on the persons concerned.

At the facility in Uchtspringe, there was no possibility of having privacy in a room occupied by four women. Stress and quarrels occurred frequently and there was no possibility for the women to withdraw in order to de-escalate the situa-

tion.

Due to the over-occupancy of the forensic psychiatric clinic in Kaufbeuren, single-occupancy rooms are regularly occupied by two persons and double-occupancy rooms by three persons. Confining three or more mentally ill or addicted persons to a room is problematic, even if the room is of sufficient size. The lack of privacy can trigger aggression and provoke incidents, hindering the goal of treatment and the healing of the patients. A high density of patients, even in sufficiently large wards, poses a particular challenge for all persons involved.

It should be ensured that the occupancy of the rooms does not cause issues with the therapeutic process and that the protection of patients’ privacy is always guaranteed. Furthermore, necessary measures should be taken to counteract the structural over-occupancy in the facility.

The National Agency believes that single occupancy should be prescribed by law as the general rule. Future construction projects should also envisage single occupancy. In the course of renovations or new construction projects, the rooms should generally be geared towards single occupancy.

#### **4.2.3 – Strip-searches**

At the facilities in Stralsund and Straubing, patients are routinely searched upon admission.

According to the Federal Constitutional Court, strip-searches involving a visual inspection of patients’ genital area represent a severe interference with their general right of personality<sup>86</sup> even if carried out in two stages. It is not permissible to carry out strip-searches of all patients routinely and without case-specific suspicions.<sup>87</sup>

It should always be decided on a case-by-case basis whether there are in fact indications that would justify a strip-search. The staff must be made aware that decisions on whether or not to carry out a strip-search must be taken in each individual case. The existence of such leeway to take decisions on a case-by-case basis should also be stipulated by law.<sup>88</sup>

<sup>86</sup> Federal Constitutional Court, order of 5 March 2015, file no. 2 BvR 746/13.

<sup>87</sup> Federal Constitutional Court, order of 10 July 2013, file no.: 2 BvR 2815/11.

<sup>88</sup> Cf. section 46 (3), second half-sentence, of the Hesse Prison Act (*Hessisches Strafvollzugsgesetz*, HStVollzG): “a strip-search

If it is indeed necessary that the patient undress fully, the grounds must be documented. In addition, the search should be conducted in a respectful procedure, for example involving two stages where half the body remains dressed in each stage.

#### 4.2.4 – Information about the placement

##### Information on rights

In the facilities in Stralsund and Uchtspringe, no point in time has been determined at which written information on rights has to be provided.

All patients should be informed in writing of their rights and obligations as early as possible. This information can be extensive, is usually written in technical language and can have a deterrent effect on patients, making them more reluctant to assert their rights. In the view of the National Agency, comprehensible, comprehensive and written information about the rights of persons placed in closed facilities is indispensable.

This information should also be provided in easily comprehensible language or in plain language. In order to ensure that patients are fully informed, it is necessary to provide the contact details of the National Agency.

##### House rules

At the forensic psychiatric clinics in Arnsdorf, Kaufbeuren, Lochow, Stralsund, Straubing and Uchtspringe, the house rules are currently only available in German. They are not always handed out upon admission and not all facilities make them available to patients on the wards.

Especially in closed psychiatric facilities, it is important that patients know and understand the rules and structures of the facility and that any limits set are transparent to them. This can have a de-escalating effect and prevent individual crisis situations and conflicts. Therefore, it is important that patients can read the house rules in peace at any time in their own room without first having to request them from the staff.

In view of the changes to the patient population due to the increasing number of immigrants

in recent years<sup>89</sup>, the house rules should also be comprehensible to all patients. A rather considerable number of patients have a migrant background and have only little knowledge of the German language.

Therefore, the house rules should be provided in different languages and also in plain language. They should be handed out to all patients upon their admission.

##### Language barriers

At the facilities visited, therapy is exclusively provided in German. Poor language skills create language barriers and lead to limitations regarding treatment options because conversation plays an important role in therapy.

While patients at the forensic psychiatric clinics in Uchtspringe and Kaufbeuren are offered German lessons, these only take place twice a week.

In order to overcome language barriers and to make it possible for patients to make use of treatment offers, patients' language skills should be supported to a greater extent. Until they have reached a certain level of competence, professional interpreters should be involved in order to ensure that treatment can be provided.

##### Possibility for complaint

At the forensic psychiatric clinics in Arnsdorf, Hamburg and Lüneburg, the patients had no way of lodging an anonymous complaint on their respective wards.

Mentally ill patients on closed wards in particular may encounter huge difficulties when trying to contact a complaints body. A patient advocate can act as an intermediary in such situations. Publishing the contact details of patient advocates or an ombudsperson can make it possible for patients to lodge a complaint anonymously and in a safe environment.

It could also be useful to offer regular consulting hours at fixed times in order to make it easier for patients to initiate contact. The necessary contact details should be displayed in the wards so that they are clearly visible to patients. In sim-

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is not carried out in a particular case if, due to the particular circumstances, a threat to the security or order of the institution seems unlikely.”

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<sup>89</sup> Cf.: Querengässer/Trau (2019), *Nichtdeutsche Staatsbürger im Maßregelvollzug gemäß § 64 StGB – Jahres- und Bundesländervergleich der Neuordnungen 2010–2015 sowie Gruppenbesonderheiten*, in: *Forensische Psychiatrie, Psychologie, Kriminologie* Heft 13, pp. 251–260.

ilar facilities, complaints boxes are provided on the wards to allow patients to anonymously lodge a complaint.

It should be made possible to lodge complaints anonymously. Furthermore, complaints should be recorded centrally and evaluated on a regular basis. This makes it possible to detect recurring issues and implement counter-measures if necessary.

#### 4.2.5 – Night lock-up

During its visits to forensic psychiatric clinics, the National Agency regularly asked whether patients are locked up at night. According to a survey from 2012, this was the case in about 50% of the facilities nationwide.<sup>90</sup>

In many forensic psychiatric facilities, for example the ones in Arnisdorf, Kaufbeuren, Lochow and Lüneburg, night lock-up does not take place. Patients are able to move freely around the wards, even at night. The facility did not have any security concerns. At the Lochow branch of Uchtsprunge Forensic Psychiatric Clinic, night lock-up is not imposed for practical reasons: there are no toilets in the patient rooms. The Arnisdorf facility had planned to abandon the practice of night lock-up by the end of 2021. The National Agency welcomes the fact that, after its visits to the forensic psychiatric clinics in Straubing and Kaufbeuren, the Bavarian Forensic Psychiatry Office (*Amt für Maßregelvollzug*) announced that it would review the practice of night lock-up with the goal of abandoning it.

At other forensic psychiatric clinics visited, e.g. in Berlin, Stralsund, Uchtsprunge and Ueckermünde, patients are indeed locked up at night. According to the management of the facility in Ueckermünde, the reasons for this were of a strictly organisational nature. There, patients are locked up at night so that sufficient staff is available during the day in order to provide the extensive treatment and care services that have been positively mentioned by the National Agency.

In the view of the National Agency, human rights and medical treatment aspects must be taken into account when deciding on the organisation of night hours in forensic psychiatric facilities. Night lock-up raises concerns when it is ordered for organisational reasons or due to staff

shortages.

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<sup>90</sup> Bulla/Hoffmann (2012), *Der Nachteinschluss – eine Methode des modernen Maßregelvollzugs?*, in: Forensische Psychiatrie und Psychotherapie Heft 19, pp. 204-216.

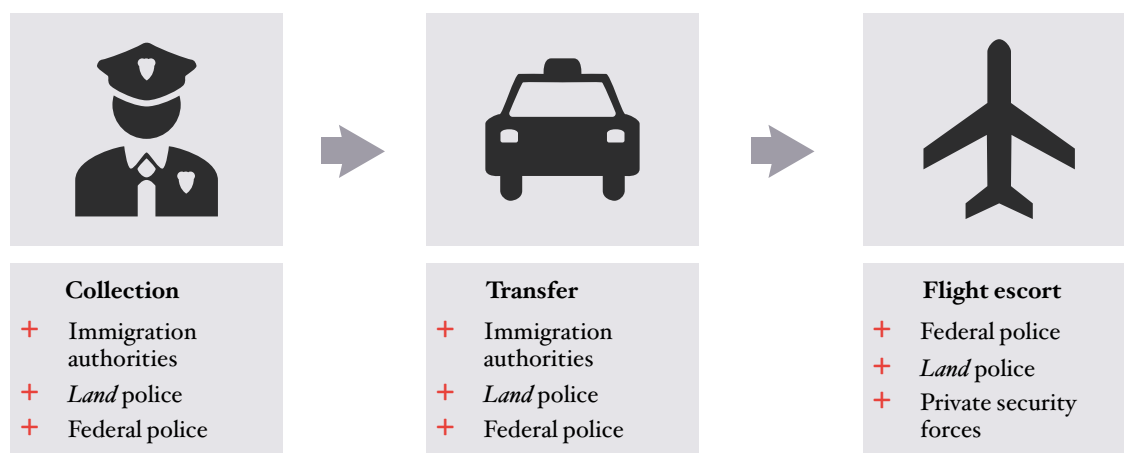


**VI**  
**FOCUS:**  
**DEPORTATION**



## 1 – INTRODUCTION

In 2021, the National Agency placed a particular focus on accompanying and documenting deportations. The National Agency's mandate covers the entire deportation procedure from the time of collection of the persons concerned until they are handed over in the country of destination.



### 1.1 – Exchange with authorities

In addition to its visits, the National Agency also inspected the documentation of German charter operations and other operations in which Germany participated.<sup>91</sup> Like in 2020, it was noticed in this connection that derogatory phrases were sometimes used in the documentation of these measures. Value judgments – for example describing the person in question as “whiny” – are never appropriate. They could give the impression of a biased attitude on the part of the officers involved.<sup>92</sup> Moreover, the National Agency specifically communicated documentation to the Federal Ministry of the Interior and Community in which strip-searches and coercive measures were incomplete and in part contradictory. It once again urged that measures be documented completely and comprehensibly.

The Federal Ministry of the Interior and Community assured that the documentation would be discussed with the Federal Police Headquarters and that adapted templates for documentation would be created.

On 10 May 2021, the National Agency held its annual exchange with the Ministry in order to work towards a nationwide implementation of its recommendations and to discuss possible opposing points of view. In addition to the ever-recurring findings and recommendations regarding strip-searches and the use of coercive measures, as well as the problematic interaction between the Federal Government and the *Länder* (collection at night, handling of mobile phones, transfer of deportees without luggage or cash), a special focus was also placed on the effective exercise of the mandate of the National Agency.

In 2020, it had become clear that, in addition to the transfer of deportees, the *Länder* were also increasingly in charge of the ground handling

<sup>91</sup> This only related to deportation procedures carried out by or with the involvement of the Federal Police.

<sup>92</sup> Such a judgment of deportees can, for example, be found repeatedly in the documentation of the deportation from Munich Airport to Kabul on 9 February 2021.

phase.<sup>93</sup> In a survey<sup>94</sup> on this issue, several *Länder* expressed doubts as to the mandate of the National Agency. In Bavaria and Baden-Württemberg, private security staff of the *Air Bulgaria* airline is entrusted with escorting deportees during their flight until they are handed over in the country of destination. The variety of actors involved in such measures makes a uniform implementation of the National Agency's recommendations and standards more difficult.

In order to ensure an effective exercise of its mandate also at *Länder* level, a delegation of the National Agency participated in the working group on integrated return management (*Arbeitsgemeinschaft Integriertes Rückkehrmanagement*) on 29 September 2021 and presented the Agency's tasks and standards. Since then, Baden-Württemberg has been informing the National Agency about the organisation of charter operations at *Land* level. Since Bavaria did not announce any such measures in 2021, the National Agency assumes that charter operations were suspended due to the pandemic.<sup>95</sup>

A delegation of the National Agency observed a refresher course for air escorts (Federal Police), which took place in Eschwege from 19 to 22 July 2021. The professional and communicative structure of the course, especially the design of the situational training (handling of unpredictable stress situations) and the emphasis on a differentiated application of restraint systems, constitutes a good basis to ensure that deportees are treated adequately and that communication with them is appropriate. The National Agency views this positively.

Based on the observations made during this course, the National Agency's view that textile handcuffs should always be used during deportations was consolidated. In addition to the training courses that already take place, the National Agency recommends increased training and further training of escort leaders<sup>96</sup> in order to focus even more on the proportionality of strip-searches and shackling.

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<sup>93</sup> Cf. the Annual Report 2020, URL: <https://www.nationale-stelle.de/en/publications.html>.

<sup>94</sup> The survey was sent to the competent ministries in December 2020.

<sup>95</sup> As a rule, Bavaria informs the National Agency of any return operations it organises autonomously. Cf. Annual Report 2020.

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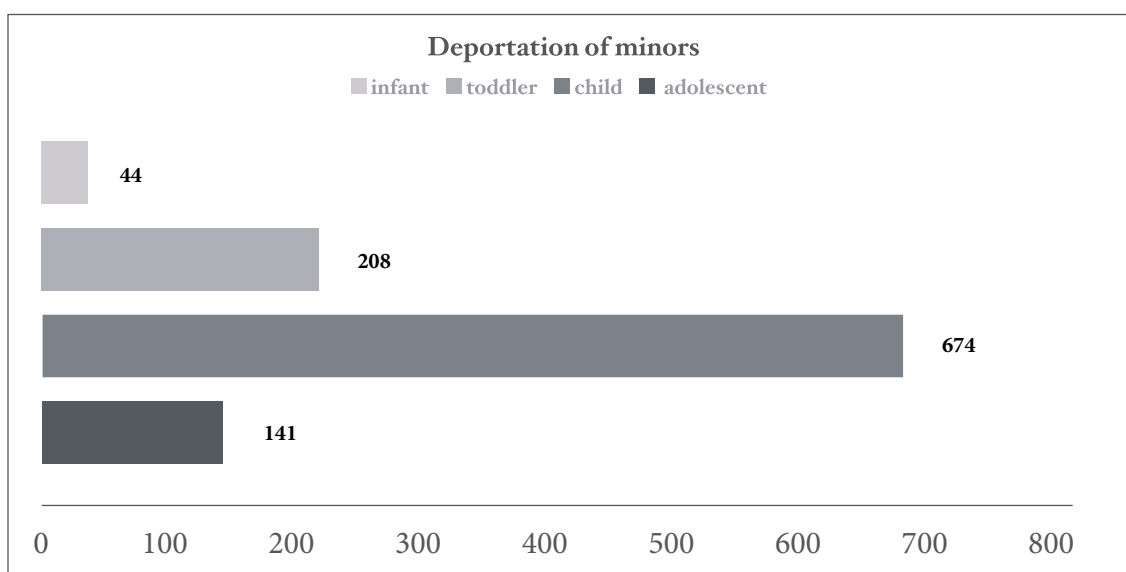
<sup>96</sup> The officer in charge of the operation.

## 1.2 – Specific challenges

### 1.2.1 – Deportation of children

Families with children, including infants and small children, are deported regularly in Germany. For example, in 2021, a total of 1915 minors were deported<sup>97</sup>, including children in particularly vulnerable situations.

In the framework of its visits and documentation-based monitoring, the National Agency registered 1067 deportations of minors in 2021<sup>98</sup>:



Pursuant to Article 3 (1) of the UN Convention on the Rights of the Child, the best interests of the child must be a primary consideration in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies. This applies also<sup>99</sup> and, in the National Agency's view, in particular to severe measures such as deportations. Therefore, the National Agency has formulated certain minimum standards for collections at night, separations of fami-

lies, shackling of or in front of children and possibilities for children to occupy themselves at the airport.

However, despite strong recommendations, the National Agency has found that the best interests of the child are generally not taken into sufficient consideration in connection with deportation procedures.

In the majority of cases, deportees are picked up at night, regardless of whether children or other vulnerable persons are affected by the measure. This is all the more serious because the collection and transfer to the airport already constitute a particularly stressful situation for the persons concerned. For young children in particular, being picked up at night not only means a severe disruption of their healthy sleep rhythm, but can even lead to trauma when processing the experience.

The statement of the Hesse Ministry for the Interior and Sport, according to which "children

<sup>97</sup> Study by the Federal Police.

<sup>98</sup> Procedures: Deportations to Albania, Georgia, Moldova, North Macedonia, Serbia, Armenia, Ghana, Azerbaijan, Bosnia and Herzegovina, Nigeria, Egypt, Pakistan, Tunisia, Ukraine and Kosovo; transfers under the Dublin Regulation to Bulgaria and Austria.

<sup>99</sup> Cf., inter alia, Article 5 of the Return Directive (Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals).

[have to] bear the consequences of their parents' unlawful refusal to leave the country", is particularly alarming in this context.<sup>100</sup> It appears out of the question that such an attitude could indicate the best interests of the child being a primary consideration as required under the UN Convention on the Rights of the Child.

Moreover, the National Agency increasingly found that deportees were shackled during the collection/transfer. This also applied to parents, who had to be shackled in front of their children. During a transfer to Munich Airport, for example, a mother of four children including a small child was restrained with a waist belt. When the person concerned was picked up, pepper spray was used because she had resisted.<sup>101</sup> Due to the significant health risks involved, the use of pepper spray in confined spaces is not an proportionate measure under any circumstances.<sup>102</sup>

Therefore, the regular presence of a person who is tasked with ensuring the child's best interests during the procedure appears all the more important.

Furthermore, it became apparent during the inspection of the documentation that families were often separated. During a deportation from Düsseldorf to Azerbaijan on 1 July, a particularly problematic situation arose. After a psychotic episode at the airport, one of the parents was excluded from the flight by the on-site doctor and subsequently taken to a clinic. The competent authority then ordered the separation of the family. This affected four children between the ages of 4 and 11. In the end, the procedure for returning the persons concerned was stopped by court order. This only became known when the plane landed in Baku. Since the return flight was not a direct flight, the family first flew to Athens where

they had to stay in the transit area of the airport. There, they were accompanied by six air escorts until their return flight to Düsseldorf. It was only at 7:50 p.m. on 2 July that the family was handed over to staff members of the competent authority. In the view of the National Agency, the persons concerned, most importantly the children, were subjected to an unacceptable situation.

### 1.2.2 – Observation of deportation procedures

During the 2020 Schengen evaluation of Germany<sup>103</sup>, the lack of an effective mechanism for the monitoring of returns, as called for in the EU Return Directive, was criticised. The National Agency would like to once again emphasise that independent deportation monitoring<sup>104</sup> is essential ("*nemo monitor in res sua*"<sup>105</sup>).

In Germany, independent deportation monitoring is carried out by staff of the welfare organisations *Diakonisches Werk* and *Caritas* at Frankfurt am Main<sup>106</sup> and Hamburg<sup>107</sup> airports, as well as the airports in Berlin<sup>108</sup> and in North Rhine-Westphalia<sup>109</sup>. It is, however, still limited to the phase from the arrival at the airport to the boarding of the plane. Beyond that, the areas of competence of the deportation monitoring bodies at the respective airports are set forth in individual agreements. There is no uniform national legal basis.

Deportation monitoring and regular exchanges with authorities and non-state actors are essential to ensure sustainable compliance with state

<sup>100</sup> Statement of the Hesse Ministry for the Interior and Sport of 28 December 2021 with regard to the report on the accompanied deportation procedure from Frankfurt am Main to Baku (Azerbaijan). The statement is available on the website of the National Agency: <https://www.nationale-stelle.de/besuche/bundesstelle/2021.html>.

<sup>101</sup> This information is based on the documentation of the deportation procedure from Munich Airport to Moscow (Russia) of 26 October 2021, which is available to the National Agency.

<sup>102</sup> The European Court of Human Rights (ECHR, *Tali v. Estonia*, 66393/10, 13 February 2014, margin no. 78) and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT/Inf (2008) 33, margin no. 86) share this view.

<sup>103</sup> Schengen evaluation mechanism (Regulation (EU) No. 1053/2013 of 7 October 2013). The mechanism serves to verify the effective application of the Schengen acquis. See II 6.2.

<sup>104</sup> The aim of deportation monitoring is to identify structural deficiencies, to contribute to the protection of fundamental and human rights and to make the process and execution of deportations more transparent.

<sup>105</sup> Return Handbook, p. L 339/119; URL: <https://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=CELEX:32017H2338&from=DE> (retrieved on 25 March 2022).

<sup>106</sup> Activity reports, <https://www.diakonie-frankfurt-offenbach.de/ich-suche-hilfe/fluechtlinge/abschiebungsbeobachtung/> (retrieved on 15 February 2022).

<sup>107</sup> Activity report, <https://www.diakonie-hamburg.de/export/sites/default/.content/downloads/Fachbereiche/ME/Jahresbericht-Abschiebungsbeobachtung-2019-2020.pdf> (retrieved on 18 March 2021).

<sup>108</sup> Activity report, [www.caritas-brandenburg.de/beratung-hilfe/flucht-und-migration/abschiebungsbeobachtung/](http://www.caritas-brandenburg.de/beratung-hilfe/flucht-und-migration/abschiebungsbeobachtung/) (retrieved on 15 February 2022).

<sup>109</sup> Activity report, [https://www.ekir.de/www/downloads/Jahresbericht\\_Abschiebungsbeobachtung\\_NRW\\_2019.pdf](https://www.ekir.de/www/downloads/Jahresbericht_Abschiebungsbeobachtung_NRW_2019.pdf) (retrieved on 15 February 2022).

and human rights regulations and to develop these further.

An effective deportation monitoring system must be provided for.<sup>110</sup> Independent monitoring should take place at all stages of the procedure.

### 1.2.3 – Deportations to Afghanistan

In 2021, a total of 167 persons were deported from Germany to Afghanistan.

During the deportation procedure from Munich Airport to Kabul on 9 February, the deportation of a person undergoing substitution therapy was aborted due to an order issued by the Federal Constitutional Court.<sup>111</sup> In its decision to provisionally prohibit the deportation of the person concerned, the court referred to the continuous deterioration of the situation in Afghanistan, caused in particular by the effects of the Covid-19 pandemic on the Afghan health system, and the economic situation. The deportation of another person who was in a comparable situation was aborted as well.

On 6 July, during the deportation procedure from Hanover airport to Kabul, a person was deported who was suffering from severe withdrawal symptoms due to their drug addiction and vomited several times during ground handling and the flight. The competent authorities and the staff escorting the deportee to the airport had not informed the Federal Police about the deportee's condition.<sup>112</sup> It was therefore not possible to check whether the order of the Federal Constitutional Court had to be complied with.

Despite the deteriorating security situation, the Federal Republic of Germany carried out monthly deportations to Kabul until 3 August.

On 3 August, a deportation from Munich Airport to Kabul was to be carried out jointly with Austria. However, the European Court of Human Rights had in the meantime ordered an interim measure to not yet enforce the deportation procedure from Austria due to the immediate risk of irreparable harm.<sup>113</sup> Therefore, Austria suspended

the deportation procedure.

At Munich Airport, the National Agency was repeatedly told in response to its enquiries that the security situation in Kabul was stable. The procedure had to be aborted after boarding had been completed because of an attack in Kabul. The deportees were taken from the plane to the airport building and the deportation procedure was reversed. Of the six persons concerned, five were taken to the respectively competent detention facilities and one person was released into national territory with an arrival certificate.

It was only on 11 August 2021 that deportations to Afghanistan were temporarily suspended.<sup>114</sup>

<sup>110</sup> Article 8 (6) of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008.

<sup>111</sup> Federal Constitutional Court, order of 9 February 2021, file no.: 2 BvQ 8/21.

<sup>112</sup> This can be deduced from the documentation of the procedure by the Federal Police.

<sup>113</sup> Interim measure pursuant to Rule 39 of the Rules of Court of the European Court of Human Rights are urgent measures which, according to the prevailing practice of the Court, are

only applied if there is an immediate risk of irreparable harm.

<sup>114</sup> URL <https://www.bmi.bund.de/SharedDocs/pressmitteilungen/DE/2021/08/aussetzung-abschiebung.html> (retrieved on 9 February 2022).

## 2 – VISITS

In 2021, the National Agency observed the following four deportation procedures:

- + 16 June: Frankfurt am Main to Baku (Azerbaijan)
- + 14 July: Leipzig/Halle to Tabarka (Tunisia)
- + 3 August: Munich to Kabul (Afghanistan)
- + 26 October: Munich to Moscow (Russia)

### 2.1 – Positive examples

The National Agency highlighted the following positive examples during its visits:

The Federal Police staff exhibited a high degree of professionalism and empathy in dealing with the deportees.

At Frankfurt Airport, deportees who want to **call somebody** are supported. Upon their arrival at the airport, the officers in charge of the transfer receive written information reminding them of their duty to inform the deportees of their right to have telephone conversations and to inform them that any mobile phones they have on them will be taken away when they are handed over and that telephone numbers should therefore be noted separately. During the reception process, the deportees are again informed by the Federal Police (if necessary via an interpreter) that they have the possibility to make phone calls. The deportees are also asked whether they already had a chance to separately note any relevant phone numbers. Where this is not the case, they are given enough time to do so. The Federal Police in Frankfurt provides deportees with mobile phones during the entire ground handling phase.

During the observed deportation procedures from Frankfurt to Baku and from Munich to Moscow, **strip-searches** were only carried out following a review of the respective individual case and thus only in exceptional cases. The procedures carried out and the reasons for them were documented completely and comprehensibly. This corresponds to the National Agency's standards and is expressly welcomed. At Munich Airport, the handling of searches deserves positive mention. Constant calm and respectful communication with the deportees made it possible

to avoid the use of direct force during searches. The relevant members of staff made efforts to avoid offending the sense of modesty of the persons concerned.

During the deportation procedure from Munich to Moscow in particular, the officers treated the **children** present with a high level of sensitivity. By offering activities and through personalised communication, they ensured that the deportation procedure was carried out in the most considerate manner possible. Moreover, the children were allowed to use their own toys if they had any. Facilities to keep children occupied have a calming and de-escalating effect on both the children and on their parents. In order to ensure that the procedures followed are uniform throughout Germany and in line with the standards of the National Agency, suitable facilities to keep children occupied should generally be made available.

### 2.2 – Findings and recommendations

After the observed deportations, recommendations were mainly given on the following topics:

#### 2.2.1 – Time of collection

Due to the early transfers in all of the deportations observed, the deportees were all collected at night time. This also affected children and other vulnerable persons,

Beyond the observation of deportation procedures in 2021, the National Agency, when reviewing the documentation regarding several charter operations, also noted that deportees have been collected at night in most cases since the Covid-19 pandemic began.

In the view of the National Agency, this practice is not acceptable. It is contrary to the principle of always avoiding collections at night in order to keep the burden on deportees, especially families with children, to a minimum. "At night, the apartment may only be entered or searched if there are facts to suggest that apprehension of the person concerned for the purpose of their deportation would otherwise be obstructed."<sup>115</sup> This means that the circumstances must be exceptional. Mere organisational considerations, such as the departure times of the chartered aircraft, do not justify deviating from this guarantee.<sup>116</sup>

<sup>115</sup> Düsseldorf Administrative Court, order of 16 November 2020, 7 I 32/20.

<sup>116</sup> Düsseldorf Administrative Court, order of 16 Novem-

Collections at night should be avoided. Where children are deported, this must be guaranteed without exception.

### 2.2.2 – Separation of families

During the deportation procedure from Munich Airport to Moscow, a family was separated. The documentation shows that one of the persons remaining in Germany (father and two sons) was hospitalised at the time of the procedure. The reasoning for the decision to separate this family is not available to the National Agency. The planned separation of another family did not take place in the end, as a positive result was detected in the PCR test of one of the persons concerned and the family was not transferred to check-in.

Beyond the observation of deportation procedures in 2021, the National Agency, when reviewing the documentation regarding several charter operations, also noted that families were separated on a regular basis.<sup>117</sup>

Families should not be separated as a result of deportation measures.

### 2.2.3 – Strip-searches

#### Proportionality

During the deportation from Munich to Kabul, strip-searches of all deportees were carried out. In the case of one of the persons concerned, this included a visual inspection of their genital area by the doctor. The searches were carried out in the presence of three male police officers. The report on the conduct of the operation states that a risk analysis had been carried out on site. However, during the handover, which was closely observed by the National Agency, the deportees were described as cooperative and calm by the officers in charge of their transfer. The individual documentation does not provide any justification for the intensity of the searches either.

The strip-searches of all deportees during of

the deportation procedure from Leipzig/Halle Airport to Tunisia seem particularly problematic. All deportees were subjected to a strip-search involving a visual inspection of their genital area by a male or female doctor. This was done in the presence of at least three police officers. During the introductory briefing, the escort leader referred to the nationality of the persons concerned and announced that strip-searches of all deportees would be carried out.

The conduct and communication during the procedure at Halle/Leipzig Airport reinforces the impression already created during the observed deportation measures to Enfidha (Tunisia) on 21 June 2017 and 31 January 2018 that strip-searches were carried out based solely on the nationality of the persons concerned, which would constitute an interference with their basic right to equality under Article 3 (3) sentence 1 of the Basic Law. Furthermore, the fact that the vast majority of affected persons had already committed criminal offences is not a legitimate reason to routinely interfere with their privacy without considering each individual case.

The National Agency recognises that, in certain cases, strip-searches involving a visual inspection of the genital area of the person concerned may be necessary. However, it must be kept in mind in those cases that such a measure constitutes a particularly serious interference with the right of personality<sup>118</sup> guaranteed by Article 2 (1) of the Basic Law and with human dignity.

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ber 2020, 7 I 32/20; Cologne Administrative Court, order of 4 March 2021, 5 I 3/21.

<sup>117</sup> During a single deportation from Frankfurt to Serbia and North Macedonia on 25 February, three families were separated. In one case, this was due to the health condition of the mother, who was taken to a clinic while the father was deported with three children aged 4 to 13. During a deportation from Berlin to Armenia on 31 March 2021, a family was separated despite having church asylum.

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<sup>118</sup> Federal Constitutional Court, order of 29 October 2003, file no.: 2 BvR 1745/01; order of 4 February 2009, file no.: 2 BvR 455/08.

It should therefore be decided on a case-by-case basis whether there are in fact indications of a danger to public security and order that would justify a strip-search. Any such measures must adhere to the principle of proportionality. On account of the particular severity of such an invasion of the privacy and sense of modesty of the persons concerned, they have a right to be treated with special respect.

Strip-searches involving a visual inspection of the genital area should only be carried out if, based on careful consideration of the individual case, the preconditions for such an interference with basic rights are met. The extent of the search and the reasons for carrying it out must always be documented.

### Documentation

Despite the National Agency's regular recommendations that coercive measures should be carefully documented, the reasons for the strip-searches carried out during the deportation procedures from Leipzig/Halle to Tunisia and from Munich to Kabul were not individually recorded. In the view of the National Agency, the general statement that a decision had been taken on a case-by-case basis is not sufficient.

In both cases, the intensity of the search and the related visual inspection of the genital area can only be deduced from the reports on the conduct of the operation.

The individual documentation of the searches of the various deportees only stated the time of the measure and that it was a search conducted by the police. The duration and results of the searches were only documented in a few cases.

Due to the severity of the interference with fundamental rights, the justifications for strip-searches must be documented completely and comprehensibly so that it can be verified whether such measures were necessary and proportionate. The reasons should be based on current information indicating an imminent risk of endangerment. A failure to document increases the risk of unjustified bodily searches.

### 2.2.4 – Shackles

#### Proportionality

During the observed deportation procedure from Munich Airport to Afghanistan on 3 Au-

gust 2021, two persons were body-cuffed with metal handcuffs for the entire procedure. The justifications for such shackling of deportees can only have been based on previous findings by the police. Both individuals had been calm and cooperative during the entire procedure. The documentation did not provide any insights into why the shackling was upheld. In addition to the procedure observed, the National Agency, upon reviewing the documentation of the deportation from Munich Airport to Kabul on 9 February 2021, found that all 26 deportees were shackled. Eight of them were body-cuffed and ten were body-cuffed and shackled using ankle-cuffs. This was done regardless of how they behaved when they were brought in. Only in two cases was the justification for the decision documented: In one case, there was a risk self-harm (the person had inflicted cuts on their wrist and neck during collection) and in the other the person had actively resisted their strip-search.

In this context, it should be recalled that means of restraint should be used no more than is absolutely necessary. The application of a holding and restraining system for the hands or hands and legs must be considered as a last resort that may only be used if less severe measures are not sufficient.

Coercive measures may only be applied in individual cases and should be restricted to the shortest possible period of time. Their necessity and proportionality must therefore continuously be reviewed and assessed. For this purpose, the reasons justifying the coercive measure should also be documented. The reasons must be based on current information indicating a risk of endangerment. Preventive shackling – especially with a body-cuff – should not be practised.<sup>119</sup>

Despite strong recommendations, the National Agency noted beyond the observation of deportation procedures in 2021 that the documentation of such measures was regularly incomplete and that the reasons for the application of coercive measures were not documented.

Coercive measures and the reasons for them must be documented completely and compre-

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<sup>119</sup> When inspecting the documentation of deportation procedures, the National Agency repeatedly found general justifications for shackling based on "risk-indicative previous behaviour". In several cases, the documentation stated that the person concerned did not resist during the procedure and that they were generally cooperative.



hensibly so that it can be verified whether they were necessary and proportionate. The reasons should be based on current information indicating an imminent risk of endangerment.

### Shackling system

During the deportation procedures observed, some individuals were shackled with plastic cuffs by their hands and/or feet, some were shackled with steel handcuffs and body-cuffs (metal handcuffs), sometimes combined with plastic cuffs on their legs (“Frankfurt model”).

The use of metal cuffs can cause injuries. The same applies when disposable plastic cuffs and velcro cuffs are used, since these are not lockable and can thus continuously tighten around the wrist. This risk increases when the individual’s hands are tied behind their back.

This was the case, for example, with a deportee whose hands were tied behind their back with steel handcuffs during their transfer. This shackling caused abrasions on the person’s wrists. The injuries, which according to the police officers in charge of the person’s transfer to Frankfurt Airport were not present before the transport, were only noticed when the shackles were removed by the Federal Police. As the officers on site first had to deal with the son of the person concerned, who had tested positive for Covid-19, the removal of the shackles was delayed. The person concerned was later shackled again during boarding after having passively resisted. Textile handcuffs were used because of the injuries.

Conversely, it was observed at Leipzig Airport that one deportee who had sustained multiple cuts on their left forearm was handcuffed with steel handcuffs.

Where shackling is necessary, it is the responsibility of the police to avoid injuring the persons concerned and to protect their right to physical integrity.

In order to protect the right to physical integrity, any shackling should be carried out using adjustable textile hand restraint belts<sup>120</sup>, which should be kept in stock at all times.

### 2.2.5 – Luggage

In the context of the deportation procedure from Munich to Moscow, one person was transferred from the facility for custody awaiting deportation to the airport and subsequently deported without luggage. The detention and subsequent deportation of a person must not lead to them losing their belongings.

Moreover, the documentation showed that the officers in charge of a family’s transfer in Thuringia had forgotten to bring the family’s belongings.

A solution must be found which ensures that the persons concerned are returned together with their luggage. Every person awaiting deportation must therefore be given the opportunity to pack personal belongings. A supply of basic hygiene products and sufficient clothing should be issued as necessary.

### 2.2.6 – Contact with legal counsel

The documentation regarding the deportation from Leipzig/Halle Airport states that a person wished to call their employer and their lawyer. The documentation reads as follows: “After a short conversation, he abandoned his wish.” The content of the conversation is not described.

In the view of the National Agency, such a procedure is not correct. It is not comprehensible how the wish to make a phone call can be the cause of a conversation between the police and the deportee. Deportees are entitled to have telephone conversations. In particular, they must be given the opportunity to contact legal counsel. The officers of the Federal Police should support deportees in making telephone calls, as was the case, for example, during a procedure observed by the National Agency at Frankfurt Airport (16 June 2021).

During the deportation procedure, deportees must be allowed to contact legal counsel. Such contact must be made possible at the beginning of the deportation procedure so that any necessary legal measures can be taken in due time. In case the person concerned has so far had no contact with a lawyer, they must be given contact details for emergency legal services.

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<sup>120</sup> An example of this can be seen in the model used by FRON-TEX during deportation flights.

### 2.2.7 – Lack of means

During the deportation procedure from Leipzig/Halle Airport, two of the deportees transferred from Saxony were handed over without any cash. One of the persons concerned was issued 30 euros as travel support.<sup>121</sup> The other person was not given a lump sum even though, according to the available documentation, the person was deported without any cash or valuable items. In another case, the documentation did not contain any information regarding any cash carried. Two other persons were each deported with small cash amounts (20<sup>122</sup> and 25<sup>123</sup> euros).

The National Agency is still of the opinion that the Federal Police are responsible for the humane enforcement of the deportation procedure from the moment they take charge of the deportees at the airport.

In the event that a deportee without the necessary means is handed over to the Federal Police, he or she should be given a sufficient cash lump sum within the framework of a binding regulation, without the officers on site having to advance the costs of this payment.

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

### 2.2.8 – Reversal of the procedure

During the deportation procedure from Frankfurt to Baku, the flight had to be aborted because of a bird strike hazard. Consequently, all deportees returned to Frankfurt am Main Airport. As the procedure had to be aborted, the Federal Police contacted the authorities of the *Länder* involved and tried to coordinate the transport of the persons concerned.

36 of the 38 persons were left to their own devices at the airport with an arrival certificate; only two persons were handed over again to the authorities that had brought them in. Of these two persons, one was transferred from Hesse and the other was brought in by the Federal Police.

The persons released into national territory

were supported by the ground forces of the Federal Police in moving their luggage and finding the bus stop in front of Terminal 2. Since the responsible authorities from Rhineland-Palatinate, Berlin and Mecklenburg-Western Pomerania had decided that the deportees should be released into national territory with arrival certificates, they had to return to their place of residence on their own responsibility.

Alongside the difficulty of transporting their sometimes bulky luggage, some people only had their cash lump sum with them. The fact that the return journey of the persons concerned – including families with small children who had already been picked up during the night and other vulnerable persons – was not coordinated by the competent authorities of the *Länder* involved and that they were not offered temporary accommodation is not comprehensible to the National Agency.

If a deportation procedure has to be reversed, it must be ensured that the persons concerned can return to their place of residence.

### 2.2.9 – Confidentiality of conversations

At Leipzig/Halle Airport, there was no separate area for the medical examination at the beginning of the deportation procedure. Both the officers in charge of the transfer and the Federal Police officers were able to see the entire area, and several officers were standing very close by.

While the examinations at the beginning of the deportation procedure to Moscow at Munich Airport took place in an area separated by mobile partition walls, up to six officers were sometimes standing directly in front of this area.

In both cases, the confidentiality of the conversations was not ensured.

Conversations with doctors should be confidential.

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<sup>121</sup> This information is based on the documentation available to the National Agency.

<sup>122</sup> The person concerned was transferred from Baden Württemberg.

<sup>123</sup> The person concerned was transferred from Saxony.



# VII VISITS

# 1 – RESIDENTIAL CARE AND NURSING HOMES

## 1.1 – Introduction

In 2021, the National Agency visited one residential care and nursing home in North Rhine-Westphalia and one in Hesse.

Since there is no clear legal basis for publishing the names of privately owned facilities, the National Agency cannot publish the names of the facilities it visited. This reduces the effectiveness of the National Agency's work.

## 1.2 – Positive examples

The National Agency highlighted the following positive examples during its visits:

The residents in the visited facilities have barrier-free access to an ample outdoor area which they can also use. One facility has separate rooms for wheelchair users with low door handles and light switches.

In addition, one facility has living facilities for couples with an additional room.

To help residents with dementia find their way around, one facility has pictures on their room doors to make it easier for them to find their own room.

In one facility, doctors from various medical disciplines (ophthalmologist, general practitioner, ear specialist, neurologist, etc.) offer home visits.

## 1.3 – Findings and recommendations

The visited facilities were given recommendations on the following main topics:

### 1.3.1 – Risk of accidents

In the middle of the outdoor area of one facility, there was a deep hole in the ground that serves to collect rainwater. It was only secured with red and white barrier tape.

The risk of accidents, especially for persons who are less mobile or suffer from dementia, should be minimised.

### 1.3.2 – Barrier-free accessibility

One facility has special wheelchair-accessible

rooms equipped with low door handles and light switches. However, the window handles are too high for wheelchair users to reach.

A check should be carried out to see whether it can be made possible for wheelchair users to open the windows themselves.

### 1.3.3 – Complaints management

In one facility, residents, their relatives and their guardians can use a form available in the entrance area to submit complaints. The form can be put in a letterbox in the entrance area or handed in directly to the facility's management. A review of the complaint documents showed that the documents had been filed, but not signed by the facility or the nursing management. No proposed solutions had been documented or evaluated.

The processing of complaints should be ensured, suggestions for solving the respective problem should be documented and the further course of action should be evaluated.

### 1.3.4 – Data protection and right to one's own image

The model residential care contract of one facility contains a clause providing consent for photos of the resident to be used by the company operating the facility for advertising purposes. No reference is made to any possibility of objecting. This may give the impression that, when signing the residential care contract and being admitted to the facility, the transfer of image rights is mandatory. Residents who do not actually wish to do so may find themselves forced to consent to the transfer of their right to their own image against their will when signing the residential care contract. Being photographed can then – despite this written consent – be perceived as an intrusion and a feeling of being at the mercy of others, and can interfere with the residents' everyday life.

In order to minimise the risk of the right to one's own image being unwittingly or involuntarily surrendered, accommodation in the home and the transfer of image rights should be dealt with in separate contracts. It should be pointed out that transferring one's image rights is voluntary.

### 1.3.5 – Consent to measures involving deprivation of liberty

At the facility visited in North Rhine-Westphalia, consent to measures involving a depriva-

tion of liberty has to be given in writing and updated annually. Measures involving deprivation of liberty constitute a serious interference with the fundamental rights of the individuals concerned. Therefore, it is necessary that the consent given to measures involving deprivation of liberty be updated at close intervals. The persons concerned should be asked on a quarterly basis whether the consent they gave is still valid.

A procedure should be established to ensure the quarterly, legally valid consent of the persons concerned to measures involving deprivation of liberty.

The National Agency is pleased to note that the Ministry of Labour, Health and Social Affairs of North Rhine-Westphalia made reference to a recent legislative reform which, in future, will provide for quarterly consent in section 8b of the Act on Residence and Participation (*Wohn- und Teilhabegesetz*, WTG) of North Rhine-Westphalia.<sup>124</sup>

### 1.3.6 – Meals

From individual interviews and the complaints folder of one facility, it became apparent that the catering was deficient in quality and quantity. Moreover, there had been cases of residents not receiving the medically necessary diets they had been prescribed by a doctor.

It should be checked whether the menus and portions are in line with nutritional guidelines and it should be ensured that all residents receive the diet they need. The provision of a medically necessary diet should be guaranteed.

### 1.3.7 – Contact with the facility’s advisory council

One facility has an advisory council consisting of four external members and one internal member. The contact details of these council members are not clearly and publicly displayed for residents and their relatives or for the staff members caring for them.

The council members and their contact details should be made known to all residents in an appropriate manner, for example by posting notices in the corridors or communal areas. It must be ensured that the members can be contacted.

<sup>124</sup> Parliament of North Rhine-Westphalia, Printed Paper 17/15188, URL: <https://www.landtag.nrw.de/portal/WWW/dokumentenarchiv/Dokument/MMD17-15188.pdf> (retrieved on 21 March 2022).

### 1.3.8 – Smoking on balconies

In one facility, residents are only allowed to smoke outside and not in their rooms. However, not all residents are capable of reaching the outdoor area on their own and within a reasonable period of time. However, all rooms do have balconies, which are easier to access independently.

Therefore, residents should also be allowed to smoke on their balconies.

The Ministry of Labour, Health and Social Affairs of North Rhine-Westphalia agreed to consider setting up smoking rooms.

### 1.3.9 – Rooms

In one facility, the nursing beds do not fit through the doors of the care rooms due to their width. If the building has to be evacuated, for example in case of fire or smoke, non-mobile residents have to be carried with rescue blankets. Four people are needed for this. During day shifts, two care staff members are present on each wing. During the night shifts, there are only two care staff members in the entire facility. In the event of a fire, a quick and safe evacuation by the staff present is hardly possible, especially at night. In addition, the time required to move a person from one bed to another will delay the safe and swift evacuation of the residents.

It must be ensured that residents can be evacuated safely and swiftly at any given time. This must already be taken into account when planning and approving the use of residential care and nursing homes.

### 1.3.10 – Legality of medication

Guardians responsible for health care often learn of doctor’s appointments and subsequent changes to residents’ medication only after the appointments have taken place, if at all.

A guardian is appointed to actively represent the interests of the person concerned towards third parties in accordance with their assigned area of responsibility. This also applies to appropriately authorised representatives. It is therefore necessary that legal representatives are comprehensively informed in advance by the attending physician of the intention and goals behind any changes in medication and any undesired effects of this changed medication. They must also be informed of the reasoning, potential

effects and alternatives so that they can make an informed decision if the person placed in care is no longer capable of providing informed consent themselves.

It should be ensured that legal representatives responsible for health care are involved in decisions relating to medical care, including changes in medication, in good time, i.e. before a change in medication, in compliance with legal requirements. Medication without valid consent is not permissible.

### **1.3.11 – Approach to closeness and detachment**

In one facility, the care staff came physically very close to the residents and touched them during the National Agency's visit; this did not always seem to be desired by the residents. Dealing appropriately with closeness and detachment is a fundamental part of interpersonal relationships and requires a professional attitude, especially when caring for vulnerable people. The need for closeness and physical touch is expressed differently in all people. The initiation of physical contact on the part of care professionals without the consent of the person concerned represents an interference with the latter's physical self-determination. It can also represent a crossing of their personal boundaries and be perceived as a demonstration of power.

The handling of closeness and detachment in the facility should be reviewed, and it should be ensured that the individual needs of the respective residents guide the actions of care staff at all times. Personal boundaries must be respected.

### **1.3.12 – Medical check-ups**

Many of the residents of one facility had been living there for decades and are of advanced age. These residents are themselves responsible for attending their recommended medical check-ups. However, many residents in residential care facilities are dependent on the support of the facility in the area of preventive health care and treatment and rely on it.

Residents and/or their guardians should be regularly made aware of the possibility and recommendation to participate in preventive medical check-ups.

## 2 – FEDERAL AND LAND POLICE

### 2.1 – Introduction

In 2021, the National Agency visited three police stations of the Federal and the *Land* Police, including Düsseldorf Police Headquarters in North Rhine-Westphalia, Halle Federal Police Station and Nuremberg Federal Police District Office.

### 2.2 – Positive examples

The National Agency highlighted the following positive examples during its visits:

When inspecting the custody records of the federal police stations visited, the National Agency found that all custody-related information was documented completely and comprehensibly and signed by name. Supervisors also verify at regular intervals whether the custody records are being kept correctly. This serves to improve the recollection of incidents and ensures that the associated interferences with fundamental rights can be reviewed.

At Halle Federal Police Station, strip-searches are only carried out in individual cases. If it is indeed necessary that the person concerned undress fully, this search is generally conducted in two stages where half the body remains dressed in each stage. In this way, the privacy of the individuals concerned is respected to the greatest extent possible. Another positive aspect is the immediate implementation of the on-site recommendations regarding CCTV monitoring and the provision of sanitary products.<sup>125</sup>

At Nuremberg Federal Police District Office, only velcro cuffs are used in custody which reduces the risk of injury in case of shackling.

At Düsseldorf Police Headquarters, none of the detention cells is CCTV monitored. Notices in the entrance area remind officers to lay down their weapons.

### 2.3 – Findings and recommendations

The visited stations were given recommenda-

<sup>125</sup> In order to allow persons taken into custody to maintain a minimum level of personal hygiene, basic hygiene products should be kept in stock at all police stations and handed out when needed.

tions on the following main topics:

#### 2.3.1 – Strip-searches

During its visits to Düsseldorf Police Headquarters and Nuremberg Federal Police District Office, the National Agency was informed that strip-searches are, as a general rule, performed on all persons placed in custody cells.

Strip-searches involving a visual inspection of the genital area can represent a severe interference with the general right of personality guaranteed by Article 2 (1) of the Basic Law and can, in individual cases, violate the human dignity of the person in custody.<sup>126</sup> It should therefore be decided on a case-by-case basis whether there are specific indications of a danger to public security and order that would justify a strip-search. Any such measures must adhere to the principle of proportionality.<sup>127</sup>

The reasons for conducting a strip-search should be documented in a clear and comprehensible manner. Furthermore, the search should be carried out as respectfully as possible, for example involving two stages where half the body remains dressed in each stage. This procedure should be provided for in the form of an official instruction, for example.

#### 2.3.2 – Shackles

According to staff, metal handcuffs are used in custody at Halle Federal Police Station.

These can cause serious injuries.

In order to protect the right to physical integrity, any shackling in custody should be carried out using adjustable textile hand restraint belts, which should be kept in stock at all times.<sup>128</sup>

In its statement of 10 February 2022, the Federal Ministry of the Interior and Community gave assurances that the Federal Police Headquarters would once again raise awareness among its subordinate units regarding the issue of velcro hand-

<sup>126</sup> Federal Constitutional Court, order of 4 February 2009, file no.: 2 BvR 455/08; Federal Constitutional Court, order of 5 March 2015, file no.: 2 BvR 746/13.

<sup>127</sup> Cologne Administrative Court, judgment of 25 November 2015, file no.: 20 K 2624/14; Hamburg Regional Court, decisions on complaints against G20 detentions, 18 June 2018, URL: <http://justiz.hamburg.de/pressemitteilungen/11228482/pressemitteilung-2018-06-18-olg-01/> (retrieved on 25 January 2022)

<sup>128</sup> Reference is made, for example, to the model used by FRONTEX during deportation flights.



cuffs to be used in custody.

### 2.3.3 – Physical restraint

Physical restraint<sup>129</sup> constitutes a severe interference with fundamental rights and carries the risk of health impairments.<sup>130</sup> The minimum requirements expressed by the Federal Constitutional Court in its judgment of 24 July 2018<sup>131</sup> cannot be implemented in the framework of police custody. One-on-one supervision by therapeutic or nursing staff, for example, cannot be ensured due to the lack of such personnel. Since 2015, the National Agency has been recommending that no physical restraints be applied in police custody. The CPT also called upon the Federal Republic of Germany to put an end to the practice of physical restraint in the context of police custody.<sup>132</sup> The Federal Police and the Land Police of Baden-Württemberg, Berlin, Mecklenburg-Western Pomerania, Rhineland-Palatinate, Saarland, Saxony, Saxony-Anhalt, Schleswig-Holstein and Thuringia do not use physical restraints.

However, at Düsseldorf Police Headquarters, physical restraints are still applied. Persons taken into custody can be subjected to physical restraints in the eight security cells. For this purpose, metal rings are fitted above the cells' laying areas. Metal handcuffs and ankle-cuffs are used, which has a high potential for injury.

In one case, the affected person was subjected to physical restraints for several hours. A judicial order had not been obtained and the staff members on site were unable to provide specific answers as to the minimum duration of physical restraint that would require an application for a judicial order. This means that the requirements established by the Federal Constitutional Court in its judgment of 24 July 2018 are not being complied with.

In the view of the National Agency, physical restraints should not be applied at all in police

custody. To the extent that physical restraints are applied, the constitutional requirements regarding their use must be met in all cases. Where physical restraints are used, a strap-based system should be used in an appropriate and professional manner.

### 2.3.4 – Size of custody cells

The facing walls of single-occupancy custody cells at Düsseldorf Police Headquarters are separated by only 1.6 metres.

According to the National Agency's standards, a single-occupancy custody cell must have a floor space of at least 4.5 square metres. Facing walls must be separated by a distance of at least two metres, and the ceiling must be considerably higher than two metres. This represents an absolute minimum requirement.

### 2.3.5 – CCTV monitoring

#### Custody cells

The custody cells of Halle Federal Police Station and Nuremberg Federal Police District Office can be observed by CCTV monitoring. The recordings are not stored. At the time of the visit, there were no adequate notices referring to the CCTV monitoring within the custody cells. Moreover, at both police stations, the red lights on the camera were broken so that it was not possible for the persons concerned to discern whether the cameras were running.

CCTV monitoring should only be used in police stations in individual cases where it is imperative for the protection of the person concerned. The reasons for CCTV monitoring must be documented. In addition, the person concerned must be informed in a suitable manner (e.g. through pictogrammes) that monitoring is taking place. It must be possible for the person concerned to discern whether the camera is running.

After the visit to Halle Federal Police Station, the management on site immediately ordered both the repair of the red light on the camera and the procurement of multi-language notices indicating the CCTV monitoring in the custody cells. In its statement of 11 February 2022, the Federal Ministry of the Interior and Community gave assurances that Nuremberg Federal Police District Office had arranged for the procurement of appropriate notices (pictograms) indicating the

<sup>129</sup> The National Agency defines physical restraint as the act of depriving a person of their freedom to move by binding their arms, legs and in some cases the centre of the body, with the result that they are unable or only marginally able to change their sitting or lying position independently.

<sup>130</sup> Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15, 2 BvR 502/16, margin no. 71.

<sup>131</sup> Federal Constitutional Court, judgment of 24 July 2018, file no.: 2 BvR 309/15, 2 BvR 502/16.

<sup>132</sup> CPT report on its visit to Germany in 2015, CPT/Inf (2017) 13, margin no. 33.

CCTV monitoring. Moreover, the repair of the camera's defective optical signal had already been completed.

### **Pass-through room**

The so-called pass-through room at Nuremberg Federal Police District Office is subject to permanent CCTV monitoring. The recordings made are stored.

The use of this "pass-through room" is similar to that of custody cells. For example, minors who have been taken into custody are placed in this room, with only a few exceptions. Intractable persons who must be separated from other detainees and cannot be taken to the basement are also placed in this room.

It seems questionable whether the continuous CCTV monitoring and subsequent storage of the recordings is proportionate. It is not apparent why this would be necessary, especially since this pass-through room is visible from the front desk.

CCTV monitoring of juveniles in particular should be avoided. Under no circumstances can CCTV monitoring replace the presence of police officers.

### **2.3.6 – Toilets in multiple-occupancy custody cells**

Both multiple-occupancy custody cells at Düsseldorf Police Headquarters have floor-level squat toilets that are separated from the rest of the cell only by partition walls. The walls each end about 30 cm above the floor, so that the intimate area of the person using the toilet and the toilet bowl are visible from the rest of the room.

According to past decisions of the Federal Constitutional Court, the placement of several prisoners in a single cell without a partitioned toilet and separate ventilation represents a violation of human dignity.<sup>133</sup> This is exacerbated in this case because the intimate area is visible when the toilet is in use.

The toilets in the multiple-occupancy custody cells should either be taken out of service or completely partitioned and separately ventilated.

### **2.3.7 – Access to custody cells**

At Düsseldorf Police Headquarters, the custo-

dy cells are accessed via a courtyard and a staircase leading upwards. The custody rooms of the Nuremberg Federal Police District Office can only be reached via a steep staircase or an elevator.

The current structural conditions can lead to dangerous situations for the persons taken into custody and the staff. Moving agitated persons up a staircase can lead to a higher risk of injury.

Secured, level access to the custody cells should be created.

According to information provided by the staff at Düsseldorf Police Headquarters, the construction of a new, barrier-free access way to the custody cells is planned.

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<sup>133</sup> Federal Constitutional Court, order of 22 February 2011, file no.: 1 BvR 409/09, margin no. 30.

## 3 – THE FEDERAL ARMED FORCES

### 3.1 – Introduction

Following the establishment of standards regarding the modalities of implementing disciplinary detention<sup>134</sup> in 2020, a meeting between the National Agency, the Federal Ministry of Defence and the Territorial Tasks Command took place on 17 November 2021 at the Julius Leber Barracks. The main objective of this meeting was to promote the effective and timely implementation of the National Agency's standards.

During this exchange and in a subsequent statement dated 21 December 2021, the Federal Ministry of Defence expressed its willingness to implement a large number of the recommendations. This includes removing dangers that lead to an increased risk of injury in disciplinary detention, preventing visibility of toilets and fully documenting any measures of disciplinary detention.

In 2021, the National Agency visited the detention facilities of Schwarzenborn Barracks (Knüll-Kaserne) and Ingolstadt Barracks (Pionierkaserne auf der Schanz). The places of detention visited were chosen at random.

### 3.2 – Positive examples

The National Agency highlighted the following positive examples during its visits:

The specially secured detention cells of the two barracks visited were closed off by the Territorial Tasks Command following the recommendations of the National Agency.<sup>135</sup> Where disciplinary detainees<sup>136</sup> are at an acute risk of harming themselves or others, they are, as a general rule, taken to a hospital. This ensures that they receive adequate care and medical treatment.

What also deserves positive mention is the fact that, in the visited barracks, awareness had

been raised among the members of staff responsible for the execution of disciplinary detention regarding the respectful treatment of detainees. In order to increase efforts to ensure that staff members indicate their presence in an appropriate manner before looking through the peephole or before entering a detention cell, signs labelled "Please knock" were attached to the doors of the detention cells at Schwarzenborn Barracks (Knüll-Kaserne).

During an inspection of the documentation kept at Ingolstadt Barracks (Pionierkaserne auf der Schanz), it was positively noted that fitness for detention is generally assessed on the basis of a medical examination. This procedure, which has regularly been recommended by the National Agency after visits to other facilities, is to be highlighted in a particularly positive manner because, in this way, the health condition of the detained person and any associated need for medical treatment (need for care) can be determined, and any signs of psychological stress or other forms of stress can be detected.

### 3.3 – Findings and recommendations

The visited facilities were given recommendations on the following main topics:

#### 3.3.1 – Furnishing and fittings of detention cells

##### Lighting

The light switches of the detention cells are located in the corridor, which means that detainees are not able to switch the light in their cells on and off as they see fit.

In line with the National Agency's recommendation, the Federal Ministry of Defence ordered that the detention cells be fitted with a nightlight switch.<sup>137</sup> The National Agency will continue to check as part of its visits whether this instruction was implemented.

Such a nightlight ensures that the persons concerned are able sleep, the risk of getting injured in the dark is reduced and the detainees are able to find their way in the dark.

<sup>134</sup> Disciplinary detention under section 26 of the Military Disciplinary Code (*Webrdisziplinarordnung*, WDO) is executed for a maximum period of 21 days. The implementation of disciplinary detention in facilities of the Federal Armed Forces differs in various respects from detention in prisons and in custody facilities operated by the police and the customs authorities.

<sup>135</sup> Cf. the National Agency's 2020 Annual Report, especially p. 65 and p. 80 (Specially secured detention cell)

<sup>136</sup> Soldier who is subjected to a measure involving deprivation of liberty in a detention facility of the Federal Armed Forces.

<sup>137</sup> See the statement from the Federal Ministry of Defence of 9 June 2021 which is available on the website of the National Agency under <https://www.nationale-stelle.de/besuche/bundesstelle/2020.html>.

## Daylight

At Ingolstadt Barracks (*Pionierkaserne auf der Schanz*), detention cells are equipped with frosted glass windows which results in less access to daylight. At Schwarzenborn Baracks (*Knüll-Kaserne*), it is ensured that natural light is available.

Every detention cell of the Federal Armed Forces should receive natural light.<sup>138</sup>

In its statement of 21 December 2021, the Federal Ministry of Defence declared that implementing this recommendation was not possible due to the personality rights of the detainees. They further stated that, since the detainees generally participate in daytime service, the lack of natural light is not so severe that closing the detention facility had to be considered.

The National Agency acknowledges that the possibility to work in the barracks and to participate in communal meals reduces the severity of the interference. However, in its view, a clear distinction must be made between situations where the person concerned participates in the military service and situations where this is not the case. When reviewing the documentation of disciplinary detention measures between 2019 and 2021, the National Agency found that the majority of detainees in the *Pionierkaserne* (75%) did not participate in the service. In such a case, the lack of access to daylight is particularly serious. This also applies to disciplinary detention executed at the weekend, when there is no possibility to participate in the joint service.

### 3.3.2 – Documentation

The detention documentation kept by the enforcement officers at both facilities is incomplete as it does not include any records of the checks carried out to determine the state of the detainees concerned, particularly their mental and medical state.

Complete and comprehensible documentation

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<sup>138</sup> Cf. the European Prison Rules, as revised in 2020 (Recommendation Rec(2006)2-rev of the Committee of Ministers, 11 January 2006, No. 18.2 (a), URL: [https://www.bmj.de/Shared-Docs/Downloads/DE/Service/StudienUntersuchungenFachbuecher/Freiheitsentzug\\_Empfehlung\\_des\\_Europarates\\_europaeische\\_Strafvollzugsgrundsatz2006.html](https://www.bmj.de/Shared-Docs/Downloads/DE/Service/StudienUntersuchungenFachbuecher/Freiheitsentzug_Empfehlung_des_Europarates_europaeische_Strafvollzugsgrundsatz2006.html) (retrieved on 20 January 2022)); see also the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), No. 18.2 (a).

of all information related to detention<sup>139</sup> serves to protect both detainees and the soldiers in charge (detention enforcement officers). Supervisors should verify at regular intervals whether detention records are being kept correctly. These checks must also be recorded.

In its statement of 21 December 2021, the Federal Ministry of Defence announced that it would review the documentation obligation as part of the next review of the internal regulation A.2155/1 f (regulation regarding the enforcement of deprivations of liberty by the Federal Armed Forces).

### 3.3.3 – Fitness for detention

Whether the person to be detained is fit for detention is determined on the basis of a questioning by disciplinary superiors or on the basis of their assessment. Examinations by the unit physician are only carried out as an exception.<sup>140</sup>

In view of the usual duration of detention of more than one night, the National Agency is of the opinion that the health condition of the person to be detained and any resulting need for medical treatment can only be determined on the basis of a medical examination. Such an examination also allows for any signs of psychological or other stress to be identified.

The fact that the responsible disciplinary superior assesses whether the detainee is, in principle, fit for service is not sufficient in the National Agency's view.

Fitness for detention should always be determined on the basis of a medical examination.

### 3.3.4 – Protection of privacy: Visibility of toilets

The visited detention cells did not have completely separate toilets with separate ventilation. Moreover, the toilets in the *Pionierkaserne*, which were not partitioned off, were not equipped with a screen.

From the National Agency's point of view, it is desirable that detention cells used for disciplinary measures by the Federal Armed Forces be equipped with a completely separate toilet with

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<sup>139</sup> See Chapter IV 7 Standards – Detention facilities of the Federal Armed Forces.

<sup>140</sup> Section 7 sentence 1 of the Federal Armed Forces' regulations on the enforcement of detention.

separate ventilation. Where this is not the case, the toilet area must not be directly visible from the door. If the toilet is not partitioned off, it is essential that staff indicate their presence in a suitable manner before entering the cell. The person in the cell might be using the toilet and should be given the opportunity to indicate this.

In its statement of 21 December 2021, the Federal Ministry of Defence informed the National Agency that the toilets in the detention cells at the *Pionierkaserne* were to be equipped with a screen. Moreover, the Ministry had already given assurances in 2020 that, in all new building projects, plans would be made to install toilets with a screen made of non-breakable material allowing only the detainee's silhouette to be seen.<sup>141</sup>

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<sup>141</sup> Statement of the Federal Ministry of Defence dated 16 October 2020, 39-79-02/-02/R1140002, URL: <https://www.nationale-stelle.de/besuche/bundesstelle/2020.html>.

## 4 – PRISONS

### 4.1 – Introduction

In 2021, the National Agency visited five prisons, including Schwäbisch-Hall Prison in Baden-Württemberg, Tegel Prison in Berlin, Straubing and Landsberg am Lech Prisons in Bavaria and Bautzen Prison in Saxony. The visit to Tegel Prison was a follow-up visit to see whether and to what extent previous objections and recommendations had been addressed. In addition, in 2021, the National Agency again contacted the Baden-Württemberg Ministry of Justice and European Affairs to address the visit to Karlsruhe Prison in 2020.

### 4.2 – Psychiatric treatment in prison

In the course of its visits, the National Agency repeatedly became aware of the problem of a lack of psychiatric treatment for prisoners. According to the National Agency's assessment, this might constitute a structural problem that requires further investigation, possibly by external bodies.

For example, a high number of prisoners at Bautzen Prison require psychiatric medical treatment or suffer from the consequences of drug abuse, e.g. consumption of crystal meth. One prisoner had been segregated without access to the wider community for more than one year due to a psychiatric disorder and an inability to understand his illness. The desired transfer to the prison hospital of Leipzig Prison failed due to it being fully occupied. His illness suggests that the disorder will worsen if he does not receive adequate treatment and has to remain in constant isolation. It is also rarely possible to transfer prisoners with severe mental issues, such as former child soldiers, from Bautzen Prison to inpatient psychiatric treatment facilities.

The documentation of the security measures carried out at Tegel Prison shows that, in 2020 and 2021, several prisoners were segregated in solitary confinement for – in some cases – considerably longer than 100 days.

Adequate medical and psychiatric care for prisoners must be ensured at all times, in cooperation with external facilities if necessary.

In the experience of the National Agency, untreated mental disorders often correspond with long stays in specially secured cells. The National Agency also observed a similar situation during

visits to various *Länder* in recent years. For example, during a visit to Schwalmstadt Prison in 2020, the National Agency criticised the fact that prisoners had been segregated from the community for several months because of psychiatric disorders; and during a visit to Moabit Prison in 2019, it criticised inadequate psychological and psychiatric care which led to an increase of mental health issues among prisoners that remained untreated. In 2018, physical restraints were applied at the hospital of Leipzig Prison on the basis of “acute psychoses”. During a visit to Karlsruhe Prison in 2017, the National Agency was informed that it was generally difficult to transfer incarcerated persons to a psychiatric hospital even if this is medically indicated. The first visit to Tegel Prison in 2017 revealed a lack of psychological care in Division II of the prison. During a visit in 2020 to the Eichstätt facility for custody awaiting deportation, which is under the authority of the Bavarian Ministry of Justice, the National Agency was also told that detainees were frequently transferred to a hospital on suspicion of an acute suicide risk, but that they were regularly taken back to the Eichstätt facility a few hours later. The short duration of their stay at the hospital was enough to raise doubts as to whether diagnoses were made on the basis of a sufficient, individual assessment.

According to research by the weekly newspaper *Die Zeit*<sup>142</sup>, a considerable number of prisoners in Hamburg prisons are mentally ill and suffer from psychoses or schizophrenia, among other conditions, which worsen without adequate treatment.

If the prisoners concerned also exhibit delusional behaviour, this can lead to long periods of placement in specially secured cells under inhumane conditions.

Because of the obvious seriousness of the problem of inadequate psychiatric treatment in prisons, the National Agency believes that an investigation into the prevalence of psychiatric disorders and their treatment in German prisons is indispensable. Given its currently available resources, the National Agency is not in a position to carry out this investigation itself or to provide a complete picture through more frequent visits

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<sup>142</sup> *Häftlinge mit psychischen Krankheiten. Drama hinter Gittern.* URL: <https://www.zeit.de/2022/01/haeftlinge-psychische-krankheit-umgang-gefaengnis> (retrieved on 21 March 2022).

### 4.3 – Positive examples

The National Agency highlighted the following positive examples during its visits:

At Bautzen Prison, searches are carried out in two stages, with half the body remaining dressed in each stage. This protects the sense of modesty of the prisoners concerned, as they are not forced to stand in front of prison staff completely undressed.

In the specially secured cells at the psychiatric ward of Straubing Prison, seating made of foam is available. It was reported that no safety problems had arisen as a result of the use of these foam cubes. The National Agency recommends the use of comparable solutions for all prisons in Bavaria and nationwide.

For reasons of privacy protection, there is no CCTV monitoring of the specially secured cell at Schwäbisch-Hall Prison. There were no safety concerns in this regard.

At Bautzen and Schwabisch-Hall Prisons, physical restraints are not applied. This is to be welcomed considering the high degree of interference associated with this measure.

In the past several years, Bavaria has set up video-based interpreting systems in numerous prisons through which sworn interpreters for all necessary languages can be made available at short notice. This allows communication difficulties to be overcome while ensuring that the conversation itself can be kept confidential.

At Bautzen Prison, officers can be addressed personally, because they wear name badges. This can have a positive effect on interactions between prisoners and officers.

According to Article 35 of the Bavarian Prison Act (*Bayerisches Strafvollzugsgesetz*, BayStVollzG), telephone calls are only allowed in “urgent cases” once per month and upon request. During the Covid-19 pandemic, the possibility to make telephone calls instead of visits was introduced, allowing prisoners to have telephone conversations twice a month for 20 minutes. In this context, the announcement by the Bavarian State Ministry of Justice that the legal provisions regarding telephone use will be brought in line with the situation in other *Länder* is particularly welcomed (see below under “Contact with the outside world”).

In Tegel Prison, there are plans to introduce a media system in the cells, via which the mon-

itored use of e-mail, telephone and the internet as well as the consumption of video and music will be possible. This would be the first of its kind in German prison facilities. Considering the increasing digitalisation of society, the principles of rehabilitation and alignment with the outside world would suggest that such solutions are appropriate in prisons.

The material equipment at Bautzen Prison is also very good, especially the digital info terminals for prisoners on the corridors. There are also plans to equip all cells with telephones.

In order to support the reintegration of prisoners, the social therapy service of Landsberg am Lech Prison regularly organises meetings with former prisoners. That way, prisoners are made aware of difficulties that may arise after their release from prison.

### 4.4 – Findings and recommendations

The visited facilities were given recommendations on the following main topics:

#### 4.4.1 – Segregation

At Tegel Prison, there is an isolation unit for prisoners who dealt with drugs inside the prison. However, as during the initial visit of the National Agency in 2017, there are still no uniform criteria for prisoners’ placement in this unit and the duration of their stay. The visiting delegation was informed that the placement and its duration were determined based on the circumstances of the individual case; in order to be released from this unit, prisoners had to distance themselves from their actions, accept help and cooperate in clarifying the facts.

The duration of the stay in the isolation unit as well as the placement there should be subject to clear criteria that are communicated to the prisoners in writing. In order to ensure that these are applied consistently and proportionately at all times, a written formulation and review of the criteria applied are necessary.

#### 4.4.2 – Structural situation

At Division II of Tegel Prison, the renovations or replacements called for by the National Agency after its first visit did not take place. The demolition of another building on the grounds of Tegel Prison, which was necessary for a replacement building for Division II, did take place, and the

planning for a new, modern building was completed. However, the construction of the new building was stopped by the Berlin Senate Department for Justice. According to information from the prison, the conditions of accommodation have become even worse for the prisoners due to the old building having been demolished and the new building not yet having been constructed.

In view of all the structural deficiencies, the current fittings and furnishings of the cells, the lack of suitable sports and recreational opportunities, as well as the continuing shortage of staff in the general prison service in Division II of Tegel Prison, the National Agency's doubts regarding the suitability of the building for accommodating prisoners could not be dispelled. In order to remedy this, the planned new building should be constructed quickly.

#### 4.4.3 – Specially secured cell

##### Furnishings

In the Schwäbisch-Hall, Bautzen and Landsberg am Lech Prisons, the specially secured cells are equipped only with a mattress on the floor. No other seating is available. If the period of detention lasts for several hours or days, it is inhumane to force prisoners to stand or sit on the floor.

Where detention lasts for a prolonged period of time, prisoners should be allowed to sit in a normal position. In similar facilities, the National Agency observed that foam seating or “challenging” furniture were used. This allows the cells to be designed appropriately – even if there is a risk of the persons concerned harming themselves or others – without having to sacrifice furniture for safety reasons.

##### Designation

At Landsberg am Lech Prison, specially secured cells with lower ceilings are called “specially secured cells light”. However, the function, use and furnishings of these cells hardly differ from those of specially secured cells. Linguistically, the designation “specially secured cells light” places this cell at a lower level than “specially secured cell” and could therefore lower the threshold for placing a person there. There is therefore a risk of these cells being used more frequently.

In order to prevent this, it must be ensured that the same requirements applicable to specially

secured cells apply to the use of these “specially secured cells light”.

##### Duration of placement

The documentation of the security measures carried out at Tegel Prison shows that, in 2020 and 2021, several prisoners were placed in solitary confinement, sometimes for considerably longer than 100 days.

Measures of segregation must be continuously reviewed, especially with regard to their duration; if prisoners suffer from psychiatric illnesses, their transfer to a competent hospital for treatment should be arranged as soon as possible. Every effort should continue to be made to closely supervise prisoners in the security unit in order to avoid detrimental impacts to their physical and mental health and to enable quick transferrals from solitary confinement.

##### Documentation

When reviewing the documentation of placements in specially secured cells at Bautzen Prison, the National Agency became aware that the timeline for the measures was not documented. For example, it was not apparent how long the individual measures lasted; there was no provision for the documentation to be signed by prison management.

The separate documentation of measures serves not only to improve recollection of the incidents and the frequency with which they occurred, but also to prevent special security measures from being applied disproportionately. It can have a preventive effect by helping to reduce or prevent the application of security measures and by providing transparency regarding measures which are often perceived as arbitrary by the persons concerned.

Special security measures should be documented comprehensively, comprehensibly and completely. Furthermore, at short, regular intervals, reasons must once again be provided as to why the measure still cannot be terminated. The documentation should be done in writing and be checked at regular intervals by the prison management.



#### 4.4.4 – Occupancy

At the time of the visit (in 2020), the prisons in Landsberg am Lech, Schwäbisch-Hall and Karlsruhe were overcrowded. This results in too many prisoners being accommodated in cells that are unsuitable for such occupancy due to their size and furnishings; this can also violate the human dignity of the prisoners concerned. Moreover, leisure areas had to be repurposed, which led to a deterioration of the conditions of detention for all prisoners.

##### Multiple-occupancy of prison cells without separate toilets

During its follow-up visit in 2020, the National Agency had criticised the double-occupancy of cells that have a floor space of 8 square metres and no fully partitioned toilet with separate ventilation at Karlsruhe Prison. If the toilet is not partitioned, the placement of several persons in one cell violates their human dignity which is protected by Article 1(1) of the Basic Law.<sup>143</sup> Under these circumstances, not even a minimum of privacy can be maintained. The occupancy levels were such that it would have been possible to use mainly those cells for double-occupancy which have a partitioned toilet, yet no separate ventilation.

As was already the case after the first visit in 2017, the Baden-Württemberg Ministry of Justice and European Affairs made no promise in its statement to terminate the double occupancy of cells without partitioned toilets. Prisoners still have to go to the toilet in the presence of fellow inmates. Despite the now promised prioritisation of double-occupancy cells with partitioned yet not separately ventilated toilets, the Ministry stated that the “double occupancy of cells not equipped with structurally partitioned toilets remains unavoidable in order to handle occupancy bottlenecks”.

Double occupancy should only be carried out in cells with separately ventilated and structurally partitioned toilets.<sup>144</sup>

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<sup>143</sup> Cf.: Federal Constitutional Court file no.: 2 BvR 409/09; Lübke-Wolf (2016) “Die Rechtsprechung des Bundesverfassungsgerichts zum Strafvollzug und Untersuchungshaftvollzug”, p. 269; ECHR, 5 April 2013, Canali v. France, no. 40119/09; Karlsruhe Higher Regional Court, 19 July 2005, file no.: 12 U 300/04.

<sup>144</sup> Cf. Federal Constitutional Court, order of 22 February 2011, file no.: 1 BvR 409/09, margin no. 30, according to which the accommodation of several prisoners in a single cell

##### Multiple-occupancy and cell size

At Landsberg am Lech Prison, the smallest four-bed cell has a floor space of 16.98 square metres, and the double detention rooms in the entrance building have a floor space of 9.92 square metres. At Schwäbisch-Hall Prison, the cells used for double occupancy in the old building have a floor space of 9.13 square metres. In the view of the National Agency, the absolute minimum threshold for humane accommodation is not met in these cases.

In order for detention conditions to be humane, cells must have a floor space of at least six square metres, excluding the sanitary area. For multiple-occupancy, a further four square metres of floor space must be added to this figure for each additional person.

Moreover, measures should be taken to allow prisoners to generally be accommodated in single-occupancy cells as provided for by law.

##### Over-occupancy

Schwäbisch Hall Prison and Karlsruhe Prison, which was visited in 2020, are regularly overcrowded, as is generally the case in Baden-Württemberg’s prisons. This led to the multiple-occupancy situation described above in these prisons, which were visited in 2021 and 2020. The quality of the detention conditions has thus been negatively affected. What is more, at Schwäbisch-Hall Prison, recreational rooms are used to accommodate prisoners. This worsens the conditions of detention for the other prisoners as well and restricts their recreational activities.

Measures should quickly be taken to counteract the structural over-occupancy in Baden-Württemberg’s prisons.

##### Building projects and over-occupancy

The Baden-Württemberg Ministry of Justice and European Affairs told the National Agency about planned building projects which are intended to increase the capacity of Stuttgart Prison by 270 from the end of 2022. The National Agency welcomes the fact that the occupancy situation is to be remedied through construction measures. In early 2021, the National Agency nevertheless contacted the Baden-Württemberg Ministry of Justice and European Affairs once again to advo-

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without a partitioned toilet and separate ventilation represents a violation of human dignity.

cate immediate measures to ensure that the detention conditions at Karlsruhe Prison are in line with the constitution and humane. The Federal Constitutional Court demands the following: “If, due to the special conditions in a particular facility, the requirements arising from the duty to protect human dignity cannot be met vis-à-vis a prisoner, the prisoner must be transferred to another facility.”<sup>145</sup> In addition, it is possible to postpone the enforcement of a sentence of imprisonment pursuant to section 455a of the Code of Criminal Procedure (*Strafprozessordnung*, StPO) if this is necessary on the grounds of institutional organisation and if overriding reasons of public safety do not present an obstacle thereto.

#### 4.4.5 – Recreational opportunities

The sports and recreational opportunities offered in Division II of Tegel Prison have not been expanded since the first visit of the National Agency in 2017. According to the Berlin Senate Department for Justice, it is difficult to motivate prisoners to participate in the existing offerings. However, sports and activity-based leisure activities are an important part of preventive health care and rehabilitation and can contribute to an improvement in well-being, particularly in view of the burdensome structural conditions in Division II.

The range of sports and recreational opportunities available to prisoners at Division II should be expanded. Prisoners should be encouraged to actively participate.

#### 4.4.6 – Shackles

During its visit to Schwäbisch-Hall Prison, the National Agency was informed that persons placed in specially secured cells sometimes had their hands and feet bound with steel cuffs.

The use of metal cuffs has a high potential for injury to the person concerned and can result in haematomas or compressed nerves.

In order to protect the right to physical integrity, any shackling should be carried out using adjustable textile hand restraint belts.<sup>146</sup>

#### 4.4.7 – Physical restraint

Prisoners placed in a specially secured cell at Division II of Tegel Prison can also be bound to the sides of the bed by their arms and legs (four-point restraint). Two leather and two metal cuffs are kept in each cell for this purpose. According to information provided by the facility, the metal cuffs, which can be locked more quickly, are used as a means of aiding the use of physical force for the immediate restraint of prisoners in order to ensure they can be restrained quickly in situations of distress. These are then replaced by padded leather cuffs, which are brought in from another specially secured cell.

However, when several prisoners are restrained in different cells at the same time, there are insufficient leather cuffs available. Thus, there is a danger of metal cuffs being used for a longer period of time. Suitable material must be available on site. The National Agency is aware that, in the forensic psychiatric sector and in many prisons, textile restraints are used exclusively. The use of metal cuffs has a high potential for injury to the restrained person. It can result in haematomas or compressed nerves.

To minimise the risk of physical harm, restraints should be applied using a strap-based system. If physical restraint is initially carried out with metal cuffs, the time at which these are replaced should be documented.

#### 4.4.8 – Updating enforcement plans

The prison management of Tegel Prison reported that, following the first visit of the National Agency in 2017, 80% of the enforcement plans of admitted prisoners are now being regularly updated. In addition, some enforcement plans of prisoners newly admitted at the time of the National Agency’s visit had not even been drawn up yet after more than six weeks in the Berlin prison system. According to the information provided, responsibility for this lies with Moabit Prison, the prison responsible for all admissions to the Berlin prison system. Officers of Moabit Prison regularly come to Tegel Prison to draw up the initial enforcement plans. Pursuant to section 9 (2) of the Berlin Prison Act (*Berliner Strafvollzugsgesetz*), enforcement plans generally have to be drawn up within the first six weeks. The obligation to update these enforcement plans applies to

<sup>145</sup> Federal Constitutional Court, order of 13 November 2007, file no.: 2 BvR 939/07, margin no. 13.

<sup>146</sup> Reference is made, for example, to the model used by FRONTEX during deportation flights.

all prisoners and must be observed accordingly.

Given the significance of the enforcement plan to a prisoner's rehabilitation, the management of all prisons involved must ensure that each prisoner possesses an up-to-date enforcement plan and is able to work with their supervisors to achieve their enforcement objectives.

#### 4.4.9 – Contact with the outside world

Before the Covid-19 pandemic, prisoners at Straubing and Landsberg am Lech Prisons were only allowed to make telephone calls – as in all Bavarian prisons as per Article 35 of the Bavarian Prison Act – upon request and “in urgent cases”, for example if they otherwise had no visitors or if a relative had died. This made Bavaria the only *Land* where, apart from actual visits, the external contacts of prisoners were, in normal times, limited to letters.

Maintaining contact with the outside world serves to facilitate prisoners' social rehabilitation and helps them reintegrate into their life outside of prison after their release. Regular contact with the outside world is urgently needed, especially for longer periods of imprisonment, in order to maintain and promote a welcoming space for release. In the National Agency's view, prisoners in Bavaria should be allowed to have regular telephone conversations with relatives, as is common in other *Länder*.

In its statement to the National Agency, the Bavarian State Ministry of Justice declared that it would permanently expand the possibilities for prisoners to use the telephone and that it would regulate by law the possibility of using video telephony. The National Agency welcomes this alignment with the standard common in other *Länder*.

The National Agency recommends that the possibilities for video telephony established during the pandemic be maintained. These should not be counted towards visiting times.

#### 4.4.10 – Staffing situation

##### Psychological and psychiatric care

Pursuant to section 63 (1) of the Saxon Prison Act (*Sächsisches Strafvollzugsgesetz*), prisoners have a right to necessary medical services in line with the general standards of statutory health insurance. At Bautzen Prison, adequate psychological

and psychiatric care of all prisoners is not guaranteed.

If a prisoner has mental health issues or exhibits mental disorders, intensive psychological care and treatment must always be guaranteed. Adequate medical and psychiatric care for prisoners must be ensured at all times.

##### Prison staff

During the National Agency's visits, several facilities reported that the staffing situation was strained. At Schwäbisch-Hall Prison, 55 prisoners are accommodated on each corridor and supervised by only one member of staff. At the time of the visit, 155 of 178 posts in the general prison service and 47 of 50 posts in the other professional groups were filled at Bautzen Prison. In the medical department of Bautzen Prison, only one of two doctor's positions and only two of five posts for care staff were filled. Under these circumstances, adequate medical care for prisoners can hardly be guaranteed.

It was also reported that it was increasingly difficult to recruit suitable personnel for training in the general prison service. There were several cases where, due to staff shortage, individual members of the general prison service at Bautzen Prison were simultaneously responsible for several departments in which prisoners were allowed to leave their cells. Particularly at night, staffing levels that would ensure a rapid response to emergency calls were not always possible. Due to this shortage of staff, prisoners cannot be adequately supervised. This significantly increases the risk of assaults among prisoners, but also against staff members. This has already led to a considerable reduction of out-of-cell time. It also seems impossible to provide prisoners with sufficient care under these conditions, which constitutes an obstacle to rehabilitation. According to information from Bautzen Prison, working in the general prison service is not very attractive and offers few opportunities for change.

Generally, understaffing results in the remaining staff members being overworked. Sufficient staffing in line with the staffing plan must be ensured.

## 4.4.11 – Privacy

### Drug tests

At Straubing, Landsberg am Lech and Bautzen Prisons, drug tests are conducted on urine samples that have to be passed while under the observation of non-medical staff. This procedure considerably interferes with the privacy of the persons concerned. During its visits, the National Agency encountered various drug testing methods which minimised the degree of interference with prisoners' privacy, such as the use of a marker system. With this procedure, it is no longer necessary to observe the passing of the urine sample. At least one alternative method of drug testing should be available so that prisoners can choose the method they find to be the least intrusive.

In previous statements to the National Agency, the *Land* Bavaria also spoke about a pilot project and test runs with different methods of drug testing. A marker system was rejected, however, as swallowing markers was considered a major physical interference.

The National Agency would like to point out that, when prisoners can choose between different methods of drug testing, they can also decide which of those methods constitutes the least interference for them.

### Strip-searches

During their visits to Straubing, Landsberg am Lech and Bautzen Prisons, the delegation was told that all new prisoners are strip-searched upon their arrival. According to the Federal Constitutional Court, strip-searches involving a visual inspection of detainees' genital area represent a severe interference with their general right of personality.<sup>147</sup> They must not be carried out routinely or in the absence of case-specific suspicions.<sup>148</sup> To satisfy this requirement, general strip-search orders must allow for exceptions if the principle of proportionality so demands. For reasons of prevention, the National Agency suggests that this leeway to take decisions on a case-by-case basis also be explicitly stipulated by *Land*

<sup>147</sup> Federal Constitutional Court, order of 5 March 2015, file no.: 2 BvR 746/13, juris margin nos. 33-35

<sup>148</sup> Federal Constitutional Court, order of 10 July 2013, file no.: 2 BvR 2815/11, margin no. 16, with reference to ECHR, *van der Ven v. the Netherlands*, judgment of 4 February 2003, Application no. 50901/99, margin no. 62.

law.<sup>149</sup>

For example, the Saxon Prison Act provides such leeway by providing for the possibility of ordering searches of prisoners only "as a rule" in section 75 (3) sentence 1. At the visited prison in Bautzen, however, searches were carried out without exception.

It must be ensured that orders for strip-searches involving a visual inspection of the genital area always allow officers to exercise discretion in assessing whether or not the measure is necessary. Officers must be made aware of this.

If it is indeed necessary that the prisoner undress fully, then the search should be conducted in a respectful procedure, for example involving two stages where half the body remains dressed in each stage. This serves to protect the human dignity of those concerned, as they are not forced to stand in front of prison staff completely undressed.

### Showers

As regards the communal showers at Schwäbisch-Hall Prison, there are no arrangements in place to ensure privacy protection, such as partition walls.

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

### Visibility of toilets

At all Bavarian prisons visited since 2019, CCTV monitoring in the specially secured cells also covered the toilet area, which was shown on the monitoring screen without pixelation. In 2021, this situation was again encountered at Straubing and Landsberg am Lech Prisons. The same was also found at Bautzen Prison. At Tegel Prison, the function of the installed pixelation system could not be demonstrated. The National Agency asked for a clarification of how the system works.

Monitoring prisoners while they are using the toilet represents a considerable interference with their rights of personality. Prisons in other *Länder* found appropriate solutions for this problem. For

<sup>149</sup> Cf. section 46 (3) half-sentence 2 of the Hesse Prison Act (*Hessisches Strafvollzugsgesetz*).

example, the toilet area in a specially secured cell at Frankfurt Prison is roughly pixelated so that the prisoners' movements and silhouette can still be made out despite the pixelation. This protects the privacy of those affected and, at the same time, provides sufficient visibility to enable a timely intervention if there is a risk of self-harm. CCTV cameras must be fitted in such a way that the toilet area is either not visible on the monitor at all or, alternatively, is taped over or only shown in the form of pixelated images.

If deemed necessary in carefully considered individual cases, it may be possible to permit unrestricted monitoring of prisoners held in specially secured cells due to an acute danger of self-harm or suicide. The reasons for such a decision must be clearly documented. In addition, if a toilet area is indeed covered by CCTV monitoring and is not pixelated, only persons of the same sex as the detainee may carry out the monitoring.

#### **4.4.12 – Respectful treatment**

At Bautzen, Tegel and Landsberg am Lech Prisons, the National Agency observed that prisoners are not always treated respectfully. For example, officers entered cells without announcing themselves by knocking; at Tegel Prison, prisoners were addressed with the informal pronoun "du".

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

#### **4.4.13 – Language barrier**

##### **Interpreters**

In the medical departments of Bautzen and Tegel Prisons, devices are sometimes used for video-based interpreting of conversations between prisoners and physicians. In other fields, interpreters are sometimes called in from other facilities to translate confidential conversations with prisoners. However, in individual cases, fellow inmates – and on rare occasions staff members – are asked to interpret in both facilities. At Tegel Prison, doctors can call in external interpreters to help with conversations with non-German-speaking prisoners.

Medical information must be treated confidentially – and facilities where persons are deprived

of their liberty are no exception. This is particularly true for conversations which are subject to medical secrecy. Having staff members or other prisoners interpret is therefore not a suitable solution. In addition, there is a danger in such cases that medical terms or subject matter will not be translated correctly.

When communication problems arise during medical consultations, an interpreter should always be involved. The video interpreting service that is already being used could be expanded for this purpose.

##### **House rules**

At Bautzen Prison, the house rules are available in German, Czech, Russian and Arabic. However, Bautzen Prison houses prisoners from a great number of nationalities; several languages spoken by them are not covered.

It is important that prisoners know and understand the rules and structures of the facility and that any limits set are transparent to them. This can help avoid individual crisis situations and have a de-escalating effect. Therefore, it is important that prisoners can read the house rules in peace at any time without first having to request them from the staff.

In view of the changes to the prisoner population due to the increasing number of immigrants in recent years, the house rules should also be comprehensible for all prisoners. A rather considerable number of prisoners have a migrant background and have only little knowledge of the German language.

The house rules should be provided in the languages predominantly spoken and also in plain language. They should be handed out to prisoners upon their admission.

## 5 – CHILD AND YOUTH PSYCHIATRY

### 5.1 – Introduction

In 2021, the National Agency visited the department for child and youth psychiatry at Asklepios Clinic Harburg in Hamburg-Harburg.

### 5.2 – Positive examples

The National Agency highlighted the following positive examples during its visit:

If they have a negative PCR test result, newly admitted patients are released from Covid-19 preventive quarantine after just three hours.

The documentation of coercive measures is detailed. Especially where restraints are applied, it is ensured that the documentation thereof is comprehensible and complete. This was very positively received by the visiting delegation.

The rooms in the psychiatric clinic for children and juveniles made a well-kept and clean impression. Due to the friendly interaction of the staff with each other and in contact with the patients, the atmosphere in the areas visited was relaxed.

### 5.3 – Findings and recommendations

The visited facilities were given recommendations on the following main topics:

#### 5.3.1 – Complaints management

At the time of the visit, the patients had no way of lodging an anonymous complaint on their respective wards of the department for child and youth psychiatry. A notice with possible contact addresses was posted directly at the care support centre. The notice was written in administrative language.

Mentally ill patients on closed wards in particular may encounter huge difficulties when trying to contact a complaints body. A patient advocate can act as an intermediary in such situations. Publishing the contact details of patient advocates or an ombudsperson can make it possible for patients to lodge a complaint. In similar facilities, complaints boxes are provided on the wards to allow patients to anonymously lodge a complaint.

In order to guarantee the possibility of complaining anonymously, an information sheet with contact details of patient advocates or ombud-

spersons, if necessary with a photo, should be displayed in a clearly visible place and handed out to the patients. This information should also be provided in easily comprehensible language or in plain language. Furthermore, a complaints box provided on the closed wards can offer children and juveniles an anonymous way of submitting complaints. Complaints should be recorded centrally and evaluated on a regular basis. This makes it possible to detect recurring issues and implement counter-measures if necessary.

#### 5.3.2 – Crisis intervention room

##### Furnishings

The crisis intervention room in the department for child and youth psychiatry is equipped with a mattress on the floor. Upon enquiry, the National Agency was informed that no other seating is provided even if an individual is placed in such a cell for a longer period of time.

Solutions should be found to allow patients to sit in a normal position.

Foam seating or “challenging” furniture could be used, for example, which would allow the rooms to be designed appropriately without having to sacrifice furniture or comfort for safety reasons.

##### Camera

There is a camera in the crisis intervention room of the clinic’s unit for child and juvenile psychiatry. This camera is no longer used, but remains visible in the room.

Even a non-operational, but clearly visible camera can give the impression, especially to children and juveniles, that they are being monitored.

The camera should be removed from the crisis intervention room.

## 6 – CUSTOMS

### 6.1 – Introduction

In 2021, the National Agency visited Frankfurt am Main Customs Investigation Office (Airport office) and Munich Customs Investigation Office (Airport office). The places of detention visited were chosen in order to address the customs authorities' handling of the specific issue of persons being taken into custody after having internally concealed small packages of drugs (including so-called body packers) and the associated use of a "swallowers' toilet"<sup>150</sup>. In this context, the National Agency made recommendations which relate to minimum human rights guarantees. It should be noted here that at three different locations that have a "swallowers' toilet" (Düsseldorf<sup>151</sup>, Frankfurt a. M., Munich), just as many different practices can be observed. Of these, the practice at Munich Airport largely fulfils the requirements and recommendations of the National Agency.

As a result of an initial exchange between the National Agency and the Central Customs Authority on 10 February 2021<sup>152</sup>, the possibility of adequately protecting the privacy of persons concerned was examined by the Central Customs Authority and subsequently implemented by attaching a privacy film at the level of the intimate area at the facility in Frankfurt. The recommendations given to Essen Customs Investigation Office (Düsseldorf Airport office), which was previously visited in 2020, have yet to be implemented.

During the exchange held on 10 February 2021, the Central Customs Authority also gave assurances that the possibility of constant medical supervision was being considered. This was discussed in depth during another conversation between the National Agency and the Central Customs Authority on 18 January 2022. In this context, the National Agency strongly recommended that the Central Customs Authority initiate an independent medical evaluation on the handling of persons in custody who internally

concealed drugs.

In order to enable effective monitoring by the National Agency, it will in future be provided with a bi-annual statistical report on the number and course of measures in which the so-called "swallowers' toilet" was used.

### 6.2 – Positive examples

The National Agency highlighted the following positive examples during its visits:

It should be particularly emphasised that persons who are apprehended at Munich Airport and who are strongly suspected of having internally concealed drugs are immediately taken to a hospital. Through their stay there and the cooperative collaboration between the staff of the clinic and the customs authorities, medical supervision is ensured during and after excretion of the foreign objects. This way, the right to life and physical integrity is protected in the best possible manner, while effectively designed control processes and law enforcement remain guaranteed. To protect the sense of modesty of the persons concerned, they are provided with a hospital gown which covers the intimate area completely – even while using the toilet – while the hands of the persons concerned are still visible.

The National Agency also welcomes the fact that, at Frankfurt am Main Customs Investigation Office (Airport office), officers always remove their firearms before entering the custody suite. The furnishings of the three custody cells available there conform with the recommendations of the National Agency. The laying areas, which are fitted with a mattress, have a height that allows the persons concerned to sit. Finally, the detailed and comprehensible documentation of custody by the staff of the Frankfurt Customs Investigation Office, which serves to protect the persons in custody, should be positively emphasised.

<sup>150</sup> Customs officers use a device they call a "swallowers' toilet" in order to monitor the excretion of the foreign objects concerned (body packs).

<sup>151</sup> The report on the visit at Essen Customs Investigation Office (Düsseldorf Airport office) of 10 September 2020 can be found on the website of the National Agency (retrieved on 26 January 2022).

<sup>152</sup> Also see the National Agency's 2020 Annual Report, especially pp. 90-93.

### 6.3 – Findings and recommendations

The visited facilities were given recommendations on the following main topics:

#### 6.3.1 – “Swallowers’ toilet”<sup>153</sup>

Date	Drug	Number of packages	Duration of custody (in hours)
13.-14. March 2020 <sup>154</sup>	Cocaine	67	18
22.-23. October 2020	Cocaine	31	21,5
13.-14. December 2020	Cocaine	67 + 1 <sup>155</sup>	24
13.-14. December 2020	Cocaine	67	28,5

Table 2: Taking into custody of persons who internally concealed small packages of drug, Customs Investigation Office, Frankfurt a.M.

The so-called “swallowers’ toilet” at Frankfurt am Main Customs Investigation Office (Airport office) is located in the custody suite on an elevated platform and is visible from one side. The persons concerned are constantly monitored by staff during the process of excretion. In order to protect their sense of modesty, a privacy film was attached at the level of the intimate area.

During its visit, the delegation was informed that medical care of the persons concerned is not ensured while they are in custody and using the so-called “swallowers’ toilet”. Even though there is an emergency call button in the office that can be used to directly notify the emergency services at the airport, regular medical supervision is not ensured.

The National Agency recognises that due to the nature of the offences in question (narcotics offences, trafficking and smuggling of narcotics), the staff of the customs investigation offices face particular challenges and securing evidence can require exceptional measures. In this context, the National Agency also acknowledges that special consideration must be given to security needs and

the securing of evidence.

However, in the case of persons who have internally concealed drugs, there is a risk of so-called body pack syndromes (risk of poisoning due to perforation of the swallowed package, risk of gastrointestinal obstruction), which can lead to the death of the person concerned.<sup>155</sup>

In the National Agency’s view, it is essential to grant the persons concerned the right to medical care and treatment.<sup>156</sup> Medical supervision to ensure the timely detection of ruptured body packs appears to be indispensable.<sup>157</sup> The CPT also rec-

<sup>153</sup> The information presented in this table is derived from the Central Customs Authority’s response to a query conducted by the National Agency to obtain an overview of the duration and conditions of the use of the “swallowers’ toilet”. According to information provided by the Central Customs Authority, no persons were taken into custody in 2021 having internally concealed drugs.

<sup>154</sup> One package had been inserted into the vagina.

<sup>155</sup> This view is shared by the customs administration: “If only one of these containers ruptured inside the stomach, this would lead to certain death in most cases.” (*“Platzt nur eines dieser Behälter im Magen, bedeutet das in den meisten Fällen den sicheren Tod.”* URL: [https://www.zoll.de/SharedDocs/Pressemitteilungen/DE/Rauschgift/2020/z84\\_bodypacker\\_m.html#:~:text=Als%20Bodypacking%20wird%20das%20Verschlucken,meisten%20FC3%A4llen%20den%20sicheren%20Tod](https://www.zoll.de/SharedDocs/Pressemitteilungen/DE/Rauschgift/2020/z84_bodypacker_m.html#:~:text=Als%20Bodypacking%20wird%20das%20Verschlucken,meisten%20FC3%A4llen%20den%20sicheren%20Tod) (retrieved on 26 January 2022). See also: Markun/ Flach/ Schweitzer/ Imbach (2013), Bodypacking, in: Praxis 102 (15), pp. 891-901 (896): “Unsealed drug packages can release lethal doses of narcotics within a very short time and, depending on the substance, result in fulminant intoxication due to rapid transmucous absorption.” (*“Undichte Drogenpakete können innert kürzester Zeit letale Dosen von Rauschgift freisetzen und je nach Substanz aufgrund rascher transmuköser Resorption zu einer fulminanten Intoxikation führen.”*)

<sup>156</sup> See also: Praxis 2013; 102 (15): pp. 891 - 901.

<sup>157</sup> Cf., *inter alia*, the medical-ethical guidelines of the central ethics commission of the Swiss Academy of Medical Sciences (*Schweizerische Akademie der Medizinischen Wissenschaften, SAMW*), Medical care for detained persons (*Ausübung der ärztlichen Tätigkeit bei inhaftierten Personen*). <https://www.samw.ch/de/Publikationen/Richtlinien.html> (retrieved on 15 Janu-



ommends increased medical supervision of the individuals concerned, preferably in a medical ward, in view of the risk of this so-called body back syndrome.<sup>158</sup>

It is undoubtedly up to the competent authorities to decide how medical supervision is to be ensured. However, it must be clarified definitively to what extent the conditions of custody of the persons concerned are adapted (e.g. possibility to lie down or move around) if they stay there for a long period of time (up to 28 hours in the case of the observed measures) under constant visual observation and excrete a large number of packages (up to 67 in the case of the observed measures) on the so-called “swallowers’ toilet”. Furthermore, it must be clarified to what extent medical supervision – for example through checks by medical staff at the airport – can actually be guaranteed in this framework.

Due to the potential risks involved and in order to protect the right to life and physical integrity, a detained person who has internally concealed drugs should, under all circumstances, receive constant medical supervision before, during and after excretion of the foreign objects.

In the view of the National Agency, the reservations brought forward by the Central Customs Authority in its statement of 6 December 2021 are not comprehensible. In particular, the objections raised (“Monitoring the excretion process on the premises of Frankfurt am Main Customs Investigation Office (Airport office) is indispensable to ensure the suspects’ own security and to prevent their escape and a possible danger to uninvolved persons in the clinic, among other reasons.”) do not appear coherent considering the practice in Munich. The repeated arguments according to which a medical examination is carried out only “as a general rule” and constant medical supervision may not be considered necessary where a doctor is of the opinion that the person’s state of health does not raise any concerns are worrying. This is all the more the case as the excretion process generally lasts several hours during which the health situation of the person concerned can change at any time.

### 6.3.2 – Access to custody cells

Access to the custody cells in Frankfurt a. M. is not at ground level and can only be reached via the stairs or an elevator.

The current structural conditions can lead to potentially dangerous situations for the persons taken into custody and the staff. Moving agitated persons up a staircase can lead to a higher risk of injury. During visits to comparable facilities, the National Agency became aware that an elevator had already become stuck several times due to technical problems. On one specific occasion, this led to two police officers and one individual in custody being stuck in the elevator together.

A secured level access to the custody cells should be created.

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ary 2021).

<sup>158</sup> CPT/Inf (2008) 33, margin no. 39.

# VIII APPENDIX

## 1 – LIST OF VISITS IN 2021

Date	Visit
8 June	Residential care and nursing home, North-Rhine Westphalia
9 June	Düsseldorf Police Headquarters
15 June	Frankfurt am Main Customs Investigation Office, Airport office
16 June	Observation of a deportation procedure, Frankfurt Airport to Baku, Azerbaijan
14 July	Observation of a deportation procedure, Leipzig/Halle Airport to Tabarka, Tunisia
14 July	Halle/Saale Federal Police Station
22 July	Straubing Prison, Bavaria
23 July	Straubing District Hospital, Forensic Psychiatric Clinic, Bavaria
3 August	Munich Customs Investigation Office, Airport office
3 August	Observation of a deportation procedure, Munich Airport to Kabul, Afghanistan
17 August	Schwäbisch Hall Prison, Baden-Württemberg
8 September	Forensic Psychiatric Clinic, Lower Saxony
9 September	Helios Hanse Clinic Stralsund (forensic psychiatry), Mecklenburg-Western Pomerania
10 September	Ameos Clinic for Forensic Psychiatry and Psychotherapy Ueckermünde, Mecklenburg-Western Pomerania
13 September	Residential care and nursing home, Hesse
22 September	Bautzen Prison, Saxony
23 September	Saxon Hospital Arnsdorf, forensic psychiatric clinic and unit for juveniles, Saxony
28 September	Knüll Baracks Schwarzenborn
6 October	Tegel Prison, Berlin
7 October	Hospital of the Forensic Psychiatric Facility (follow-up visit), Berlin
8 October	Unit for juveniles, Hospital of the Forensic Psychiatric Facility, Berlin
12 October	Landsberg am Lech Prison, Bavaria
13 October	Kaufbeuren District Hospital, Clinic for Forensic Psychiatry

Date	Visit
25 October	Nuremberg Federal Police District Office
26 October	Observation of a deportation procedure, Munich Airport to Moscow, Russia
26 October	Pionierkaserne auf der Schanz (Ingolstadt Barracks)
4 November	Forensic Psychiatric Clinic in Uchtspringe, Saxony-Anhalt
5 November	<i>Land</i> Clinic of Forensic Psychiatry, Lochow branch, Saxony-Anhalt
30 November	Asklepios Clinic North – Ochsenzoll, Forensic Psychiatric Clinic (follow-up visit), Hamburg
1 December	Asklepios Clinic Harburg-Hamburg, Clinic for Child and Juvenile Psychiatry, Hamburg

## 2 – STATEMENTS ON DRAFT LEGISLATION

Date	Legislation
1 March 2021	Draft bill on the execution of youth detention (Berlin Senate Department for Justice, Consumer Protection and Anti-Discrimination)

## 3 – MEMBERS OF THE FEDERAL AGENCY

Name	Official title	Since	Position
Ralph-Günther Adam	Senior civil servant and prison director (retd)	06/2013	Director
Sabine Thurau	President of the Hesse <i>Land</i> Criminal Police Office (retd)	04/2021	Deputy Director

## 4 – MEMBERS OF THE JOINT COMMISSION

Name	Official title/profession	Since	Position
Rainer Dopp	State Secretary (retd)	09/2012	Chair
Petra Heß	Former Member of the German Bundestag	09/2012	Member
Dr Helmut Roos	Senior civil servant (retd)	07/2013	Member
Dr Monika Deuerlein	Certified psychologist [Dipl.-Psy.]	01/2015	Member
Margret Osterfeld	Psychiatrist, psychotherapist (retd)	01/2015	Member
Petra Bertelsmeier	Senior public prosecutor (retd)	01/2019	Member
Dr Werner Päckert	Senior civil servant and prison director (retd)	01/2019	Member
Michael Thewalt	Senior civil servant and prison director (retd)	07/2013	Member

## 5 – SECRETARIAT STAFF

Name	Official title/profession	Position
Christian Illgner	Lawyer (Mag. iur.), Criminologist (M.A.)	Head
Dr Sarah Teweleit	Lawyer (LL.M.)	Deputy Head
Oliver Reichenauer	State-certified educator	Employee (since 07/2021)
Jutta Jung-Henrich	Education in Health Care (M.A.)	Research associate (since 08/2021)
Pascal Décarpes	Criminologist (M.A., LL.M.)	Research associate (since 10/2021)
Elisabeth Linkenbach	Nursing educator (B.A)	Academic Assistant
Katja Simon	Public administration specialist ( <i>Verwaltungsfachwirtin</i> )	Administrative Department
Judith Bene	Travel agent	Secretariat (since 08/2021)
Désirée Eichler	Management assistant in marketing communication	Secretariat

## 6 – ACTIVITIES IN THE PERIOD UNDER REVIEW

Date	Location	Visit
26 January	Online	Participation in the seminar “Forced Return Monitoring”; International Centre for Migration Policy Development
10 February	Online	Exchange with the Central Customs Authority
10 March	Online	Presentation of the minimum standards for deportations, Conference of the Diakonie (the social welfare organisation of Germany’s Protestant churches)
7 April	Online	Active participation in the seminar “Professional communication. Basic principles of internal and external crisis communication” ( <i>“Professionelle Kommunikation. Grundlegende Prinzipien der internen und externen Krisenkommunikation”</i> )
19 April	Online	Exchange with advisory councils on custody awaiting deportation
21 April	Online	Expert hearing before the Human Rights Committee of the Bundestag
10-12 May	Online	Lectures at the University of Applied Sciences for Administration and Service Altenholz ( <i>Fachhochschule für Verwaltung und Dienstleistung Altenholz</i> ): Working methods of the National Agency in the field of police custody
12 May	Berlin	Exchange with the Federal Ministry of the Interior
31 May	Online	Participation in the Conference: “Human rights as a compass within and out of the Covid-19 crisis” [ <i>“Menschenrechte als Kompass in und aus der Covid-19-Krise”</i> ]
15-17 June	Online	Participation in the expert/work meeting: “Older People Deprived of Liberty: Monitoring the Risk”; APT/ODIHR
19-22 July, 25 August	Eschwege	Participation in the refresher course for air escorts (Federal Police) and dialogue
28-29 September	Fulda	Presentation of the work of the National Agency; working group on integrated return management
3 November	Online	Participation in the seminar: “Mendèz-Principles – Principles on Effective Interviewing for investigations and information gathering”; APT.
3 November	Online	Participation in the workshop: “Culture of constructive criticism within the police” What is that? Is a culture of constructive criticism within the police even possible? (“Fehlerkultur in der Polizei? Was ist das überhaupt? Ist eine Fehlerkultur in der Polizei realisierbar?”); Institute for Safety and Security Research ( <i>Forschungsinstitut für öffentliche und private Sicherheit</i> )
12-14 November	Online	Participation in the Conference: “The future of migration law – beyond eurocentrism and new nationalism?” ( <i>“Zukunft des Migrationsrechts – jenseits von Eurozentrismus und neuem Nationalismus?”</i> ); Network Migration Law ( <i>Netzwerk Migrationsrecht</i> )

Date	Location	Visit
17 November	Berlin	Exchange with the Federal Ministry of Defence and the Territorial Tasks Command
18-19 November	Berlin	Meeting between Germany, Austria and Switzerland: Organisation of the exchange of experiences between German-speaking NPMs
25 November	online	Participation in the seminar: "Covid-19 in prison – Prevention of infection, reintegration into society and quality of life" ( <i>"Covid-19 im Strafvollzug - Infektionsschutz, Resozialisierung und Lebensqualität"</i> )
3 December	Online	Participation in the seminar: "External and independent mechanisms of monitoring of police: functioning, interactions, and effectiveness"; Independent Police Complaints Authorities' Network
6 December	Online	Participation in the "Workshop on police complaints bodies" ( <i>Werkstattgespräch zu Polizeibeschwerdestellen</i> ); German Institute for Human Rights
7 December	Online	Participation in the concluding event "Residential care as a risk factor" ( <i>Pflege als Risiko</i> )
9 December	Online	Participation in the seminar: "The theory and practice of involving vulnerable children in decision making"; CP4Europe.
10 December	Online	Participation in the event: "Protection against violence in residential facilities" ( <i>Schutz vor Gewalt in Wohnrichtungen</i> ), German Institute for Human Rights
13 December	Online	Participation in the seminar: "Closed wards: Total institutions" ( <i>Geschlossen Untergebracht: Totale Institutionen</i> ); German Sociological Association ( <i>Deutsche Gesellschaft für Soziologie</i> )
17-18 December	Online	Participation in the Conference: "Monitoring places of deprivation of liberty in the context of Covid-19"; Tunisian NPM